proposed change to option position limits would accomplish the goals of the proposal without a corresponding change to Exchange Rule 309(a)(1).71

Accordingly, the proposal does not provide an adequate basis for the Commission to conclude that the proposal would be consistent with Section 6(b)(5) of the Act.

IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their data, views, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposed rule change is consistent with Section 6(b)(5), or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval which would be facilitated by an oral presentation of data, views, and arguments, the Commission will consider, pursuant to Section 19(b)(2) of the Act,72 any request for an opportunity to make an oral presentation.73

The Commission asks that commenters address the sufficiency and merit of the Exchange’s statements in support of the proposal in addition to any other comments they may wish to submit about the proposed rule change. In particular, the Commission seeks comment on its concerns expressed above regarding the proposal’s consistency with the Act, and seeks commenters’ views as to whether the proposal could have an adverse market impact.

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change should be approved or disapproved by August 29, 2023. Any person who wishes to file a rebuttal to any other person’s submission must file that rebuttal by September 12, 2023. 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);
- Send an email to rule-comments@sec.gov. Please include File No. SR–MIAX–2023–19 on the subject line.

Paper Comments
- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–MIAX–2023–19. 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 website (https://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 Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–MIAX–2023–19 and should be submitted on or before August 29, 2023. Rebuttal comments should be submitted September 12, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.74

Sherry R. Haywood,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving a Proposed Rule Change To Adopt FINRA Rules 6151 (Disclosure of Order Routing Information for NMS Securities) and 6470 (Disclosure of Order Routing Information for OTC Equity Securities)

August 2, 2023.

I. Introduction

On November 16, 2022, the Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“Commission” or “SEC”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act”)1 and Rule 19b–4 thereunder,2 a proposed rule change to require members to (i) publish order routing reports for orders in OTC Equity Securities,3 and (ii) submit their order routing reports for both OTC Equity Securities and NMS securities4 to FINRA for publication on the FINRA website. The proposed rule change was published for comment in the Federal Register on December 6, 2022.5 On January 18, 2023, pursuant to Section 19(b)(2) of the Exchange Act,6 the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change.7 On March 3, 2023, the Commission instituted proceedings to determine whether to approve or disapprove the proposed rule change.8 On May 31, 2023, FINRA filed an amended proposal to add an OTC Equity Security5 to the definition of a Restricted Equity Security that is not a NMS stock.9 On August 2, 2023, the Commission approved the amended proposal.

3 FINRA Rule 6420(k) defines an “OTC Equity Security” as any equity security that is not an NMS stock, other than a Restricted Equity Security. FINRA Rule 6420(k) defines a “Restricted Equity Security” as any equity security that meets the definition of “restricted security” as contained in Rule 144(a)(3) under the Securities Act of 1933. “NMS stock” means any NMS security other than an option. See 17 CFR 242.600(b)(55).
4 “NMS securities” include any security or class of securities for which transaction reports are collected, processed, and made available to an effective transaction reporting plan, or an effective national market system plan for reporting transactions in listed options. See 17 CFR 242.600(b)(54).
2023, the Commission designated a longer period for Commission action on proceedings to determine whether to approve or disapprove the proposed rule change. The Commission received comment letters on the proposed rule change and responses from FINRA.

This order approves the proposed rule change.

II. Summary of the Proposed Rule Change

As FINRA states in the Notice, Rule 606(a) of Regulation National Market System (“Regulation NMS”) requires broker-dealers to publicly disclose specified information about their order routing practices for NMS securities. In 2018, the Commission amended SEC Rule 606(a) to enhance required disclosures from broker-dealers about their order routing practices for NMS securities, including enhanced disclosures for non-directed orders in NMS stocks that are submitted on a “held” basis in order to better allow “cashed out” and retail investors in particular—that submit orders to their broker-dealers—to be better able to assess the quality of order handling services provided by their broker-dealers and to allow customers to determine “whether their broker-dealers are effectively managing potential conflicts of interest.”

