

Regulation of Inter-dealer Quotation Systems

FINRA Adopts Rule 6439 Governing the Operation of Inter-dealer Quotation Systems and Announces Closure of the OTC Bulletin Board

Effective Date of Rule 6439 (except paragraph (d)(1)(B)):
October 1, 2021

Summary

FINRA has adopted new Rule 6439 (Requirements for Member Inter-Dealer Quotation Systems),¹ which implements additional requirements for firms that operate systems that regularly disseminate the quotations of identified broker-dealers in OTC Equity Securities (each an “inter-dealer quotation system” or “IDQS”).² Rule 6439 will become effective on October 1, 2021, except for paragraph (d)(1)(B), which relates to the collection of order-level information. The effective date for this paragraph will be announced at a later date to better coordinate, and avoid regulatory duplication, with reporting obligations to the Consolidated Audit Trail (CAT) under Rule 6830 (Industry Member Data Reporting).

FINRA also is deleting the Rule 6500 Series and other rules related to the OTC Bulletin Board (OTCBB) – a FINRA-operated inter-dealer quotation system – and ceasing its operation. The permanent closure of the OTCBB will not occur prior to October 1, 2021. FINRA will announce the effective date of the deletion of the OTCBB-related rules and its closure in a separate communication.

Questions regarding this *Notice* should be directed to:

- ▶ Racquel Russell, Senior Vice President, Capital Markets, Office of General Counsel, at (202) 728-8363 or racquel.russell@finra.org;
- ▶ Dave Chapman, Vice President, Market Regulation, at (240) 386-4995 or dave.chapman@finra.org; and
- ▶ For questions regarding the closure of the OTC Bulletin Board, Chris Stone, Vice President, Transparency Services, at (202) 728-8457 or chris.stone@finra.org.

August 6, 2021

Notice Type

- ▶ Rule Amendment

Suggested Routing

- ▶ Compliance
- ▶ Legal
- ▶ Operations
- ▶ Systems
- ▶ Technology
- ▶ Trading and Market Making

Key Topics

- ▶ Alternative Trading System
- ▶ Inter-dealer Quotation System
- ▶ OTC Bulletin Board
- ▶ OTC Equity Security
- ▶ Penny Stock
- ▶ Qualifying Electronic Quotation System

Referenced Rules

- ▶ Regulation ATS
- ▶ Regulation NMS
- ▶ Regulation SCI
- ▶ Rule 5220
- ▶ Rule 6420
- ▶ Rule 6439
- ▶ Rule 6500 Series
- ▶ Rule 6830
- ▶ SEA Rule 15c2-11
- ▶ SEA Section 15A
- ▶ SEA Section 17B

Background and Discussion

New Rule 6439 implements additional requirements for member IDQs that permit quotation updates in OTC Equity Securities³ on a real-time basis and strengthens oversight of quotation systems for OTC Equity Securities given that the OTCBB is closing. Specifically, as discussed further below, new Rule 6439 requires a covered IDQ to:

- (1) establish and prominently disclose to subscribers its written policies and procedures relating to the collection and dissemination of quotation information in OTC Equity Securities;
- (2) establish and prominently disclose to subscribers its nondiscriminatory written standards for granting access to quoting and trading on its system;
- (3) establish written policies and procedures addressing subscriber unresponsiveness with respect to the display of firm quotations in OTC Equity Securities;
- (4) submit reports to FINRA on a monthly basis that include specified aggregate and order-level information for OTC Equity Securities;
- (5) make available to customers a written description of each OTC Equity Security order- or quotation-related data product offered by such firm and related pricing information; and
- (6) provide FINRA with specified information concerning the integrity of its systems.

