

OMB APPROVAL

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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No. SR - 2009 - 077

Amendment No.

Proposed Rule Change by Financial Industry Regulatory Authority

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial ☒ Amendment ☐ Withdrawal ☐

Section 19(b)(2) ☒ Section 19(b)(3)(A) ☐ Section 19(b)(3)(B) ☐

Rule

Pilot ☐ Extension of Time Period
for Commission Action ☐ Date Expires

☐ 19b-4(f)(1) ☐ 19b-4(f)(4)
☐ 19b-4(f)(2) ☐ 19b-4(f)(5)
☐ 19b-4(f)(3) ☐ 19b-4(f)(6)

Exhibit 2 Sent As Paper Document ☐Exhibit 3 Sent As Paper Document ☐**Description**

Provide a brief description of the proposed rule change (limit 250 characters).

Proposed Rule Change to Restructure Quotation Collection and Dissemination for OTC Equity Securities

Contact Information

Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name Last Name
Title
E-mail
Telephone Fax

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized officer.

Date By
(Name)

(Title)

NOTE: Clicking the button at right will digitally sign and lock
this form. A digital signature is as legally binding as a physical
signature, and once signed, this form cannot be changed.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EDFS website.

Form 19b-4 Information

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change

Add Remove View

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

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Exhibit Sent As Paper Document

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Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

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Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

Add Remove View

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ Financial Industry Regulatory Authority, Inc. (“FINRA”) (f/k/a National Association of Securities Dealers, Inc. (“NASD”)) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to restructure quotation collection and dissemination for OTC Equity Securities.

The text of the proposed rule change is attached as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

At its meeting on July 16, 2009, the FINRA Board of Governors authorized the filing of the proposed rule change with the SEC. No other action by FINRA is necessary for the filing of the proposed rule change.

FINRA will cease operation of the OTC Bulletin Board Service concurrent with the implementation of the Quotation Consolidation Facility and intends to provide ample time for investors and market participants to prepare for the transition. The effective date of the proposed rule change will, therefore, be no sooner than 60 days and no later than 365 days from Commission approval; provided, however, that the proposed rule change will not take effect prior to the cessation of operation of the OTC Bulletin Board Service.

¹ 15 U.S.C. 78s(b)(1).

3. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

FINRA is proposing to: (1) create a Quotation Consolidation Facility (“QCF”) for OTC Equity Securities for regulatory and transparency purposes that would serve as a data consolidator for all quote data in the over-the-counter equity market; (2) delete the FINRA Rule 6500 Series, which governs the operation of the OTC Bulletin Board Service (“OTCBB”);² and (3) modify the position charge from \$6.00/security/month to \$4.00/security/month.

Background

The OTCBB and Pink OTC Markets Inc. (“Pink Sheets”) are the primary attributable quotation platforms for OTC Equity Securities.³ The OTC Equity Security class generally is comprised of: (i) securities quoted solely on the OTCBB (approximately 75 issues);⁴ (ii) securities quoted solely on the Pink Sheets (approximately 5,877 issues); (iii) securities quoted on both the Pink Sheets and the OTCBB (approximately 3,372 issues); and (iv) “Grey Market” securities (i.e., publicly

² FINRA intends to cease operation of the OTCBB upon implementation of this proposed rule change.

³ “OTC Equity Security” means any non-exchange-listed security and certain exchange-listed securities that do not otherwise qualify for real-time trade reporting. See FINRA Rule 6420(d).

⁴ To be eligible for quoting on the OTCBB, an issuer must generally not be listed on an exchange (or otherwise qualify for real-time trade reporting via the Consolidated Tape) and be a current, timely filer of periodic financial reports as set forth in FINRA Rule 6530.

traded, non-exchange listed securities that are not otherwise quoted on any inter-dealer quotation system (approximately 14,000 issues)).⁵

OTCBB quotation data, as well as OTC Equity Security trade report data, has historically been consolidated through FINRA into the Nasdaq Level 1 data feed.⁶ The Commission specifically approved the incorporation of this commingled data into Level 1 to ensure that it is widely disseminated for a reasonable cost to investors and market participants.⁷ FINRA believes that the creation of a consolidated OTC Equity Security national best bid or offer (“NBBO”) and last sale trade tape through the Level 1 data feed will continue to benefit market integrity, foster investor protection, and directly support the original intent of the Commission in approving the commingling of OTC Equity Security data with the Level 1 data feed.