As described below and in more detail in the Notice, FINRA proposes to adopt FINRA Rule 6470 (Disclosure of Order Routing Information for OTC Equity Securities), which imposes disclosure requirements for OTC Equity Securities that are generally aligned with the requirements of SEC Rule 606(a) disclosures but with modifications to account for differences between the over-the-counter (“OTC”) markets and the market for NMS securities. In addition, to improve the accessibility of these new disclosures, as well as SEC Rule 606(a) reports, FINRA proposes to adopt FINRA Rule 6470(d) and FINRA Rule 6151 (Disclosure of Order Routing Information for NMS Securities) to require members to send both disclosures to FINRA for centralized publication on the FINRA website.

Proposed FINRA Rule 6470 would require the publication of order routing disclosures for OTC Equity Securities. Specifically, proposed FINRA Rule 6470(a) would require every member to make publicly available for each calendar quarter a report on its routing of non-directed orders in OTC Equity Securities that are submitted on a held basis during that quarter, broken down by calendar month, and keep such report posted on an internet website that is freely and readily accessible to the public for a period of three years from the initial date of posting on the internet website (“OTC Equity Security reports”). These reports would be required to be separated into three sections: (i) domestic OTC Equity Securities; (ii) American Depository Receipts and foreign ordnaries that are OTC Equity Securities; and (iii) Canadian-listed securities trading in the United States as OTC Equity Securities.

In addition, proposed FINRA Rule 6470(d) would specify that the new OTC Equity Security reports must be made available using the most recent versions of the XML schema and associated PDF renderer as published on the FINRA website, and proposed FINRA Rule 6470(d) would require the reports to be made publicly available within one month after the end of the quarter addressed in the report.

Pursuant to proposed FINRA Rule 6470(a), the new OTC Equity Security reports would be required to include the information specified in paragraphs (a)(1) through (a)(4) of proposed FINRA Rule 6470, specifically:

- the percentage of total orders for the section that were not held orders and held orders, and the percentage of held orders for the section that were non-directed orders;
- the identity of the ten venues to which the largest number of total non-directed held orders for the section were sent.

5, at 74673 n.12. FINRA expects that, subject to the differences between the SEC Rule 606(a) reports and the OTC Equity Security reports, the XML schema and associated PDF renderer published by FINRA would be substantially similar to those published by the SEC for the SEC Rule 606(a) reports. Id. FINRA believes this requirement would ensure that reports are generated and published in standardized machine-readable and human-readable forms, which would benefit investors by permitting the public to more easily analyze and compare the OTC Equity Security reports across members, as well as to more easily perform combined analysis of both SEC Rule 606(a) and OTC Equity Security reports. Id. at 74763.

FINRA states that it understands that some introducing firms route all of their orders in OTC Equity Securities to one or more clearing firms for further routing to other venues for execution. See Notice, supra note 5 at 74673 n.10. FINRA states that the Commission has provided guidance that, where an introducing firm routes all of its covered orders to one or more clearing firms for further routing and execution and the clearing firm in fact makes the routing decision, the introducing firm generally may comply with the SEC Rule 606(a) order routing disclosure requirements by: (i) disclosing its relationship with the clearing firm(s) on its website that includes any payment for order flow received by the introducing firm; and (ii) adopting the clearing firm’s disclosures by reference, provided that the introducing firm has examined the report and does not have reason to believe it materially misrepresents the order routing practices. Id. FINRA states that it intends to provide parallel guidance with respect to proposed FINRA Rule 6470.

FINRA states that “total orders” would include all orders from customers for the section, including both directed and non-directed orders from customers. See Notice, supra note 5, at 74673 n.14.

FINRA states that for purposes of the proposed disclosure, a “non-directed order” would mean any order from a customer other than a directed order. See Notice, supra note 5, at 74673–74 n.15. FINRA further states that consistent with the definition of “directed order” under Regulation NMS, a “directed order” would mean an order from a customer that the customer specifically instructed the member to route to a particular venue for execution. See id.; 17 CFR 242.601(b). FINRA notes that, similar to the definition of “customer” under SEC Rule 606(b)(2)(3) of Regulation NMS, a “customer” is defined under FINRA rules to exclude a broker or dealer. FINRA Rule 0160(b)(4). Orders from other broker-dealers would therefore be excluded from the proposed disclosures. See Notice, supra note 5, at 74673–74 n.15.
To make both the existing SEC Rule 606(a) reports and the new OTC Equity Security reports more accessible for regulators, investors and others seeking to analyze and compare the data, FINRA is proposing to require that members provide the reports to FINRA for central publication on the FINRA website. Proposed FINRA Rule 6151 would require every member that is required to publish a SEC Rule 606(a) report to provide the report to FINRA, in a manner prescribed by FINRA, within the same time and in the same formats that each report was required to be made publicly available pursuant to SEC Rule 606(a). In combination with proposed FINRA Rule 6470(d), which would require members to provide the OTC Equity Security report to FINRA within one month after the end of the quarter addressed in the report in such a manner as may be prescribed by FINRA, FINRA would be able to publish both SEC Rule 606(a) and OTC Equity Security reports on its public website, free of charge and without usage restrictions.