A. Quotation Collection and Dissemination

Rule 6439(a) requires an IDQ to establish, maintain and enforce written policies and procedures relating to the collection and dissemination of quotation information in OTC Equity Securities on or through its system. These policies and procedures must be reasonably designed to ensure that quotations received and disseminated are informative, reliable, accurate, firm, and treated in a not unfairly discriminatory manner, including by establishing non-discretionary standards under which quotations are prioritized and displayed. The required policies and procedures must address the firm's 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). Firms also must 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). Firms are required to prominently disclose these written policies and procedures, along with any material updates, modifications and revisions, to subscribers within five business days following the date of establishment of the policy or procedure or implementation of the material change and to provide them to prospective subscribers upon request.⁴

B. Fair Access

Rule 6439(b) requires an IDQS to establish non-discriminatory written standards for granting access to quoting and trading in OTC Equity Securities on its system that do not unreasonably prohibit or limit any person in respect to access to services offered by the member. This requirement applies to quoting and trading in all OTC Equity Securities on the IDQS, regardless of the percentage of average daily volume that such firm had in the security.⁵ The IDQS is also required to prominently disclose these written standards, and any material updates, modifications and revisions thereto, to its subscribers within five business days following the date of establishment of the written standards or implementation of the material change and to provide them to prospective subscribers upon request.⁶

C. Enhanced Firm Quote Compliance and Reporting

Rule 6439(c) and (d) address firm quote rule compliance under Rule 5220 (Offers at Stated Prices) with respect to the activity occurring on an IDQS. *These two paragraphs only apply to a member IDQS that does not automatically execute all orders presented for execution against displayed quotations for which a member subscriber has a Rule 5220 obligation (because there is no opportunity for unresponsiveness where orders are appropriately matched and auto-executed by the system).* Specifically, paragraph (c) requires a member IDQS to establish, maintain and enforce written policies and procedures that are reasonably designed to address instances of unresponsiveness when orders are presented to trade with firm quotations displayed in OTC Equity Securities on its system. At a minimum, these policies and procedures must specify an efficient process for:

- ▶ Monitoring subscriber unresponsiveness;
- ▶ Subscribers submitting to the member IDQS complaints regarding potential instances of order unresponsiveness;
- ▶ Documenting the subscriber's rationale for unresponsiveness; and
- ▶ Determining specified steps when an instance or repeated order unresponsiveness may have occurred.

Paragraph (d) requires an IDQS to, on a monthly basis, provide to FINRA specified aggregate and order-level information for OTC Equity Securities. Specifically, paragraph (d)(1)(A) requires an IDQS to submit aggregated information per member subscriber market participant identifier (MPID) across all symbols quoted by the MPID during the preceding calendar month; specifically:

- i. Total number of marketable orders presented for execution against the MPID's quotation;
- ii. Average execution (full or partial) time for marketable orders presented against the MPID's quotation based on the time an order is presented;
- iii. Total number of full or partial executions based on the time a marketable order is presented that are within the following execution timeframes: < 5 seconds; ≥ 5 seconds and < 10 seconds; ≥10 and < 20 seconds; and ≥ 20 seconds;

- iv. Total number of marketable orders presented against the MPID's quotation that did not receive a full or partial execution; and
- v. Average response time of the highest 10% and highest 50% of the MPID's response times for marketable orders (for full or partial executions).

See **Attachment** for file format and delivery technical specifications. Paragraph (d)(1)(A) monthly reports are due to FINRA within 10 calendar days of the end of each month. Therefore, the first report, covering activity during the month of October 2021, will be due to FINRA on November 10, 2021.

Paragraph (d)(1)(B) requires an IDQS to submit specified information for each order presented against the MPID's quotation during the preceding calendar month; specifically:

- i. Buy/Sell;
- ii. Security symbol;
- iii. Price;
- iv. Size;
- v. All or None indicator (Y/N);
- vi. Order entry firm MPID;
- vii. Order receipt time;
- viii. Time in force;
- ix. Response time;
- x. Order Response (*e.g.*, execute, reject, cancel, etc.);
- xi. Executed quantity;
- xii. System-generated order number (if any); and
- xiii. Position in queue for quote (*e.g.*, IL, IL2).