FINRA notes that an increasing amount of quotation data is not made directly available through the Level 1 data feed for a variety of reasons. For example, some

⁵ Notwithstanding that quotation activity in OTC Equity Securities occurs on both the Pink Sheets and on the OTCBB, trade reporting is centralized through the FINRA OTC Reporting Facility (“ORF”). Currently FINRA members are required to report substantially all trades in OTC Equity Securities to the ORF within 90 seconds of execution and FINRA disseminates this transaction information in real-time.

⁶ The Level 1 feed is a consolidated best bid or offer (“BBO”) data feed for Nasdaq-listed securities and OTCBB-eligible securities. The Level 1 feed is carried by virtually all trading firms and market data distributors.

⁷ See Securities Exchange Act Release No. 29616 (August 27, 1991), 56 FR 43826 (September 4, 1991) (Notice of Filing and Immediate Effectiveness of File No. SR-NASD-91-38); Securities Exchange Act Release No. 35054 (December 6, 1994), 59 FR 64225 (December 13, 1994) (Notice of Filing of File No. SR-NASD-94-70); and Securities Exchange Act Release No. 35217 (January 11, 1995), 60 FR 3890 (January 19, 1995) (Order Approving File No. SR-NASD-94-70). Pink Sheets quotation data is not currently included in this data feed but is sold as a proprietary product by Pink Sheets.

market makers are opting to utilize inter-dealer quotation systems other than the OTCBB Service for some or all of their quoting activity. In addition, certain classes of securities that are not currently eligible by rule for quotation on the OTCBB have experienced significant growth in the recent past (e.g., unsponsored American Depositary Receipts). In contrast to the market for OTC Equity Securities, the NMS consolidated data system ensures that investors, market participants, and regulators have ready access to consolidated real-time data for NMS stocks quoted and traded on an inter-market basis for a reasonable cost. Thus, FINRA believes a number of factors, including members' best execution obligations and the potential for future market fragmentation in the OTC Equity Security space, necessitate a widely available NBBO for over-the-counter quotations in OTC Equity Securities. Further to that point, a consolidated OTC Equity Security NBBO that is integrated in real time into FINRA regulatory systems will be beneficial for conducting surveillance for compliance with other FINRA rules. FINRA also notes that this proposal is consistent with the goals articulated in a separate filing proposing to extend selected Regulation NMS protections to the over-the-counter market.⁸

The Proposed Restructuring

As discussed above, data consolidation for OTC Equity Securities is currently in place for last sale trade reports through the FINRA ORF, but no readily available,

⁸ See Securities Exchange Act Release No. 60515 (August 17, 2009), 74 FR 43207 (August 26, 2009) (Notice of Filing of File No. SR-FINRA-2009-054). The proposed rule change would: (1) restrict sub-penny quoting; (2) restrict locked and crossed markets; (3) implement a cap on access fees; and (4) require the display of customer limit orders.

complementary, consolidated system exists for quotations in OTC Equity Securities.

Thus, FINRA is proposing to implement a new over-the-counter transparency structure by ceasing operation of the OTCBB and establishing an OTC Equity Security QCF.⁹

Under the proposal, FINRA would require: (1) members to submit contemporaneously to the QCF any quotation in an OTC Equity Security that is displayed directly by a member on an inter-dealer quotation system that permits updates on a real-time basis,¹⁰ and (2) a member that is an ATS (as defined by Rule 300(a) of Regulation ATS) to submit contemporaneously to the QCF its highest displayed buy price and size and lowest displayed sell price and size (i.e., “top-of-book”), irrespective of whether it chooses to display its quotations on an inter-dealer quotation system.¹¹

⁹ To ensure a smooth transition in connection with the launch of the QCF and the sale of the OTCBB, FINRA is actively engaged in an outreach campaign to inform investors, issuers, market participants, and the market data community regarding the initiative.

¹⁰ Rule 15c2-11(e)(2) under the Act defines “inter-dealer quotation system” as “any system of general circulation to brokers or dealers which regularly disseminates quotations of identified brokers or dealers.”

