

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 Web site 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 the Exchange. 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-Phlx-2014-65 and should be submitted on or before November 4, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

Kevin M. O'Neill,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-73313; File No. SR-FINRA-2014-030]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change Relating to Quotation Requirements for Unlisted Equity Securities and Deletion of the Rules Related to the OTC Bulletin Board Service

October 7, 2014.

I. Introduction

On June 27, 2014, the Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to adopt rules relating to quotation requirements for over-the-counter ("OTC") equity securities and to delete the rules relating to the OTC

Bulletin Board Service ("OTCBB" or "Service") and thus cease its operation. The proposed rule change was published for comment in the **Federal Register** on July 15, 2014.³ The Commission received one comment letter on the proposed rule change.⁴ This order institutes proceedings under Section 19(b)(2)(B) of the Act⁵ to determine whether to approve or disapprove the proposed rule change.

Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to the proposed rule change, nor does it mean that the Commission will ultimately disapprove the proposed rule change. Rather, as discussed below, the Commission seeks additional input from interested parties on the proposed rule change.

II. Description of the Proposed Rule Change

As described more fully in the Notice, FINRA proposed to adopt rules: (1) Governing the treatment of quotations in OTC equity securities⁶ by member inter-dealer quotation systems,⁷ and addressing fair and non-discriminatory access to such systems; (2) requiring member inter-dealer quotation systems to provide FINRA with a written description of quotation-related data products offered and related pricing information, including fees, rebates, discounts and cross-product pricing incentives; (3) expanding the reporting requirements related to quotation information in OTC equity securities; and (4) deleting the Rule 6500 Series and related rules and thereby ceasing operation of the OTCBB.

A. Current Regulatory Framework for Governing Quotations

FINRA, under the statutory mandate of Section 15A of the Act,⁸ has

³ See Securities Exchange Act Release No. 72575 (July 9, 2014), 79 FR 41339 ("Notice"). On August 8, 2014, FINRA consented to extending the time period for the Commission to either approve or disapprove the proposed rule change, or to institute proceedings to determine whether to approve or disapprove the proposed rule change, to October 10, 2014.

⁴ See Letter from Daniel Zinn, General Counsel, OTC Markets Group Inc., dated August 5, 2014 ("OTC Markets Letter").

⁵ 15 U.S.C. 78s(b)(2)(B).

⁶ FINRA Rule 6420(f) defines "OTC equity security" as 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.

⁷ FINRA Rule 6420(c) defines "inter-dealer quotation system" as any system of general circulation to brokers or dealers which regularly disseminates quotations of identified brokers or dealers.

⁸ See 15 U.S.C. 78o-3.

previously adopted rules governing the form and content of quotations relating to securities sold OTC, including rules designed to: (1) Produce fair and informative quotations; (2) prevent fictitious or misleading quotations; and (3) promote orderly procedures for collecting, distributing, and publishing quotations.⁹ FINRA's Rule 6400 Series (Quoting and Trading in OTC Equity Securities), among other things, provides a regulatory framework governing the form and content of quotations in OTC equity securities and, together with other FINRA rules, including rules in the Rule 5200 Series (Quotation and Trading Obligations and Practices), specifies provisions directed toward the mandate set forth in Section 15A(b)(11) of the Act (collectively referred to as the "Quotation Governance Rules"). FINRA also operates the OTCBB and has established the Rule 6500 Series, which governs the operation and use of the OTCBB.

FINRA's Quotation Governance Rules generally prescribe limitations around the conduct of members that publish quotations in OTC equity securities, including quotations displayed on inter-dealer quotation systems. While these rules apply to member quotation activities, they generally do not include rules specifically directed to the member inter-dealer quotation systems on or through which such quotation activity may take place. For example, FINRA Rule 6432 (Compliance with the Information Requirements of Exchange Act Rule 15c2-11) generally provides that members may not initiate or resume quotations in any quotation medium unless the member files Form 211 with FINRA and complies with Exchange Act Rule 15c2-11 (Initiation or resumption of quotations without specific information).¹⁰

In 2010, the Commission approved four FINRA rules governing quotation activity generally by prescribing additional requirements for members entering quotations on inter-dealer quotation systems in OTC equity securities: (1) Rule 6434 (Minimum Pricing Increment for OTC Equity Securities); (2) Rule 6437 (Prohibition

⁹ Section 15A(b)(11) of the Act provides: "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. Such rules relating to quotations shall be designed to produce fair and informative quotations, to prevent fictitious or misleading quotations, and to promote orderly procedures for collecting, distributing, and publishing quotations." See 15 U.S.C. 78o-3(b)(11).

