



8011-01p
SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-70839; File No. SR-FINRA-2013-049)

November 8, 2013

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Extend the Tier Size Pilot of 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 November 5, 2013, 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 the Substance of the Proposed Rule Change

FINRA is proposing to amend FINRA Rule 6433 (Minimum Quotation Size Requirements for OTC Equity Securities) to extend the tier size pilot, which currently is scheduled to expire on November 12, 2013.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

FINRA proposes to amend FINRA Rule 6433 (Minimum Quotation Size Requirements for OTC Equity Securities) (the "Rule") to extend the amendments set forth in File No. SR-FINRA-2011-058 (the "tier size pilot"), which currently are scheduled to expire on November 12, 2013, through November 14, 2014.³

On October 6, 2011, FINRA filed with the SEC a proposed rule change to amend the minimum quotation sizes (or "tier sizes") for OTC equity securities⁴ to, among other things, simplify the tier structure, facilitate the display of customer limit orders, and expand the scope of the Rule to apply to additional quoting participants.⁵ During the proposal process, the SEC received a number of comments and, in response, FINRA proposed that the new tier sizes operate on a pilot basis for one year to allow FINRA and the SEC to better analyze the impact of the revised tier sizes.

To effectively assess the impact of the tier size pilot on quoted OTC equity securities, FINRA has collected and provided to the Commission certain pre- and post-pilot data, including:

³ See Securities Exchange Act Release No. 67208 (June 15, 2012), 77 FR 37458 (June 21, 2012) (Order Approving File No. SR-FINRA-2011-058).

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(f).

⁵ See Securities Exchange Act Release No. 65568 (October 14, 2011), 76 FR 65307 (October 20, 2011) (Notice of Filing of File No. SR-FINRA-2011-058).

- The price of the first trade of each trading day executed at or after 9:30:00 a.m., based on execution time.
- The price of the last trade of each trading day executed at or before 4:00:00 p.m., based on execution time.
- Daily share volume.
- Daily dollar volume.
- Number of limit orders from customers and in total.
- Percentage of the day that the size of the BBO equals the minimum quote size.
- Number of market makers actively quoting.
- Number of executions from a limit order and number of limit orders at the BBO or better by tier size from a customer and in total.
- Liquidity/BBO metrics
 - Time-weighted quoted spread.
 - Effective spread.
 - Time-weighted quoted depth (number of shares) at the inside.
 - Time-weighted quoted depth (dollar value of shares) at the inside.

Amendment No. 2 specified, among other things, that: (1) FINRA would begin submitting the above data for the period of one year by no later than 90 days after the start of the tier size pilot, and (2) the data for each month would be submitted within 20 business days of the beginning of the following month.⁶ In Amendment No. 2, FINRA also stated that, at least 60 days before the conclusion of the tier size pilot, FINRA would provide the SEC with an

⁶ See Amendment No. 2 to File No. SR-FINRA-2011-058, available at <http://www.finra.org/web/groups/industry/@ip/@reg/@rulfil/documents/rulefilings/p126817.pdf> (“Amendment No. 2”).

assessment that addressed the impact of the pilot, the concerns raised by commenters during the rule filing process, and whether the pilot has resulted in the desired effects. FINRA submitted this assessment to the Commission on September 13, 2013. The purpose of this filing is to extend the operation of the tier size pilot for an additional year to provide the SEC with data over a longer time period so that the effects of the tier size pilot can be more thoroughly reviewed.⁷ Consequently, FINRA will continue to provide the Commission with the data noted above, as requested.

FINRA has filed the proposed rule change for immediate effectiveness. The effective date of the proposed rule change will be the date of filing.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁸ 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.⁹ 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.

⁷ The Tier Size Pilot Assessment is part of the SEC's comment file for SR-FINRA-2011-058 and also is available on FINRA's website at: <http://www.finra.org/Industry/Regulation/RuleFilings/2011/P124615>.

⁸ 15 U.S.C. 78o-3(b)(6).

⁹ 15 U.S.C. 78o-3(b)(11).

FINRA believes that the extension of the tier size pilot for an additional year is consistent with the Act in that it would provide the Commission with additional data and more time to undertake a thorough review of the submitted data and assessment. FINRA believes this additional data and time will enhance the Commission's ability to assess the appropriateness of making the tier size pilot permanent.

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

FINRA has not solicited, and does not intend to solicit, comments on this proposed rule change. FINRA has not received any written comments from members or other interested parties.

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 as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁰ and Rule 19b-4(f)(6) thereunder.¹¹

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6). 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. The Exchange has satisfied this requirement.

A proposed rule change filed under Rule 19b-4(f)(6)¹² normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹³ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

FINRA has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because such waiver will allow the pilot program to continue without interruption. Therefore, the Commission designates the proposal operative upon filing.¹⁴

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:

¹² 17 CFR 240.19b-4(f)(6).

¹³ 17 CFR 240.19b-4(f)(6)(iii).

¹⁴ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-2013-049 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-2013-049. 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 St. NE, Washington D.C. 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 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-2013-049, 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.¹⁵

Kevin M. O'Neill
Deputy Secretary

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¹⁵ 17 CFR 200.30-3(a)(12).