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SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-73299; File No. SR-FINRA-2014-041)

October 3, 2014

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”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 30, 2014, the Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a “non-controversial” rule change under paragraph (f)(6) of Rule 19b-4 under the Act,<sup>3</sup> which renders the proposal effective upon receipt of this filing by the Commission. 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 14, 2014, for an additional three months, until February 13, 2015.

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

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 17 CFR 240.19b-4(f)(6).

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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

FINRA proposes to amend FINRA Rule 6433 (Minimum Quotation Size Requirements for OTC Equity Securities) (the “Rule”) to extend, until February 13, 2015, the amendments set forth in File No. SR-FINRA-2011-058 (“Tier Size Pilot” or “Pilot”), which currently are scheduled to expire on November 14, 2014.<sup>4</sup>

The Tier Size Pilot was filed with the SEC on October 6, 2011,<sup>5</sup> to amend the minimum quotation sizes (or “tier sizes”) for OTC Equity Securities.<sup>6</sup> FINRA believed, and continues to believe, that the Pilot, among other things, would simplify the tier structure, facilitate the display

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<sup>4</sup> See Securities Exchange Act Release No. 67208 (June 15, 2012), 77 FR 37458 (June 21, 2012) (Order Approving File No. SR-FINRA-2011-058, as amended); see also Securities Exchange Act Release No. 70839 (November 8, 2013), 78 FR 68893 (November 15, 2013) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Extend the Tier Size Pilot of FINRA Rule 6433; File No. SR-FINRA-2013-049).

<sup>5</sup> 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).

<sup>6</sup> “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.

of customer limit orders, and expand the scope of the Rule to apply to additional quoting participants. During the proposal process, the SEC received a number of comments, including some expressing concern regarding the potential impact of the proposed rule change, and, in response, FINRA submitted an amendment to revise the tiers and to implement the proposed revised tier sizes as a one-year pilot to allow FINRA and the SEC to better analyze the impact of the new tiers during the pilot period.<sup>7</sup> FINRA also committed to collecting and providing to the Commission certain pre- and post-pilot data to assist in analyzing the impact of the Pilot.<sup>8</sup> The data provision includes the collection and submission to the SEC of monthly information regarding:

- 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.

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<sup>7</sup> See Securities Exchange Act Release No. 66819 (April 17, 2012); 77 FR 23770 (April 20, 2012) (Notice of Filing of Amendment No. 1 to File No. SR-FINRA-2011-058).

<sup>8</sup> See Securities Exchange Act Release No. 67208 (June 15, 2012), 77 FR 37458 (June 21, 2012) (Order Approving File No. SR-FINRA-2011-058, as amended).

- 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.

In addition to submitting the above data to the Commission, which FINRA has provided on a monthly basis for the duration of the Pilot,<sup>9</sup> FINRA also committed to providing to the Commission an assessment on the operation of the Tier Size Pilot that, among other things, would address 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 on September 13, 2013. The assessment utilized Pilot data covering the period from November 12, 2012 through June 30, 2013.<sup>10</sup> As noted in the assessment, FINRA believes that the analysis of the data generally showed that the Tier Size Pilot had a neutral to positive impact on OTC market quality for the majority of OTC Equity Securities and tiers. FINRA also found that there was an increase of 13% in the number of customer limit orders that met the minimum quotation sizes to be eligible for display under the Pilot tiers (for all tiers combined).

FINRA also observed certain impacts that appeared to be temporary. Specifically, FINRA noted that, while some large market makers initially reduced the number of securities actively quoted on a priced basis, the number of market makers providing quotes gradually

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<sup>9</sup> FINRA will continue to submit monthly data until the new Tier Size Pilot period expiration date of February 13, 2015.

<sup>10</sup> The 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> ("Pilot Assessment").

reversed over time as the Pilot progressed. Thus, to allow additional time to observe the operation of the Pilot and to provide the SEC with data over a longer time period so that the effects of the Pilot could be more thoroughly reviewed, FINRA filed an extension for another year, extending the period from November 12, 2013 until November 14, 2014.

The purpose of this filing is to extend the operation of the Tier Size Pilot for an additional three month period, until February 13, 2015, to provide FINRA with additional time to consider the implications of the data collected since June 30, 2013 and to determine whether FINRA will propose that the Pilot tiers be adopted as permanent.

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,<sup>11</sup> 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.<sup>12</sup> Section 15A(b)(11) requires that FINRA rules include provisions governing the form and content of quotations relating to securities sold otherwise than on a national securities exchange which may be distributed or published by any member or person associated with a member, and the persons to whom such quotations may be supplied.

FINRA believes that the extension of the Tier Size Pilot for an additional three months is consistent with the Act in that it would provide the Commission and FINRA with additional data

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<sup>11</sup> 15 U.S.C. 78o-3(b)(6).

<sup>12</sup> 15 U.S.C. 78o-3(b)(11).

and more time to undertake a thorough review of the submitted data. FINRA believes this additional time will facilitate FINRA's consideration of the impact of the Pilot using data after June 30, 2013, and determination of the appropriateness of making the Pilot tiers 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

Written comments were neither solicited nor received.

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 Act<sup>13</sup> and Rule 19b-4(f)(6) thereunder.<sup>14</sup>

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.

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<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>14</sup> 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.

#### 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](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2014-041 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-2014-041. 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-2014-041, 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.<sup>15</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>15</sup> 17 CFR 200.30-3(a)(12).