However, an IDQS is not required to report paragraph (d)(1)(B) information pursuant to Rule 6439 if, at a minimum, the items specified in (i) through (xi) are subject to reporting to the CAT under Rule 6830. FINRA currently anticipates that the information specified in (i) through (xi) will become subject to CAT reporting in the coming months and, therefore, will delay setting an effective date for paragraph (d)(1)(B) until after the CAT reporting requirements for this information commences (subject to the timeframe set forth in SR-FINRA-2020-031, as amended).⁷ Thus, members are not required to report paragraph (d)(1)(B) information to FINRA on October 1, 2021.

D. Order and Quotation Data Product Transparency

Rule 6439(e) requires an IDQS to provide on its website (or its affiliate distributor's website) a written description of each OTC Equity Security order- or quotation-related data product

offered by such IDQS and related pricing information, including fees, rebates, discounts and cross-product pricing incentives. Firms are required to keep the relevant website page(s) accurate and up to date with respect to the required information, and to make such information available at least two business days in advance of offering the data product.⁸

E. System Integrity

Rule 6439(f) requires a member IDQS to provide FINRA with prompt notification when it reasonably becomes aware of any non-de minimis systems disruption that degrades, limits, or otherwise impacts the IDQS's functionality with respect to trading or the dissemination of market data. The notification must include, on a reasonable best efforts basis, a brief description of the event, its impact, and the IDQS's resolution efforts.

To comply with this requirement, members must send this information by email to FINRA. Specifically:

- ▶ **Members must send these notifications of any non-de minimis systems disruptions, and corresponding updates, promptly to FINRA at IDQSnotification@finra.org.**

FINRA notes that, to comply with this requirement, an IDQS that is an SCI alternative trading system, as defined in Rule 1000 of SEC Regulation SCI,⁹ could provide FINRA with the same information (or a duplicate copy of any notification) submitted to the SEC concerning the occurrence of, and updates on, a non-de minimis systems disruption SCI event pursuant to Rule 1002(b) of SEC Regulation SCI,¹⁰ promptly after filing the notification with the SEC. If an IDQS is not an SCI alternative trading system, it must comply with this requirement by providing FINRA prompt notification when it reasonably becomes aware of any such systems disruption – including a brief description of the event, its impact, and the IDQS's resolution efforts – and by providing periodic updates on the event and its resolution.

F. Discontinuation of the OTCBB and the Qualifying Electronic Quotation System Designation¹¹

As discussed above, FINRA will be deleting the Rule 6500 Series and other rules related to the OTCBB and ceasing its operation. As stated in FINRA's filing, as amended, the effective date for deleting the rules related to the OTCBB will not occur until: (1) Rule 6439 (except for Rule 6439(d)(1)(B)) is effective; and (2) the SEC grants FINRA's request set forth in FINRA's QEQS Request Letter.¹² This *Notice* sets an effective date of October 1, 2021 for Rule 6439 (except for Rule 6439(d)(1)(B)). In addition, on June 21, 2021, the SEC granted FINRA's QEQS Request Letter and designated the FINRA ORF, together with any member Eligible IDQS,¹³ as a QEQS for purposes of the penny stock rules.¹⁴

In addition to the above conditions, FINRA also will not discontinue the OTCBB until at least one Eligible IDQS has been listed on the FINRA website. FINRA will communicate the website location and designation of any Eligible IDQS through a separate communication. FINRA also will announce the effective date of the deletion of the OTCBB-related rules and its closure in a separate communication.¹⁵