¹⁰ See 17 CFR 240.15c2-11.

¹⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

from Locking or Crossing Quotations in OTC Equity Securities); (3) Rule 6450 (Restrictions on Access Fees); and (4) Rule 6460 (Display of Customer Limit Orders) (“2010 OTC Regulatory Enhancement Rules”)¹¹ These rules extended to the OTC equity market certain protections previously applicable only to exchange-listed securities, and were adopted to enhance quality and investor protection in the OTC equity market.¹²

In addition, FINRA’s current Quotation Governance Rules also prescribe the minimum share size applicable to members’ quotations in OTC equity securities displayed on an inter-dealer quotation system.¹³ The FINRA Rule 5200 Series also includes rules that govern members’ quotation activity in OTC equity securities.¹⁴

¹¹ See Securities Exchange Act Release No. 62359 (June 22, 2010), 75 FR 37488 (June 29, 2010) (Order Approving File No. SR-FINRA-2009-054).

¹² The 2010 OTC Regulatory Enhancement Rules generally: (1) Provide that members may not display, rank, or accept a bid or offer, or an indication of interest in an OTC equity security priced greater than or equal to \$1.00 in an increment less than a penny and, for OTC equity securities priced under \$1.00, an increment less than \$0.0001; (2) require members to implement policies and procedures to reasonably avoid displaying, or engaging in a pattern or practice of displaying, locking or crossing quotations in any OTC equity security within an inter-dealer quotation system; (3) prohibit members from imposing non-subscriber access or post-transaction fees against published quotations in any OTC equity security that exceed or accumulate to more than the limits set forth in the rule; and (4) require member OTC market makers displaying priced quotations in an OTC equity security on an inter-dealer quotation system to publish immediately a customer limit order that improves the OTC market maker’s priced quotation (or that is equal to the OTC market maker’s priced quotation at the best bid or offer (“BBO”) but increases the OTC market maker’s posted size by more than a *de minimis* amount), subject to enumerated exceptions.

¹³ FINRA Rule 6433 (Minimum Pricing Increment for OTC Equity Securities) generally provides that every member entering quotations in any inter-dealer quotation system must enter and honor those quotations for at least the minimum sizes defined in the rule. The current rule, which began as a pilot in November 2012, amended the tier sizes, among other things, to simplify the tier structure and facilitate the display of customer limit orders pursuant to FINRA Rule 6460. See, e.g., Securities Exchange Act Release No. 70839 (November 8, 2013), 78 FR 68893 (November 15, 2013). This pilot was recently extended until February 13, 2015. See Securities Exchange Act Release No. 73299 (October 3, 2014).

¹⁴ FINRA Rule 5210 (Publication of Transactions and Quotations) provides, among other things, that members are prohibited from publishing or circulating (or causing to be published or circulated) any notice or communication of any kind 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 (i.e., the “fictitious quotation” prohibition). FINRA Rule 5220 (Offers at Stated Prices) generally prohibits members from making an offer to buy from or sell to any person any security at a stated price unless such member is prepared to purchase or sell, as the case may be,

