



February 12, 2021

Ms. Vanessa Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-0609

Via Electronic Mail (rule-comments@sec.gov)

Re: File No. SR-FINRA-2020-031 (Proposed Rule Change to Adopt FINRA Rule 6439 (Requirements for Member Inter-Dealer Quotation Systems) and Delete the Rules Related to the OTC Bulletin Board Service) – Rebuttal

Dear Ms. Countryman:

This letter is being submitted by the Financial Industry Regulatory Authority, Inc. (“FINRA”) in response to comments submitted to the U.S. Securities and Exchange Commission (“SEC”) regarding the above-referenced rule filing. The SEC published the proposed rule change for public comment in the *Federal Register* on October 7, 2020,¹ and received three comment letters regarding the Proposal.² FINRA submitted a letter responding to comments on November 20, 2020.³ On December 21, 2020, FINRA filed Amendment No. 1 to the proposed rule change and, on January 6, 2021, the SEC published in the *Federal Register* an order instituting proceedings to determine whether

¹ See Securities Exchange Act Release No. 90067 (October 1, 2020), 85 FR 63314 (October 7, 2020) (Notice of Filing of File No. SR-FINRA-2020-031) (“Proposal”).

² See Letter from Christopher Bok, Chief Compliance Officer, OTC Link, LLC, to Jill M. Peterson, Assistant Secretary, SEC, dated October 28, 2020 (“OTC Link”); Letter from Kimberly Unger, CEO & Executive Director, The Security Traders Association of New York, Inc., to Jill M. Peterson, Assistant Secretary, SEC, dated October 28, 2020 (“STANY”); and Letter from Sherry J. Sandler, Global OTC, to Jill M. Peterson, Assistant Secretary, SEC, dated November 9, 2020 (“Global OTC”).

³ See Letter from Racquel Russell, Associate General Counsel, FINRA, to Vanessa Countryman, Secretary, SEC (“FINRA Response Letter”).

to approve or disapprove the Proposal, as amended.⁴ The SEC received one comment letter in response to the Order.⁵ This letter responds to comments received and rebuts any assertion that the proposed rule change, as amended, would not meet the statutory requirements for approval.

The OTC Markets letter raises concerns about proposed Rule 6439(c), which applies to member inter-dealer quotation systems that do not automatically execute all orders presented for execution against displayed quotations for which a member subscriber has a Rule 5220 obligation. Under the Proposal, such member inter-dealer quotation systems must establish, maintain and enforce written policies and procedures reasonably designed to address instances of unresponsiveness to orders in an OTC Equity Security, including, at a minimum, policies and procedures that specify an efficient process for: (1) monitoring subscriber unresponsiveness; (2) subscribers to submit complaints to the member IDQS regarding potential instances of unresponsiveness to an order; (3) documenting the subscriber's rationale for unresponsiveness; and (4) determining specified steps when an instance of or repeated order unresponsiveness may have occurred.

In its letter, OTC Markets reiterates concerns previously raised in OTC Link's letter, specifically that, under paragraph (c)(2) and (c)(3) of the Proposal, it would be required to: "(i) collect and record subscriber complaints (many of which would originate as a phone call), (ii) reach out to the (allegedly) unresponsive counterparty to generate a report indicating why they failed to respond, and (iii) serve as the centralized clearinghouse and recordkeeper for these written complaints."⁶ OTC Markets states that, "in attempting to perform this function, however, OTC Link would not have access to necessary underlying information regarding the issue, such as communications between the counterparties outside of OTC Link's system."⁷ OTC Markets also states that it lacks the regulatory authority to resolve any dispute.⁸

⁴ See Securities Exchange Act Release No. 90824 (December 30, 2020), 86 FR 653 (January 6, 2021) (Notice of Filing of Amendment No. 1 and Order Instituting Proceedings to Determine Whether to Approve or Disapprove File No. SR-FINRA-2020-031) ("Order").