Endnotes

1. See Securities Exchange Act Release No. 92105 (June 3, 2021); 86 FR 30663 (June 9, 2021) (Order Approving File No. SR-FINRA-2020-031).
2. See Rule 6420(c), which defines “inter-dealer quotation system” as “any system of general circulation to brokers or dealers which regularly disseminates quotations of identified brokers or dealers.” This definition tracks the Securities Exchange Act (SEA) rule definition of the same term in SEA Rule 15c2-11.
3. 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. (The term “Restricted Equity Security” is defined in Rule 6420(k) to mean any equity security that meets the definition of “restricted security” as contained in Securities Act Rule 144(a)(3).)
4. An IDQS must prominently disclose the required information to its subscribers upon the effective date of Rule 6439(a) and, thereafter, within five business days of the implementation of any material update, modification or revision thereto.
5. An IDQS 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 due to non-payment by a subscriber is not prohibited.
6. An IDQS must prominently disclose the required information to its subscribers upon the effective date of Rule 6439(b) and, thereafter, within five business days of the implementation of any material update, modification or revision thereto.
7. 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”). Amendment No. 2 to the Proposal provides, among other things, that the effective date(s) for the provisions of Rule 6439 may be phased, but will be no later than 365 days following Commission approval.
8. This disclosure requirement does not preclude members from negotiating lower fees with customers, provided that the member discloses on the relevant website page(s) the circumstances under which it may do so.
9. See 17 CFR 242.1000.
10. See 17 CFR 242.1002(b).
11. The SEC’s penny stock rules permit a broker-dealer to fulfill specified disclosure obligations by relying on pricing information available from a system that meets the definition of a “Qualifying Electronic Quotation System” or “QEQS.” The rules define a QEQS as either an automated interdealer quotation system that has the characteristics set forth in Exchange Act Section 17B(b)(2), or any other automated interdealer quotation system designated by the Commission for these purposes. See, e.g., Exchange Act Rule 15g-3(c)(5). In addition, Exchange Act Rule 3a51-1(d)(1)(iii) defines the term “penny stock” by reference to, among other things, quotations on “an automated interdealer quotation system that has the characteristics set forth in section 17B(b)(2) of the Act, or such other automated interdealer quotation system designated by the Commission for purposes of this rule.”

12. See Letter from Robert Colby, Executive Vice President and Chief Legal Officer, FINRA, to Emily Westerberg Russell, Chief Counsel, Division of Trading and Markets, SEC, dated June 16, 2021 (“QEQS Request Letter”).
13. An “Eligible IDQS” is a system that: (1) is an IDQS; (2) permits quotation updates on a real-time basis in OTC Equity Securities; and (3) FINRA has determined has in place written policies and procedures reasonably designed to comply with FINRA Rule 6439 before identifying it as an Eligible IDQS on the FINRA website. See *infra* SEC QEQS Designation Letter.
14. See Letter from J. Matthew DeLesDernier, Assistant Secretary, SEC, to Robert Colby, Executive Vice President and Chief Legal Officer, FINRA, dated June 21, 2021 (“SEC QEQS Designation Letter”).
15. As stated in the filing, in advance of the discontinuance of the OTCBB, FINRA will take steps to ensure a smooth transition for issuers and members. Specifically, although there are no members currently using the OTCBB, FINRA will publicize announcements through the [FINRA.org](https://www.finra.org) website. See Proposal.

Attachment

Rule 6439(d)(1)(A) - Data Submission Information

The below details the technical requirements for data formatting and delivery with respect to the information required pursuant to Rule 6439(d)(1)(A) for aggregated MPID statistics, which is due to FINRA within 10 calendar days of the end of each month.

Data Delivery:

Member IDQs with a monthly reporting obligation pursuant to Rule 6439(d)(1)(A) must report the required MPID-level aggregate information to FINRA via fileX, which is a centralized, secure file transfer platform where firms can send, track and receive files. fileX offers three file transfer mechanisms – SFTP, HTTPS REST, and AWS S3 Direct. Firms must establish network connectivity and use credentials provided by FINRA with the appropriate permissions granted by the FINRA Entitlement Group to connect to fileX. Please contact the FINRA Gateway Call Center at 301-869-6699 and request an FTP account for access. For more information on entitlement, please see <https://www.finra.org/industry/entitlement-program>.