FINRA states that it undertook an “economic impact assessment” to analyze the potential economic impacts of the proposed rule change, including potential costs, benefits, and distributional and competitive effects, relative to the current baseline. In this analysis, FINRA analyzed the number of firms quoting, executing trades and routing orders in OTC Equity Securities over specific time periods, as well as the number of symbols traded per firm and average dollar volume of trading per symbol and per firm. In addition, FINRA published the proposed rule change in “Regulatory Notice 21–35” (October 2021) and received five comments in response. FINRA provided these comments, as well as a summary of these comments and its responses in its filing with the Commission.

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities association. In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Exchange Act, which requires, among other things, that the association’s rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and that the rules are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission received two comment letters that were broadly supportive of the proposed rule change and greater transparency regarding the routing of orders in OTC Equity Securities in general. Another commenter submitted three comment letters, and was supportive of some aspects of the proposal, but expressed concerns about and opposed other aspects of the proposal, as discussed below.
A. Disclosure in the Routing Firm Scenario

Among other things, proposed FINRA Rule 6470(a) requires a member to disclose the identity of the ten venues to which the largest number of total non-directed held orders for the section were routed for execution and of any venue to which five percent or more of non-directed held orders for the section were routed for execution.\(^{31}\) The commenter states that it opposes this aspect of the proposal because the proposed FINRA rule, like SEC Rule 606(a), would require a reporting firm that receives and routes customer orders to a second firm ("routing firm") that does not execute customer orders but routes those orders to other venues for execution ("routing firm scenario"), to disclose to which the routing firm routes the customer orders for execution.\(^{32}\) The commenter states that this requires the reporting firm to report the net fees paid and rebates received between the routing firm and the execution venue in the OTC Equity Security report tables (i.e., the disclosures required by proposed FINRA Rule 6470(a)(3)) and material aspects disclosures (i.e., the disclosures required by proposed FINRA Rule 6470(a)(4)).\(^{33}\) The commenter states that the proposed FINRA rule, like SEC Rule 606(a), does not require the reporting of the net fees paid or rebates received between the reporting firm and the routing firm in the OTC Equity Security report tables.\(^{34}\)

The commenter states that this approach obscures relevant information from retail customers because, to understand the financial inducements faced by a reporting firm, the relevant information is the payment between the reporting firm and the routing firm. The commenter also states that this results in reported data that is not comparable across broker-dealers.\(^{35}\) In addition, the commenter states that the approach results in reporting of arrangements that are not relevant to and results in relevant and important information being excluded from the reports.\(^{36}\) The commenter also states that this approach requires firms to report on financial arrangements to which they might not be a party, that the rules do not impose any obligation on the routing firm to provide data to the reporting firm, and a reporting firm cannot effectively validate the data received from routing firms, particularly in situations where a foreign routing firm routes to a foreign execution venue.\(^{37}\) The commenter further states that the rule filing does not explicitly discuss the costs for this reporting.\(^{38}\)

The commenter also suggests that if FINRA adopts this reporting, then proposed FINRA Rule 6470 should be revised to address the routing firm scenario, because the proposed rule does not accurately describe what firms are required to report.\(^{39}\)