B. Proposed Requirements for Member Inter-Dealer Quotation Systems

Although FINRA’s existing Quotation Governance Rules explicitly regulate the activities of OTC market makers¹⁵ and other members that display quotations on inter-dealer quotation systems, FINRA’s rules generally do not directly provide quotation governance standards for the member inter-dealer quotation systems itself on or through which such quotations are displayed. FINRA is proposing to complement the existing framework governing the form and content of quotations by amending FINRA Rule 6431 to require that a member inter-dealer quotation system: (1) Adopt and provide to FINRA written policies and procedures relating to the collection and dissemination of quotation information in OTC equity securities, (2) establish and provide to FINRA fair and non-discriminatory written standards for granting access to quoting and trading on its system, and (3) provide to FINRA for regulatory purposes a written description of each quotation-related data product offered by such member inter-dealer quotation system and related pricing information, including fees, rebates, discounts and cross-product pricing incentives.¹⁶ FINRA believes that the foregoing proposal is consistent with the goals and objectives of Section 17B of the Act¹⁷ regarding the facilitation of widespread dissemination of reliable and accurate quotation information in penny stocks.¹⁸

a. Proposed Quotation Collection and Dissemination Policies and Procedures Requirement

Under the proposed revisions to FINRA Rule 6431, FINRA would require that a member inter-dealer quotation system (whether or not also an alternative trading system or “ATS” as

at such price and under such conditions as are stated at the time of such offer to buy or sell (i.e., the “firm quote” requirement).

¹⁵ FINRA Rule 6420(g) 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 inter-dealer quotation system, including any system that the Commission has qualified pursuant to Section 17B of the Act. A member is an OTC market maker only in those OTC equity securities in which it displays market making interest via an inter-dealer quotation system.

¹⁶ As further discussed below, a member also would be required to provide FINRA with any changes to these required submissions within five business days.

¹⁷ See 15 U.S.C. 78q–2. Section 17B was enacted by Congress as part of the Securities Enforcement Remedies and Penny Stock Reform Act of 1990 (“Penny Stock Act”). See Pub. L. No. 101–429, 104 Stat. 931 (1990).

¹⁸ See Notice, *supra* note 3, 79 FR at 41341.

defined by Exchange Act Rule 300(a)¹⁹ of Regulation ATS) that permits quotation updates on a real-time basis establish, maintain and enforce fair and reasonable written policies and procedures relating to the collection and dissemination of quotation information in OTC equity securities on or through its system. Such policies and procedures are intended to ensure that quotations received are treated fairly and consistently, including by establishing fair and non-discretionary methods under which quotations are prioritized and displayed and such standards must be fully disclosed to subscribers. For example, a member inter-dealer quotation system would be required to address its methodology for ranking quotations, including at a minimum, addressing factors such as price (including any applicable quote access fee), size, time, capacity and type of quotation (such as unpriced quotes and bid/offer wanted quotations).²⁰ FINRA also is proposing that a member inter-dealer quotation system provide FINRA with a copy of its written policies and procedures relating to the collection and dissemination of quotation information, and any material updates, modifications and revisions thereto, within five business days following the member’s establishment of the written policy or procedure or implementation of the material change.²¹

b. Proposed Written Standards Governing System Access Requirement

FINRA is proposing that a member inter-dealer quotation system establish fair and non-discriminatory written standards for granting access to quoting and trading on the system that do not unreasonably prohibit or limit any person in respect to access to services offered by such inter-dealer quotation

¹⁹ See 17 CFR 242.300(a).

²⁰ The member inter-dealer quotation system also would be required to include any other factors relevant to the ranking and display of quotations (e.g., reserve sizes, quotation updates, treatment of closed quotations, and quotation information imported from other systems). FINRA believes that requiring member inter-dealer quotation systems to establish fair and reasonable written policies and procedures and provide such procedures to FINRA will, among other things, further promote orderly procedures for collecting, distributing, and publishing quotations submitted to inter-dealer quotation systems in securities traded OTC. See Notice, *supra* note 3, 79 FR at 41341.