¹¹ The QCF reporting obligations apply to quotations in “OTC Equity Securities,” which may include certain exchange-listed securities (i.e., securities that are listed on a national securities exchange that do not meet the definition of “NMS stock” as that term is defined in Rule 600(b)(47) of Regulation NMS). However, FINRA is not proposing to require members to submit to FINRA quotations in OTC Equity Securities that are displayed on an exchange. Thus, the consolidated NBBO disseminated through the QCF will include quotations in certain exchange-listed, non-NMS stocks quoted over-the-counter on an inter-dealer quotation system (or ATS), but will not include quotations in those securities displayed on an exchange. This is consistent with current transaction dissemination whereby the Level 1 data feed includes all OTC transactions in OTC Equity Securities, but does not currently consolidate transactions in OTC Equity Securities reported on or through an exchange. With respect to quotations displayed by the QCF, FINRA will append a modifier to the symbol of each OTC Equity Security disseminated by the QCF that also is listed on an exchange in

Quotation information reported to the QCF must reflect all changes in quotations or quotation size displayed and the time any such change was effected.

Specifically, members would be required to report, at a minimum, the following information for every quotation displayed by the member during the trading day:

- Submitting firm;¹²
- Inter-dealer quotation system on which the quotation is displayed (if applicable);
- Quotation date;
- Time quotation displayed (expressed in hours, minutes and seconds);
- Security name and symbol;
- Bid and bid quotation size (if applicable) and offer and offer quotation size (if applicable);¹³ and
- Highest displayed buy price and size and lowest displayed sell price and size of an ATS (if applicable).¹⁴

Members must use the QCF to report quotation information on a real-time basis and the QCF will collect, consolidate and then disseminate the NBBO on a real-time

order to indicate that the QCF NBBO may not represent the complete best bid and offer for such security.

¹² In the case that the submitting firm is an ATS, this field shall include the name of such ATS (rather than the identification of the member firm originating the trading interest).

¹³ These fields are applicable only to a member that is not an ATS.

¹⁴ This field is applicable only to a member that is an ATS.

basis for all over-the-counter quotations in OTC Equity Securities.¹⁵ Thus, the proposal will effectively ensure that all over-the-counter quotation data for OTC Equity Securities is submitted to FINRA for the purpose of creating a NBBO for dissemination through the Level 1 consolidated quote feed. Moreover, this centralized NBBO will be complemented with consolidated last sale trade report data through FINRA's operation of the existing ORF in concert with the QCF.¹⁶ Members would have the option of using a vendor (including an inter-dealer quotation system) to transmit their quotation data to the QCF, but the member would remain ultimately responsible for the real time submission of their quotation data to the QCF. FINRA currently intends to disseminate the NBBO of each OTC Equity Security displayed by an ATS or by a member on an inter-dealer quotation system, but does not intend to disseminate depth of book quotation data through the QCF. Instead, mirroring the approach taken by the Commission in the NMS market, quotation mediums operating in the OTC Equity Security space would be free to create and sell data products related to depth of book data.

FINRA also is proposing to create an additional level of transparency related to OTC Equity Securities directly within the primary consolidated Level 1 quote feed.

¹⁵ Under the current proposal, FINRA intends to build QCF functionality such that the QCF's disseminated NBBO field will extend to four decimal places. FINRA recognizes that certain quotation mediums currently accommodate quotations in increments of smaller than \$0.0001; therefore, FINRA will work with members and vendors with regard to uniform and consistent normalization of quotation data for submission to the QCF. As with other FINRA rules, FINRA will oversee member conduct in its usual course with regard to compliance with its rules in the context of this quote normalization issue.

¹⁶ As would be the case with the QCF, data for OTC Equity Securities reported on or through an exchange currently is not included in the FINRA ORF. See supra note 11.

Specifically, FINRA is proposing to append a modifier to each symbol for every OTC Equity Security to indicate its financial reporting status. These appendages would be disseminated on the Level 1 consolidated data stream indicating whether the issuer of the OTC Equity Security is a timely financial reporting company, a delinquent financial reporting company, or a non-financial reporting company. FINRA views this enhanced issuer transparency as carrying significant benefits, including that it will provide more granular information regarding the status of an issuer of each OTC Equity Security directly through the consolidated Level 1 data feed.¹⁷

To account for its broader role as the operator of the QCF and for growing fragmentation in the market for OTC Equity Securities, FINRA is proposing to implement a new, broader approach to the application of the existing FINRA OTCBB position fee (currently \$6.00/security/month). FINRA is proposing that an OTC Equity Security-wide position fee should be established in place of the current OTCBB-specific position fee. The proposed fee would be a flat \$4.00/security/month and would be

¹⁷ FINRA will track issuer reporting status in a substantially similar manner as is done with respect to securities for which quotations are posted on the OTCBB. See supra note 4. If a party believes that the modifier appended by FINRA reflects an error, such party may contact FINRA at no charge. Specific contact information will be provided by FINRA in the Regulatory Notice announcing the implementation date of these proposed rules. However, FINRA reserves the right to make the final determination as to the status of the issuer based on the sole reasonable discretion of the staff. In addition, consistent with current OTCBB procedures, because FINRA relies solely on publicly available data to track issuer reporting status (i.e., FINRA does no independent verification of issuer filing status), issuer status changes will only be made in extraordinary cases and, generally, only if written notice of status change is received by FINRA directly from the Commission or other regulator, as applicable.

assessed upon any FINRA member that submits or is required to submit its quotations to the QCF, either directly or indirectly through a service provider.