Data Filename convention (before compression):

- ▶ Provider_marketCenterID_objectname_yyyymmdd_nnnn.txt where yyyymmdd is a date and nnnn is a file counter to allow large datasets to be broken up into sets of smaller files
- ▶ For example, OTC_u_Orderstats_20210701_nnnn.txt.bz2 (compressed)

Data Formatting:

Field position #	Field Name	Description/Derivation	Data Type (Length)	Required/Conditional	Notes
1	CRD_ID	CRD Number of the firm	Bigint	R	Required. This will be the subscribing Broker-Dealers' CRD number.
2	IMID	IMID of the firm (<i>i.e.</i> , the SRO assigned identifier that an Industry Member uses to report to CAT)	Varchar (20)	R	Required. This will be the subscribing Broker-Dealers' IMID.
3	TTL_MKTBL_ODRS	Count of the total number of marketable orders (excluding odd lot orders) presented for execution against the MPID's quotation	Bigint	R	Required
4	AVG_EXCTN_TM	Average execution (full or partial) time for marketable orders presented against the MPID's quotation based on the time an order is presented	Numeric (15,9)	R	Required. Use the finest granularity utilized by the member for purposes of CAT reporting and, at a minimum, increments of milliseconds. FINRA will accept granularity as fine as nanoseconds. All partial executions should be factored into the calculation.
5	TTL_XCTNS_UNDR_5SEC	Total number of full or partial executions based on the time a marketable order is presented that are within 5 seconds	Bigint	R	Required. If there are no full or partial executions within 5 seconds of a marketable order being presented by the MPID, then submit "0".
6	TTL_XCTNS_BTWN_5SEC_10SEC	Total number of full or partial executions based on the time a marketable order is presented that are greater than/equal to 5 seconds and less than 10 seconds	Bigint	R	Required. If there are no full or partial executions greater than/equal to 5 seconds and less than 10 seconds of a marketable order being presented by the MPID, then submit "0".

Field position #	Field Name	Description/Derivation	Data Type (Length)	Required/Conditional	Notes
7	TTL_XCTNS_BTWN_10SEC_20SEC	Total number of full or partial executions based on the time a marketable order is presented that are greater than/equal to 10 seconds and less than 20 seconds	Bigint	R	Required. If there are no full or partial executions greater than/ equal to 10 seconds and less than 20 seconds of marketable order being presented by the MPID, then submit "0".
8	TTL_XCTNS_GRTR_20SEC	Total number of full or partial executions based on the time a marketable order is presented that are greater than or equal to 20 seconds	Bigint	R	Required. If there are no full or partial executions greater than or equal to 20 seconds of marketable order being presented by the MPID, then submit "0".
9	TTL_MKTBL_ODRS_NO_EXCTN	Total number of marketable orders presented against the MPID's quotation that did not receive a full or partial execution. This count must only include orders that were not executed (either fully or partially) where the order remained open for greater than or equal to 10 seconds	Bigint	R	Required
10	AVG_RSPNS_TM_TOP_10_PRCNT	Average response time of the top 10% of the MPID's longest response times (slowest) for marketable orders (for full or partial executions)	Numeric (15,9)	R	Required. Use the finest granularity utilized by the member for purposes of CAT reporting and, at a minimum, increments of milliseconds. FINRA will accept granularity as fine as nanoseconds.
11	AVG_RSPNS_TM_TOP_50_PRCNT	Average response time of the top 50% of the MPID's longest response times (slowest) for marketable orders (for full or partial executions)	Numeric (15,9)	R	Required. Use the finest granularity utilized by the member for purposes of CAT reporting and, at a minimum, increments of milliseconds. FINRA will accept granularity as fine as nanoseconds.
12	TRADE_MTH	Year and Month value of the trade month for which the values are aggregated	Integer	R	Required. This is provided in YYYYMM format where YYYY is the year and MM is the numeric month (e.g., July 2021 should be 202107).
13	RECORD_ID	Identifier which uniquely identifies a record	Varchar (20)	R	Required