²¹ A member that is an inter-dealer quotation system at the time of the effective date of the proposed rule change would provide the required information upon the effective date and, thereafter, any material update, modification or revision thereto must be provided to FINRA within five business days of its implementation. See *id.* at 41341–42.

system.²² FINRA believes that this proposed requirement is consistent with the “fair access” requirements of Regulation ATS under the Exchange Act²³ but would apply to quoting and trading in all OTC equity securities on the member inter-dealer quotation system, irrespective of the percentage of average daily volume that such inter-dealer quotation system had in the security.²⁴ Further, the proposed rule would require that a member inter-dealer quotation system provide FINRA with a copy of its written standards for granting access to quoting and trading on its system and any material updates, modifications and revisions thereto within five business days following: (a) The date of the member’s establishment of the written standard; and (b) the date of the material update, modification or revision to the written standard. FINRA believes that these proposed amendments are necessary and appropriate to further the mandates of Section 15A of the Act.

c. Proposed Quotation-Related Data Product and Pricing Provision Requirement

FINRA is proposing to require a member inter-dealer quotation system to provide FINRA with a written description of each quotation-related data product offered by such member inter-dealer quotation system and related pricing information, including fees, rebates, discounts and cross-product pricing incentives, and any changes thereto, within five business days following: (a) The date of the establishment of the quotation-related data product or date of any change thereto (including discontinuance of the offering of the quotation-related data product); and (b) the date of the establishment of the quotation-related data product price, including a fee, rebate, discount and cross-product pricing incentive, or change thereto. FINRA believes that the proposed changes described above will facilitate

the objectives of the Act, including Section 17B, by helping ensure that disseminated quotations are reliable and accurate and will provide FINRA with useful information to ensure compliance with FINRA rules and to monitor the widespread availability of quotation information to investors and market participants through sources that are not self-regulatory organizations (“SROs”).

d. Proposed Amendments to the Quotation Recording and Reporting Requirements

FINRA Rule 6431 (Recording of Quotation Information) was implemented in 2003 to provide FINRA with access to quotation data displayed on non-SRO sponsored and non-member systems so that FINRA could assess member compliance with applicable rules and regulations and, when necessary, to reconstruct market activity.²⁵ FINRA is proposing to update and expand the rule to reflect the current quoting structure of the OTC equity market.²⁶ In addition, FINRA is proposing minor amendments to the items of information required to be recorded and reported under the rule.²⁷

When it adopted FINRA Rule 6431, FINRA determined not to apply the requirements to inter-dealer quotation systems that were FINRA members and, rather, to obtain quotation information directly from the FINRA member as needed pursuant to FINRA Rule 8210. However, since that time, the primary inter-dealer quotation system from which FINRA receives quotation information (as reporting agent on behalf of member firms) has become a FINRA member firm and, therefore, FINRA believes that the exception for quotations displayed on systems operated by a FINRA member no longer

should apply.²⁸ The proposed rule would require member inter-dealer quotation systems to report each attributed quotation displayed on the system by a broker-dealer. In the event that a FINRA member displays a quotation on a non-member inter-dealer quotation system, the member must record and report to FINRA the required information regarding the quotations displayed by such member.

FINRA believes that these amendments to the quotation recording and reporting requirements would simplify and streamline the process of obtaining quotation information for regulatory purposes by directly requiring that member inter-dealer quotation systems report subscribing members’ quotation information to FINRA.²⁹ Individual quoting members no will longer be required to report or arrange to have reported to FINRA the items of quotation information specified in the rule, unless such member is displaying a quotation on a non-member inter-dealer quotation system. The rule would continue to permit the use of a reporting agent by either a member inter-dealer quotation system or a member displaying a quotation on a non-member inter-dealer quotation system.³⁰

C. Proposed Deletion of OTCBB-Related Rules

FINRA is proposing to delete the FINRA Rule 6500 Series, which governs the operation of the OTC Bulletin Board Service and cease operation of the OTCBB. FINRA previously proposed to delete the OTCBB rules and discontinue operation of the Service as part of a separate rule filing to establish a quotation consolidation facility, the “QCF Proposal.”³¹ In the QCF Proposal, FINRA stated that the level of transparency in OTC equity securities facilitated by the operation of the OTCBB has been declining significantly

²⁵ See Securities Exchange Act Release No. 47587 (March 27, 2003), 68 FR 16328 (April 3, 2003). See also NASD Notice to Members 03-28 (June 2003).