FINRA will cease operation of the OTCBB concurrent with the implementation of the QCF and intends to provide ample time for investors and market participants to prepare for the transition. The effective date of the proposed rule change will, therefore, be no sooner than 60 days and no later than 365 days from Commission approval; provided, however, that the proposed rule change will not take effect prior to the cessation of operation of the OTCBB.

(b) Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act.¹⁸ Section 15A(b)(6) 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. The proposed rule change will prevent fraudulent and manipulative acts and practices by enhancing the transparency and accessibility of consolidated quotation information for over-the-counter quotations in OTC Equity Securities and will promote better compliance with FINRA rules applicable to quoting and trading in OTC Equity Securities including, among other things, members' best execution obligations.

FINRA also believes that the proposed rule change is consistent with the provisions of Section 15A(b)(11) of the Act.¹⁹ Section 15A(b)(11) requires that the rules of the association include provisions governing the form and content of quotations

¹⁸ 15 U.S.C. 78o-3(b)(6).

¹⁹ 15 U.S.C. 78o-3(b)(11).

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.

Consistent with the requirements of Section 15A(b)(11), FINRA believes that the implementation of a consolidated quote stream (in addition to the existing FINRA trade report data stream) represents an orderly system for collecting, distributing and publishing quotation and trade data for over-the-counter quotations and transactions in OTC Equity Securities, thereby providing the investing public and market participants with ready access to informative, consolidated trade and quotation information.

4. 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.

5. 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.

6. Extension of Time Period for Commission Action

FINRA does not consent at this time to an extension of the time period for Commission action specified in Section 19(b)(2) of the Act.²⁰

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Not applicable.

²⁰

15 U.S.C. 78s(b)(2).

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Exhibits

Exhibit 1. Completed notice of proposed rule change for publication in the Federal Register.

Exhibit 5. Text of the proposed rule change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-FINRA-2009-077)

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change Relating to the Restructuring of Quotation Collection and Dissemination 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 , 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. 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 Substance of the Proposed Rule Change

FINRA is proposing a rule change to restructure quotation collection and dissemination for OTC Equity Securities.

The text of the proposed rule change is available on FINRA’s Web site at <http://www.finra.org>, at the principal office of FINRA and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 is proposing to: (1) create a Quotation Consolidation Facility ("QCF") for OTC Equity Securities for regulatory and transparency purposes that would serve as a data consolidator for all quote data in the over-the-counter equity market; (2) delete the FINRA Rule 6500 Series, which governs the operation of the OTC Bulletin Board Service ("OTCBB");³ and (3) modify the position charge from \$6.00/security/month to \$4.00/security/month.

Background

The OTCBB and Pink OTC Markets Inc. ("Pink Sheets") are the primary attributable quotation platforms for OTC Equity Securities.⁴ The OTC Equity Security class generally is comprised of: (i) securities quoted solely on the OTCBB

³ FINRA intends to cease operation of the OTCBB upon implementation of this proposed rule change.

⁴ "OTC Equity Security" means any non-exchange-listed security and certain exchange-listed securities that do not otherwise qualify for real-time trade reporting. See FINRA Rule 6420(d).

(approximately 75 issues);⁵ (ii) securities quoted solely on the Pink Sheets (approximately 5,877 issues); (iii) securities quoted on both the Pink Sheets and the OTCBB (approximately 3,372 issues); and (iv) “Grey Market” securities (i.e., publicly traded, non-exchange listed securities that are not otherwise quoted on any inter-dealer quotation system (approximately 14,000 issues)).⁶

OTCBB quotation data, as well as OTC Equity Security trade report data, has historically been consolidated through FINRA into the Nasdaq Level 1 data feed.⁷ The Commission specifically approved the incorporation of this commingled data into Level 1 to ensure that it is widely disseminated for a reasonable cost to investors and market participants.⁸ FINRA believes that the creation of a consolidated OTC Equity Security national best bid or offer (“NBBO”) and last sale trade tape through the Level 1 data feed

⁵ To be eligible for quoting on the OTCBB, an issuer must generally not be listed on an exchange (or otherwise qualify for real-time trade reporting via the Consolidated Tape) and be a current, timely filer of periodic financial reports as set forth in FINRA Rule 6530.