⁵ See Letter from Cass Sanford, Associate General Counsel, OTC Markets Group, Inc., to Jill M. Peterson, Assistant Secretary, SEC, dated January 27, 2021 ("OTC Markets").

⁶ OTC Markets at 2.

⁷ *Id.*

⁸ *Id.*

As previously stated in the FINRA Response Letter, FINRA is cognizant of the limitations on OTC Markets' access to certain information and its lack of regulatory authority.⁹ FINRA, therefore, made clear that it would not expect OTC Markets to gather extraneous information or resolve disputes (beyond steps that may be taken pursuant to paragraph (c)(4) of the Proposal).¹⁰ FINRA also is of the view that the Proposal would require that reasonable policies and procedures be developed, which could include specifying reasonable and appropriate form and methods through which a member would accept complaints from subscribers pursuant to proposed paragraph (c)(2). Therefore, for example, OTC Markets may determine to accept complaints only through a specified email address or through a complaint protocol that it may establish. In so doing, its obligations under proposed paragraph (c)(3) would be limited to complaints received through reasonable, specified, established channel(s).¹¹

In addition, and as stated previously, paragraph (c)(3) of the proposed rule does not require, and FINRA does not expect, that OTC Markets would, for example, investigate or confirm a subscriber's rationale for unresponsiveness.¹² Similarly, paragraph (c)(3) of the proposed rule does not require, nor does FINRA expect, that OTC Markets would determine whether a violation of Rule 5220 (Offers at Stated Prices) has occurred. The member inter-dealer quotation system's role in this regard would be limited to requesting and documenting the subscriber's provided rationale, but it would not be expected to investigate or confirm the accuracy of any such rationale. Thus, the lack of access to certain information regarding instances of potential unresponsiveness would not impair OTC Markets' ability to establish the policies and procedures required under the Proposal. Under proposed paragraph (c)(3), the role of the inter-dealer quotation system is limited to information collection and does not blur the lines between an inter-dealer quotation system and a self-regulatory organization.

⁹ FINRA Response Letter at 3-4.

¹⁰ Proposed paragraph (c)(4) would require the member inter-dealer quotation system to establish policies and procedures that specify the steps to be taken when an instance or repeated order unresponsiveness may have occurred.

¹¹ In the FINRA Response letter, FINRA provided an example of an automated approach that could satisfy proposed paragraph (c)(2) and (c)(3). OTC Markets has stated that it does not currently have such a mechanism (*i.e.*, a complaint messaging protocol that would accept complaints and that automatically would contact the other party requesting its rationale for responsiveness). *See* OTC Markets at n. 4. While FINRA understands that OTC Markets does not currently have such a functionality, it may choose to implement one to the extent that it deems doing so would be preferable.

¹² FINRA Response Letter at 3.

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OTC Link requests that paragraphs (c)(2) and (c)(3) of the Proposal be modified to only require that a member inter-dealer quotation system escalate instances of unresponsiveness to FINRA for review when the IDQS is informed of such cases via appropriate channels (*i.e.* phone, email, message). However, FINRA continues to believe that the requirements under paragraph (c), as proposed, are reasonable and appropriate for a member inter-dealer quotation system that permits manual responses to orders received against displayed quotations, because this is the precise framework under which order unresponsiveness can occur. As stated in the Proposal, “[g]iven that order unresponsiveness can disrupt the normal operation of the over-the-counter market, FINRA believes that requiring policies and procedures to address this activity would increase market efficiency and integrity and thus benefit investors.”¹³ Thus, FINRA continues to believe that the member IDQS is in the best position to obtain this information from the subscriber at the time of, or close in time to, the event, and to document this information and make it available to FINRA upon request.

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FINRA believes that the foregoing responds to the material issues raised by the commenter regarding the Proposal. If you have any questions, please contact the undersigned at 202-728-8363.

Very truly yours,

/s/ Racquel L. Russell

Racquel L. Russell
Associate General Counsel

¹³ Proposal at 63317.