²⁶ First, FINRA is proposing to expand the scope of the rule beyond quotations displayed by OTC market makers on an inter-dealer quotation system to include quotations displayed by any FINRA member, including ATSs. FINRA believes that quoting in OTC equity securities by ATSs and other members that are not OTC market makers has increased since the adoption of FINRA Rule 6431 and also believes that the rule’s recording and reporting requirements should apply equally to all such quotes displayed on inter-dealer quotation systems. See Notice, *supra* note 3, 79 FR at 41342.

²⁷ Specifically, the new rule would require the following items of quotation information: (1) MPID of quoting member; (2) inter-dealer quotation system; (3) date of quotation; (4) time quotation displayed (expressed in hours, minutes, seconds and milliseconds if the reporting member’s system captures time in milliseconds); (5) security name and symbol; (6) bid and bid quotation size (if applicable); (7) offer and offer quotation size (if applicable); (8) prevailing inside bid; and (9) prevailing inside offer.

²⁸ FINRA has continued to receive quotation information on a weekly basis following the inter-dealer quotation system becoming a FINRA member.

²⁹ Currently, the reporting obligation is imposed on the quoting member itself, although in practice quoting members have used the inter-dealer quotation system to which their quotation is submitted and displayed as reporting agent for purposes of meeting the FINRA Rule 6431 reporting obligation.

³⁰ A “reporting agent” is a third party that enters into any agreement with a member pursuant to which such third party agrees to fulfill such member’s obligations under FINRA Rule 6431.

³¹ See Securities Exchange Act Release No. 60999 (November 13, 2009), 74 FR 61183 (November 23, 2009) (Notice of Filing of File No. SR-FINRA-2009-077). FINRA stated that it intends to withdraw the currently pending QCF Proposal if the instant proposed rule change is approved by the Commission.

²² FINRA proposes that a member inter-dealer quotation system also must make and keep records of all grants of access including (for all subscribers) the reasons for granting such access and all denials or limitations of access and reasons (for each applicant) for denying or limiting access. A policy prohibiting or limiting access to services offered by the member inter-dealer quotation system due to non-payment by a subscriber would not be prohibited under the proposed rule.

²³ See 17 CFR 242.300 *et seq.*

²⁴ Regulation ATS’s “fair access” requirements apply with respect to securities where the ATS’s trading accounted for 5% or more of the reported average daily trading volume (ADTV) in the security. The proposal would apply the fair access standards with respect to all securities quoted on the inter-dealer quotation system (not just those meeting the minimum 5% (or other) threshold).

for years as other quotation venues have emerged. FINRA believes that, since the filing of the QCF Proposal on November 6, 2009, the amount of quotation information widely available to investors relying on OTCBB Best Bid or Offer (“BBO”) data has further declined and has become negligible. FINRA believes that the remaining OTCBB information being disseminated to investors is so incomplete as to be potentially misleading with respect to the current pricing in these securities.³²

FINRA stated that it does not believe that the discontinuance of the OTCBB as an inter-dealer quotation system will have an appreciable impact on issuers, investors or member firms.³³ FINRA does not believe that the OTCBB, in its current form and with current levels of participation, furthers the goals and objectives of Section 17B of the Act³⁴ and, therefore, does not meet the characteristics of a system described in Section 17B of the Act regarding the widespread dissemination of reliable and accurate quotation information with respect to “penny stocks.”³⁵ However, FINRA notes that, since the inception of the OTCBB, non-SRO entities have increased their participation in the collection and dissemination of quotation information in OTC equity securities, including for those OTC equity securities meeting the definition of “penny stock,” and have made such quotation information available to investors and market participants. Thus, FINRA believes that discontinuance of the OTCBB as an inter-dealer quotation

system will not have an appreciable impact on the current level of quotation transparency for OTC equity securities.³⁶ In addition, FINRA noted that the proposed rule change is intended to facilitate the widespread availability of reliable and accurate quotation information through non-SRO sources.

FINRA stated that it will continue to centralize last sale transaction reporting through the FINRA OTC Reporting Facility (“ORF”) and, therefore, will continue to operate a system that collects and disseminates transaction information on, and provides widespread dissemination of reliable and accurate last sale information with respect to, OTC equity securities, including penny stocks.³⁷ Thus, FINRA believes that the objectives of Section 17B of the Act relating to the provision of price and volume information to investors and market participants will continue to be satisfied through FINRA’s operation of the ORF.