⁶ Notwithstanding that quotation activity in OTC Equity Securities occurs on both the Pink Sheets and on the OTCBB, trade reporting is centralized through the FINRA OTC Reporting Facility (“ORF”). Currently FINRA members are required to report substantially all trades in OTC Equity Securities to the ORF within 90 seconds of execution and FINRA disseminates this transaction information in real-time.

⁷ The Level 1 feed is a consolidated best bid or offer (“BBO”) data feed for Nasdaq-listed securities and OTCBB-eligible securities. The Level 1 feed is carried by virtually all trading firms and market data distributors.

⁸ See Securities Exchange Act Release No. 29616 (August 27, 1991), 56 FR 43826 (September 4, 1991) (Notice of Filing and Immediate Effectiveness of File No. SR-NASD-91-38); Securities Exchange Act Release No. 35054 (December 6, 1994), 59 FR 64225 (December 13, 1994) (Notice of Filing of File No. SR-NASD-94-70); and Securities Exchange Act Release No. 35217 (January 11, 1995), 60 FR 3890 (January 19, 1995) (Order Approving File No. SR-NASD-94-70). Pink Sheets quotation data is not currently included in this data feed but is sold as a proprietary product by Pink Sheets.

will continue to benefit market integrity, foster investor protection, and directly support the original intent of the Commission in approving the commingling of OTC Equity Security data with the Level 1 data feed.

FINRA notes that an increasing amount of quotation data is not made directly available through the Level 1 data feed for a variety of reasons. For example, some market makers are opting to utilize inter-dealer quotation systems other than the OTCBB Service for some or all of their quoting activity. In addition, certain classes of securities that are not currently eligible by rule for quotation on the OTCBB have experienced significant growth in the recent past (e.g., unsponsored American Depositary Receipts). In contrast to the market for OTC Equity Securities, the NMS consolidated data system ensures that investors, market participants, and regulators have ready access to consolidated real-time data for NMS stocks quoted and traded on an inter-market basis for a reasonable cost. Thus, FINRA believes a number of factors, including members' best execution obligations and the potential for future market fragmentation in the OTC Equity Security space, necessitate a widely available NBBO for over-the-counter quotations in OTC Equity Securities. Further to that point, a consolidated OTC Equity Security NBBO that is integrated in real time into FINRA regulatory systems will be beneficial for conducting surveillance for compliance with other FINRA rules. FINRA also notes that this proposal is consistent with the goals articulated in a separate filing proposing to extend selected Regulation NMS protections to the over-the-counter market.⁹

⁹ See Securities Exchange Act Release No. 60515 (August 17, 2009), 74 FR 43207 (August 26, 2009) (Notice of Filing of File No. SR-FINRA-2009-054). The proposed rule change would: (1) restrict sub-penny quoting; (2) restrict locked

The Proposed Restructuring

As discussed above, data consolidation for OTC Equity Securities is currently in place for last sale trade reports through the FINRA ORF, but no readily available, complementary, consolidated system exists for quotations in OTC Equity Securities. Thus, FINRA is proposing to implement a new over-the-counter transparency structure by ceasing operation of the OTCBB and establishing an OTC Equity Security QCF.¹⁰

Under the proposal, FINRA would require: (1) members to submit contemporaneously to the QCF any quotation in an OTC Equity Security that is displayed directly by a member on an inter-dealer quotation system that permits updates on a real-time basis,¹¹ and (2) a member that is an ATS (as defined by Rule 300(a) of Regulation ATS) to submit contemporaneously to the QCF its highest displayed buy price and size and lowest displayed sell price and size (*i.e.*, “top-of-book”), irrespective of whether it chooses to display its quotations on an inter-dealer quotation system.¹² Quotation

and crossed markets; (3) implement a cap on access fees; and (4) require the display of customer limit orders.

¹⁰ To ensure a smooth transition in connection with the launch of the QCF and the sale of the OTCBB, FINRA is actively engaged in an outreach campaign to inform investors, issuers, market participants, and the market data community regarding the initiative.

¹¹ Rule 15c2-11(e)(2) under the Act defines “inter-dealer quotation system” as “any system of general circulation to brokers or dealers which regularly disseminates quotations of identified brokers or dealers.”