FINRA believes that the proposal is clear concerning the execution venue reporting requirement.\(^{40}\) FINRA states that, as is the case with SEC Rule 606(a), the plain language of proposed Rule 6470(a)(2) requires disclosure of venues to which orders "were routed for execution."\(^ {41} \) FINRA highlights that, consistent with SEC Rule 606(a), the purpose of its proposed disclosures is to provide information about members’ order routing practices and potential conflicts of interest related to execution venues and, therefore, FINRA believes that the same types of venues should be covered by its new OTC Equity Security reports as are covered by SEC Rule 606(a) reports.\(^ {42} \) FINRA also states that members already have experience with SEC Rule 606(a) and may be able to utilize existing systems and arrangements with routing firms to provide the disclosures, and that aligning the scope of the SEC Rule 606(a) and OTC Equity Security reports may also reduce potential investor confusion that could arise with similar reports that do not provide information about the same types of venues.\(^ {43} \)

FINRA states that it is appropriate to require reporting firms to provide information on the routing firm’s arrangements with execution venues because reporting firms are responsible for their order handling choices, and FINRA believes that it is reasonable to require reporting firms to obtain and disclose the required information from broker-dealers they choose to use as their routing firms, including where a routing firm or an execution venue is located abroad.\(^ {44} \) In addition, FINRA states that "requiring disclosure of execution venues would make the reports more easily comparable across reporting firms, as the reports would all include information about the financial inducements that may influence a member’s decision to route to..."
destinations where the order may be executed by the recipient venue." 45 Proposed FINRA Rule 6470, like SEC Rule 606(a), requires the routing report to cover venues to which orders are “routed for execution.” 46 If a routing firm does not execute orders, then it cannot be the venue to which orders were “routed for execution,” and thus the obligation of the reporting firm is to report the relevant information for the execution venues to which the routing firm routes orders to for execution. In response to comments challenging reporting by the recipient venue to which orders are routed for execution, specifically that the proposed rule is not clear and does not result in comparable data, the Commission agrees with FINRA that requiring the OTC Equity Security report to cover venues to which orders are “routed for execution” would ensure that the reports include information about the financial inducements that may influence a member’s decision to route to destinations where the order may be executed at the recipient venue (whether routing orders itself or through an agent routing firm). 48 It is reasonable and appropriate that the scope of disclosures required by proposed FINRA Rule 6470(a) aligns with the scope of the requirements of SEC Rule 606(a) by requiring the reports to include information for venues to which orders are “routed for execution,” which would ensure consistency across such reports. In addition, proposed FINRA Rule 6470 clearly and adequately addresses the application of the rule to the routing firm scenario raised by the commenter. The Commission also agrees with FINRA that requiring disclosure of execution venues would make the reports more easily comparable across reporting firms, as the reports would all include information about the financial inducements that may influence a member’s decision to route to destinations where the order may be executed by the recipient venue. In response to comments raising cost concerns, FINRA has undertaken an economic impact assessment that analyzed, among other things, the potential costs and benefits of the proposal that was based on its experience with order routing reporting.

B. OTC Equities With a Limited Number of Available Execution Venues

The commenter states that there are a significant number of OTC stocks that have a limited number of available execution venues (in many cases, only one or two market centers), and states that there is a potential risk that investors viewing the report for these stocks would see a high percentage of order flow being routed to one or two venues without appropriate context of the limited choices available to the reporting firm and that some firms with lower trading volume in OTC Equity Securities could have routing relationships with a limited number of market makers. 49 The commenter suggests that FINRA should identify this as a factor for investors to consider when reviewing a member’s OTC Equity Security report. 50 FINRA responds that, while the OTC Equity Securities market differs from the NMS securities market in the number of available execution venues, it intends to, as appropriate, provide members, investors, and others with information and otherwise engage in investor education efforts about the purpose, content, and potential limitation of the reports. 51 In addition, FINRA states that members could also provide additional explanatory context regarding their OTC Equity Security reports, provided that such information is accurate, not misleading, and otherwise complies with other applicable SEC and FINRA requirements. 52

C. Use of Consolidated Audit Trail ("CAT") Data

The commenter also states that FINRA should consider whether certain categories of data that firms are required to report in the OTC Equity Security reports could be obtained by FINRA from the CAT. 53 In the filing, FINRA states that it is not proposing to use CAT data because of restrictions on the use of CAT data, and because FINRA believes the most efficient and comprehensive means of providing the data included in the OTC Equity Security order routing disclosures is for members to generate the reports directly. 55 FINRA also states that not all of the data required in the reports is also reported to CAT. 56 The Commission agrees with FINRA that the most efficient and comprehensive means of obtaining the data included in the OTC Equity Security report is from members directly. The CAT does not contain all of the data required on the OTC Equity Securities reports, while FINRA members with reporting obligations under the new rule will have the means of collecting and reporting the required data.