FINRA stated that it will continue to assess the widespread availability of quotation transparency to investors and market participants through non-SRO sources on a regular basis. If the availability of quotation information to investors significantly declines, FINRA has committed to revisit and, if necessary, file a proposed rule change to establish an SRO-operated inter-dealer quotation system (or other measure) to facilitate the type of widespread quotation transparency described in Section 17B of the Act.³⁸

FINRA noted that it 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 will be no later than 180 days following Commission approval.

III. Comment Letter Received

The Commission received one comment letter.³⁹ The commenter stated that it strongly supports the proposal.⁴⁰ The commenter believed that the proposal would enable the efficient operation of inter-dealer quotation systems for OTC equity securities while ensuring fair and non-discriminatory access to those systems and would thereby strengthen the trading market for OTC equity securities.⁴¹

The commenter stated that the proposed rules governing conduct, fair access and data would provide the necessary equal access for FINRA member broker-dealers without creating unnecessary burden on the commenter’s inter-dealer quotation system or other qualifying inter-dealer quotation systems.⁴² The commenter believed that the proposal would enhance FINRA’s oversight of quotes in OTC equity securities by applying targeted regulations to qualifying inter-dealer quotation systems.⁴³ The commenter supported FINRA’s goal to ensure fair access to quoting, trading and market data for OTC equity securities.⁴⁴ The commenter agreed with the approach of extending fair access requirements to include policies and procedures relating to fair and consistent treatment of quotes received and welcomed the additional oversight to be provided by FINRA in this area, which the commenter believes would build investor confidence and market integrity.⁴⁵ The commenter also believed that the requirement to provide FINRA a written description of all data products would ensure a baseline of reliable, accurate information available to all investors and the proposal’s minimal amendments to existing information recording and reporting requirements likewise would improve the data available to FINRA, while shifting the reporting responsibility to the qualifying inter-dealer quotation system handling the applicable quotes.⁴⁶

The commenter stated that FINRA’s discontinuing operation of the OTCBB, in conjunction with FINRA’s expanded oversight of qualifying inter-dealer

³² For example, FINRA states that of the approximately 10,000 OTC equity securities quoted over the counter on the largest inter-dealer quotation system, less than 10% of those issues also are eligible to be quoted on OTCBB. In addition, less than twelve securities out of the 10,000 OTC equity securities are quoted solely on OTCBB. Furthermore, based upon a sample of 20 days in 2013, the OTCBB only disseminated an average of 27 computed BBOs, which means that OTCBB BBO quotation information was available through NASDAQ Level 1 on less than 0.3% of the 10,000 OTC equity security symbols. See Notice, *supra* note 3, 79 FR at 41343.

³³ FINRA noted that, as part of the QCF proposal, no concerns were raised by commenters with respect to the portion of the QCF Proposal that would have deleted the OTCBB rules and discontinued operation of the Service.

³⁴ Section 17B of the Act provides, among other things, that the Commission shall facilitate the widespread dissemination of reliable and accurate last sale and quotation information with respect to penny stocks.

³⁵ Under Exchange Act Rule 3a51-1, “penny stock” is defined to, among other things, exclude securities that have a price of five dollars or more as determined either on a per transaction basis or, in the absence of a transaction, on the basis of the inside bid quotation for the security displayed on an automated quotation system that has the characteristics set forth in Section 17B(b)(2) of the Act or any other system that is designated by the Commission. See 17 CFR 240.3a51-1.

³⁶ In advance of the discontinuance of the OTCBB, FINRA has stated it will take steps to ensure a smooth transition for issuers and members. Specifically, FINRA will publicize announcements through the FINRA.org and OTCBB.com Web sites; directly contact active OTCBB market makers; notify and educate the few remaining OTCBB-only issuers; and email dually quoted issuers about the cessation of quoting on the OTCBB. See Notice, *supra* note 3, 79 FR at 41343. FINRA stated that it had discussed the concepts described in this proposed rule change with several of FINRA’s industry advisory committees in developing its approach. FINRA represented that the committees supported the proposed amendments and did not believe that compliance with the proposal would be burdensome for firms. *Id.*

³⁷ FINRA members are required to report substantially all trades in OTC equity securities to ORF within 10 seconds of execution and FINRA widely disseminates this transaction information in real-time.