¹² The QCF reporting obligations apply to quotations in “OTC Equity Securities,” which may include certain exchange-listed securities (*i.e.*, securities that are listed on a national securities exchange that do not meet the definition of “NMS stock” as that term is defined in Rule 600(b)(47) of Regulation NMS). However, FINRA is not proposing to require members to submit to FINRA quotations in OTC Equity Securities that are displayed on an exchange. Thus, the consolidated NBBO disseminated through the QCF will include quotations in certain exchange-listed, non-NMS stocks quoted over-the-counter on an inter-dealer

information reported to the QCF must reflect all changes in quotations or quotation size displayed and the time any such change was effected.

Specifically, members would be required to report, at a minimum, the following information for every quotation displayed by the member during the trading day:

- Submitting firm;¹³
- Inter-dealer quotation system on which the quotation is displayed (if applicable);
- Quotation date;
- Time quotation displayed (expressed in hours, minutes and seconds);
- Security name and symbol;
- Bid and bid quotation size (if applicable) and offer and offer quotation size (if applicable);¹⁴ and
- Highest displayed buy price and size and lowest displayed sell price and size of an ATS (if applicable).¹⁵

quotation system (or ATS), but will not include quotations in those securities displayed on an exchange. This is consistent with current transaction dissemination whereby the Level 1 data feed includes all OTC transactions in OTC Equity Securities, but does not currently consolidate transactions in OTC Equity Securities reported on or through an exchange. With respect to quotations displayed by the QCF, FINRA will append a modifier to the symbol of each OTC Equity Security disseminated by the QCF that also is listed on an exchange in order to indicate that the QCF NBBO may not represent the complete best bid and offer for such security.

¹³ In the case that the submitting firm is an ATS, this field shall include the name of such ATS (rather than the identification of the member firm originating the trading interest).

¹⁴ These fields are applicable only to a member that is not an ATS.

¹⁵ This field is applicable only to a member that is an ATS.

Members must use the QCF to report quotation information on a real-time basis and the QCF will collect, consolidate and then disseminate the NBBO on a real-time basis for all over-the-counter quotations in OTC Equity Securities.¹⁶ Thus, the proposal will effectively ensure that all over-the-counter quotation data for OTC Equity Securities is submitted to FINRA for the purpose of creating a NBBO for dissemination through the Level 1 consolidated quote feed. Moreover, this centralized NBBO will be complemented with consolidated last sale trade report data through FINRA's operation of the existing ORF in concert with the QCF.¹⁷ Members would have the option of using a vendor (including an inter-dealer quotation system) to transmit their quotation data to the QCF, but the member would remain ultimately responsible for the real time submission of their quotation data to the QCF. FINRA currently intends to disseminate the NBBO of each OTC Equity Security displayed by an ATS or by a member on an inter-dealer quotation system, but does not intend to disseminate depth of book quotation data through the QCF. Instead, mirroring the approach taken by the Commission in the NMS market, quotation mediums operating in the OTC Equity Security space would be free to create and sell data products related to depth of book data.

¹⁶ Under the current proposal, FINRA intends to build QCF functionality such that the QCF's disseminated NBBO field will extend to four decimal places. FINRA recognizes that certain quotation mediums currently accommodate quotations in increments of smaller than \$0.0001; therefore, FINRA will work with members and vendors with regard to uniform and consistent normalization of quotation data for submission to the QCF. As with other FINRA rules, FINRA will oversee member conduct in its usual course with regard to compliance with its rules in the context of this quote normalization issue.

¹⁷ As would be the case with the QCF, data for OTC Equity Securities reported on or through an exchange currently is not included in the FINRA ORF. See supra note 12.

FINRA also is proposing to create an additional level of transparency related to OTC Equity Securities directly within the primary consolidated Level 1 quote feed. Specifically, FINRA is proposing to append a modifier to each symbol for every OTC Equity Security to indicate its financial reporting status. These appendages would be disseminated on the Level 1 consolidated data stream indicating whether the issuer of the OTC Equity Security is a timely financial reporting company, a delinquent financial reporting company, or a non-financial reporting company. FINRA views this enhanced issuer transparency as carrying significant benefits, including that it will provide more granular information regarding the status of an issuer of each OTC Equity Security directly through the consolidated Level 1 data feed.¹⁸