D. Implementation and Comment Period

The commenter also raises concerns about implementation of the proposal, stating that it is important to ensure that industry members will have sufficient time to properly implement the planned

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45 See id. While the financial inducements between a reporting firm and a routing firm are not disclosed pursuant to proposed FINRA Rule 6470(a)(3), FINRA states that, consistent with SEC Rule 606(a), such information may be disclosed in the report’s discussion of the material aspects of the member’s relationship with an execution venue pursuant to proposed FINRA Rule 6470(a)(4). See id. at 4–5 n.14; see also FINRA Letter II at 4.

46 17 CFR 242.606(a)(2); proposed FINRA Rule 6470(a)(2).

47 See supra notes 20–21 and accompanying text.

48 The Commission disagrees with commenter concerns that this approach obscures relevant information from retail customers, because, to the extent that a reporting firm receives financial inducements from a routing firm when ordering routes to an execution venue, such financial inducements may be reported pursuant to FINRA Rule 6470(a) as material aspects of the routing firm’s relationship with the execution venue. See Notice, supra note 5, at 74674 n.18.

49 See FIF Letter at 8.

50 See id.

51 See FINRA Letter at 6.

52 See id.

53 See id. In addition, as described above, FINRA has stated that as appropriate, it intends to provide members, investors, and others with information and otherwise engage in investor education efforts about the purpose, content, and potential limitation of the reports. See id.


55 See Notice, supra note 5, at 74678–79.

56 See FINRA Letter at 3.
reporting changes. The commenter also states that the rule filing does not provide clear guidance on reporting scenarios relating to trading on OTC Link ATSS and raises several hypothetical situations where it believes OTC Link ATSS should be reported as the execution venue, as opposed to where the execution actually took place. In the proposal, FINRA states that it intends to engage with members and other interested parties prior to implementation of the proposed rule change, including specifically to discuss order routing disclosures in scenarios involving OTC Link ATSS, as well as provide guidance as appropriate on other interpretative questions. FINRA also provided responses to the specific scenarios the commenter provided demonstrating why the execution venue and not OTC Link ATSS should be reported under the proposed rules. FINRA reiterates that, for purposes of the proposed disclosures for OTC Equity Securities, a “venue” would be defined broadly to cover any market center or any other person or entity to which a member routes for execution, and consequently would exclude an entity that is used merely as a vehicle to route an order to a venue selected by the broker-dealer. Thus, FINRA states that, for purposes of proposed Rule 6470, where an alternative trading system (“ATS”) offers both automatic order execution and order delivery functionality, the ATS should be identified as the venue only when the ATS provides order execution. FINRA believes identification of the ATS in these circumstances is appropriate because the ATS is the venue where the order was routed “for execution,” consistent with SEC Rule 606(a). FINRA also believes that, for purposes of proposed Rule 6470, in cases where the ATS instead provides order delivery, the separate market center to which the orders are delivered—e.g., a market maker or other ATS—should be identified as the venue where the order was routed for execution.

The Commission believes that FINRA’s statements with respect to implementation are reasonable and appropriate. As stated above, FINRA recognizes that members will require sufficient time to implement the new disclosure requirements, intends to provide an appropriate amount of time for implementation of the proposal, will work with the industry to publish technical specifications appropriately in advance of the implementation date, and will also publish interpretive guidance to the extent needed—including on routing scenarios unique to certain platforms in the OTC Equity Security market—with sufficient time allowed for implementation. In addition, FINRA has stated that it will announce the effective date of the proposed rule change in a Regulatory Notice and the effective date will be no later than 365 days following publication of the Regulatory Notice. Also, some broker-dealers will have familiarity and the ability to more easily produce OTC Equity Security reports due to experience in producing SEC Rule 606(a) reports for NMS securities, making the implementation reasonable and appropriate.

Moreover, the commenter expresses concern that there was not sufficient time to comment on this proposal. The Commission, however, published the proposal for comment; designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings; and extended its time to act on the proposal, during which time the commenter submitted three comment letters. Accordingly, there has been sufficient opportunity for comment on the proposal.