³⁸ Should FINRA determine that it is necessary to recommence the operation of a system to facilitate quotation transparency, FINRA also would revisit at that time the necessity of the proposals described herein requiring inter-dealer quotation systems to provide FINRA specified policies and procedures, written standards, quotation-related data product descriptions and related pricing information.

³⁹ See *supra* note 4.

⁴⁰ See OTC Markets Letter at 1.

⁴¹ See OTC Markets Letter at 1.

⁴² See OTC Markets Letter at 2.

⁴³ See OTC Markets Letter at 2.

⁴⁴ See OTC Markets Letter at 2.

⁴⁵ See OTC Markets Letter at 3.

⁴⁶ See OTC Markets Letter at 3.

quotation systems, would help eliminate investor and issuer confusion, while promoting the goals underlying Section 17B of the Act.⁴⁷ The commenter noted that much has changed over the past quarter century since the enactment of Section 17B of the Act.⁴⁸ The commenter agreed with FINRA that the OTCEB no longer fulfills the Section 17B mandate,⁴⁹ while the private sector has produced systems, such as the commenter's own inter-dealer quotation system, that meet the information needs of investors, regulators and other market participants, and are regulated by FINRA and the Commission.⁵⁰

IV. Proceedings To Determine Whether To Approve or Disapprove SR-FINRA-2014-030

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act⁵¹ to determine whether the proposed rule change should be approved or disapproved. Institution of such proceedings appears appropriate at this time in view of the legal and policy issues raised by the proposal. As noted above, institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, the Commission seeks and encourages interested persons to comment on the proposed rule change and provide the Commission with arguments to support the Commission's analysis whether to approve or disapprove the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,⁵² the Commission is providing notice of the grounds for disapproval under consideration. In particular, Section 15A(b)(6) of the Act,⁵³ 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. In addition, Section 15A(b)(11) of the Act,⁵⁴ requires, among other things, 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. Further, Section 17B of the Act⁵⁵ provides, among other things, that the Commission shall facilitate the widespread dissemination of reliable and accurate last sale and quotation information with respect to penny stocks.

The Commission believes FINRA's proposed rule change raises questions as to whether it is consistent with the requirements of Sections 15A(b)(6), 15A(b)(11), and 17B of the Act.

V. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the concerns identified above, as well as any others they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposed rule change is inconsistent with Sections 15A(b)(6), 15A(b)(11), and 17B or any other provision of the Act, or the rules and regulation thereunder.

Although there do not appear to be any issues relevant to approval or disapproval which would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.⁵⁶

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change should be disapproved by November 4, 2014. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by November 18, 2014.

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 email to rule-comments@sec.gov. Please include File Number SR-FINRA-2014-030 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities

and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2014-030. This file number should be included on the subject line if email 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 Web site 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 such filing also will be available for inspection and copying at the principal office of the Exchange. 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-2014-030 and should be submitted on or before November 4, 2014. Rebuttal comments should be submitted by November 18, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁵⁷

Kevin M. O'Neill,
Deputy Secretary.

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⁴⁷ See OTC Markets Letter at 2.

⁴⁸ See OTC Markets Letter at 4.

⁴⁹ See *supra* notes 17-18, and accompanying text.

⁵⁰ See OTC Markets Letter at 5.

⁵¹ 15 U.S.C. 78s(b)(2)(B).

⁵² *Id.*

⁵³ 15 U.S.C. 78o-3(b)(6).

⁵⁴ 15 U.S.C. 78o-3(b)(11).

⁵⁵ 15 U.S.C. 78q-2.

⁵⁶ Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Public Law 94-29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

⁵⁷ 17 CFR 200.30-3(a)(57).