To account for its broader role as the operator of the QCF and for growing fragmentation in the market for OTC Equity Securities, FINRA is proposing to implement a new, broader approach to the application of the existing FINRA OTCBB position fee (currently \$6.00/security/month). FINRA is proposing that an OTC Equity Security-wide position fee should be established in place of the current OTCBB-specific position fee. The proposed fee would be a flat \$4.00/security/month and would be

¹⁸ FINRA will track issuer reporting status in a substantially similar manner as is done with respect to securities for which quotations are posted on the OTCBB. See supra note 5. If a party believes that the modifier appended by FINRA reflects an error, such party may contact FINRA at no charge. Specific contact information will be provided by FINRA in the Regulatory Notice announcing the implementation date of these proposed rules. However, FINRA reserves the right to make the final determination as to the status of the issuer based on the sole reasonable discretion of the staff. In addition, consistent with current OTCBB procedures, because FINRA relies solely on publicly available data to track issuer reporting status (i.e., FINRA does no independent verification of issuer filing status), issuer status changes will only be made in extraordinary cases and, generally, only if written notice of status change is received by FINRA directly from the Commission or other regulator, as applicable.

assessed upon any FINRA member that submits or is required to submit its quotations to the QCF, either directly or indirectly through a service provider.

FINRA will cease operation of the OTCBB concurrent with the implementation of the QCF and intends to provide ample time for investors and market participants to prepare for the transition. The effective date of the proposed rule change will, therefore, be no sooner than 60 days and no later than 365 days from Commission approval; provided, however, that the proposed rule change will not take effect prior to the cessation of operation of the OTCBB.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act.¹⁹ Section 15A(b)(6) 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. The proposed rule change will prevent fraudulent and manipulative acts and practices by enhancing the transparency and accessibility of consolidated quotation information for over-the-counter quotations in OTC Equity Securities and will promote better compliance with FINRA rules applicable to quoting and trading in OTC Equity Securities including, among other things, members' best execution obligations.

FINRA also believes that the proposed rule change is consistent with the provisions of Section 15A(b)(11) of the Act.²⁰ Section 15A(b)(11) requires that the rules of the association include provisions governing the form and content of quotations

¹⁹ 15 U.S.C. 78o-3(b)(6).

²⁰ 15 U.S.C. 78o-3(b)(11).

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.

Consistent with the requirements of Section 15A(b)(11), FINRA believes that the implementation of a consolidated quote stream (in addition to the existing FINRA trade report data stream) represents an orderly system for collecting, distributing and publishing quotation and trade data for over-the-counter quotations and transactions in OTC Equity Securities, thereby providing the investing public and market participants with ready access to informative, consolidated trade and quotation information.

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

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be 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:

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-2009-077 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Florence E. Harmon, Deputy Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2009-077. 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 Web site (<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 inspection and copying 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 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-2009-077 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.²¹

Florence E. Harmon

Deputy Secretary

²¹ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

* * * * *

6000. QUOTATION AND TRANSACTION REPORTING FACILITIES

* * * * *

6400. QUOTING AND TRADING IN OTC EQUITY SECURITIES

6410. General

This Rule 6400 Series sets forth [recording and reporting] quotation and trading requirements for [certain quotations and unpriced indications of interest displayed on inter-dealer quotation systems and the trade reporting requirements applicable to members' transactions in equity securities for which real-time trade reporting is not otherwise required (hereinafter referred to as) "OTC Equity Securities" as that term is defined in Rule 6420[]].

Members shall use the OTC Reporting Facility for trade reporting in OTC Equity Securities in compliance with the Rule 6600 and 7300 and Series, as well as all other applicable rules and regulations.

The Quotation Consolidation Facility ("QCF") is a FINRA facility that collects, consolidates and disseminates real-time quotation information in all OTC Equity Securities as defined by Rule 6420. Rule 6430 governs the direct and indirect submission of real-time quotation information by or on behalf of members and their associated persons.

* * * * *

6430. [Recording] Reporting of Quotation Information

(a) Quotation [Recording] Reporting Requirements

[(1)] Subject to the terms and conditions contained herein, each [OTC Market Maker] member that displays [priced] “quotations” (as that term is defined in Rule 6420) [(bid and/or offer) or unpriced indications of interest] in OTC Equity Securities in an inter-dealer quotation system that permits quotation updates on a real-time basis shall contemporaneously [record] report each item of information described in paragraph (b) of this Rule to the Quotation Consolidation Facility (“QCF”) in the manner and form required by FINRA. [This quote activity record] In the case of a member that is an ATS (as defined by Rule 300(a) of Regulation ATS), the member must contemporaneously report its highest displayed buy price and size and lowest displayed sell price and size (i.e., “top-of-book”) to the QCF, irrespective of whether it chooses to display its quotations on an inter-dealer quotation system that permits quotation updates on a real-time basis. Quotation information reported to the QCF must reflect all changes in a[n OTC Market Maker’s] member’s [priced] quotation or quotation size displayed [or unpriced indication of interest,] and the time any such change was effected.