E. Centralized Hosting of Order Routing Disclosures

The commenter states that its members support centralized publication of SEC Rule 606(a) reports and the OTC Equity Security reports by FINRA, but states that if FINRA will publish these reports that firms should no longer be required to separately publish these reports on their own websites, and instead firms should be required to publish a link to the applicable section of the FINRA website. The commenter also suggests that FINRA create a database with structured firm routing report data that can be accessed through automated queries. FINRA confirms that a member would satisfy the proposed requirement to publish the new OTC Equity Security reports on the member’s website by including a link from its own website to the FINRA web page hosting centralized publication of OTC Equity Security reports. With respect to the commenter’s recommendation that FINRA create a structured database that users may query, FINRA states that it is not contemplating such a database currently but will continue to consider ways to facilitate investor access to, and the usefulness of, the OTC Equity Security reports. In addition, FINRA states in the proposal that it intends to engage in investor education efforts regarding the purpose, content, and potential limitations of the disclosures.

SEC Rule 606(a) reports are required to be made publicly available within one month after the end of the quarter addressed in the report pursuant to Commission rule and such requirement is not affected by this proposal. With respect to OTC Equity Security reports required by proposed FINRA Rule 6470, it is reasonable for the OTC Equity Security reports to be required to be disclosed publicly in a similar manner to SEC Rule 606(a) reports. These proposed changes are reasonably designed to make order routing disclosures more accessible to investors and other relevant stakeholders. Consolidating order routing reports onto a single website could assist market participants, investors and the public to more easily compare order routing disclosures and practices across different firms and observe changes in routing behaviors over time.
F. Symbol Categorization File

The commenter supports FINRA’s proposal to publish and maintain a file of which symbols are included in each OTC Equity Security category without charge, but recommends making this file available prior to the first day of each quarter for use in the upcoming quarter. 75 The commenter states that requiring daily updates to the list would significantly increase the reporting burden without material impact on aggregating data for the quarter. 76 Consistent with the commenter’s request, FINRA confirms that it will make the symbol categorization file available prior to the first day of each calendar quarter for use during the entirety of the following quarter. 77 The Commission believes that publishing and maintaining a symbol categorization file, which will be available prior to the first day of each quarter, is appropriate and would ease members’ reporting burden.

G. Categorization of Held and Not Held Orders

The commenter supports FINRA’s proposal to limit the OTC Equity Security disclosures to non-directed held orders, but requests guidance on the proposed requirement to report the percentage of not held and held orders as a percentage of all orders. 78 FINRA responds that it believes that all orders are either held or not held because a firm either has price and time discretion to execute the order, or it does not. 79 The Commission agrees with FINRA, and has discussed the difference between held and not held orders and their separate reporting requirements under Rule 606 of Regulation NMS. 80 Overall, the proposed requirements relating to the disclosure of order routing information for OTC Equity Securities are reasonably designed to assist customers in evaluating the quality of the order routing services of their broker-dealers and how well their broker-dealers manage potential conflicts of interest with execution venues. Customers would be better able to assess indirect and previously unobservable costs of trading OTC Equity Securities, including, among other things, payment for order flow and transaction fees paid less rebates, which should allow customers to assess the performance of its broker-dealer(s) and be better informed in making choices among firms. The similarities in reporting requirements between proposed FINRA Rule 6470(a) and SEC Rule 606(a) should reduce the burden of reporting for broker-dealers that already produce SEC Rule 606(a) reports, and the proposed differences in reporting requirements for OTC Equity Securities under proposed FINRA Rule 6470(a) and SEC Rule 606(a) reports for NMS securities are reasonable and appropriate due to differences in the nature of OTC Equity Securities and the markets in which they trade. 81 For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) 82 of the Exchange Act and the rules and regulations thereunder applicable to a national securities association.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act, 83 that the proposed rule change (SR–FINRA–2022–031) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority. 84

Sherry R. Haywood,
Assistant Secretary.
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81 See Notice, supra note 5, at 74674 (describing the differences in reporting requirements for OTC Equity Securities under proposed FINRA Rule 6470(a) and SEC Rule 606(a) reports for NMS securities).