[(2)] Members shall record each item of information required to be recorded under this Rule in such form as is prescribed by FINRA from time to time.]

[(3) Maintaining and Preserving Records]

[(A) Each member shall maintain and preserve records of the information required to be recorded under this Rule for the period of time and accessibility specified in SEA Rule 17a-4(a).]

[(B) The records required to be maintained and preserved under this Rule may be immediately produced or reproduced on “micrographic media” as defined in SEA Rule 17a-4(f)(1)(i) or by means of “electronic storage media” as defined in SEA Rule 17a-4(f)(1)(ii) that meet the conditions set forth in SEA Rule 17a-4(f) and may be maintained and preserved for the required time in that form.]

(b) Quotation Information to be [Recorded] Reported

The quotation [activity record] information required to be reported to the QCF pursuant to paragraph (a) of this Rule shall contain, at a minimum, the following information for every quotation [priced quotation (bid and/or offer) or unpriced indication of interest] displayed by the member during the trading day:

- (1) Submitting firm;
- (2) Inter-dealer quotation system [or medium] (if applicable);
- (3) [Trade date] Date of quotation;
- (4) Time quotation displayed (expressed in hours, minutes and seconds);
- (5) Security name and symbol;
- (6) Bid and bid quotation size (if applicable);
- (7) Offer and offer quotation size (if applicable); and
- (8) [Prevailing Inside Bid; and] Highest displayed buy price and size and lowest displayed sell price and size on an ATS (if applicable).

[(9) Prevailing Inside Offer]

If no changes were made to a member's quotation (including its top-of-book) or quotation size since the preceding trading day, each member must nonetheless re-submit quotation information to the QCF at the beginning of each trading day as prescribed by subparagraphs (b)(1) through (8) of this Rule. [If no updates were entered to an OTC Market Maker's quotation or quotation size for any given trading day, the member must record the information in subparagraphs (b)(1) through (7).]

[(c) Quotations Not Required To Be Recorded]

[The recording requirements contained in paragraphs (a) and (b) of this Rule shall not apply to quotations of OTC Equity Securities that are displayed on an inter-dealer quotation system that is:]

[(1) operated by a registered securities association or a national securities exchange; or]

[(2) operated by a member of FINRA.]

[(d) Reporting Requirements]

[(1) General Requirement]

[Members shall report information required to be recorded under this Rule to FINRA upon its request.]

[(2) Method of Transmitting Data]

[Members shall transmit this information in such form prescribed by FINRA.]

[(e)](c) Reporting Agent Agreements

(1) “Reporting Agent” shall mean a third party that enters into any agreement with a member pursuant to which such third party agrees to fulfill such member’s obligations under this Rule.

(2) Any member may enter into an agreement with a Reporting Agent pursuant to which the Reporting Agent agrees to fulfill the obligations of such member under this Rule. Any such agreement shall be evidenced in writing, which shall specify the respective functions and responsibilities of each party to the agreement that are required to effect full compliance with the requirements of this Rule.

(3) All written documents evidencing an agreement described in paragraph [(e)](c)(2) shall be maintained by each party to the agreement.

(4) Each member remains responsible for compliance with the requirements of this Rule, notwithstanding the existence of an agreement described in this paragraph.

[(f)](d) Withdrawal of Quotations [or Unpriced Indications of Interest]

If a member knows or has reason to believe that it or its Reporting Agent is not complying with the requirements of this Rule, the member must withdraw its quotations [or unpriced indications of interest] or resume direct responsibility for the reporting of its quotations to the QCF, as the case may be, until such time that the member is satisfied that its quotation [data] information is being properly [recorded and] reported.

• • • Supplementary Material: -----

.01 For the purposes of this Rule, the term “OTC Equity Security” shall have the same meaning as defined in Rule 6420(d) and further includes any equity security quoted over-

the-counter that:

(a) is undergoing delisting from a national securities exchange; and

(b) is subject to a trading suspension imposed by a national securities exchange preceding the actual delisting that permits such equity security to trade over-the-counter.

* * * * *

6450. Minimum Quotation Size Requirements For OTC Equity Securities

Every member firm that functions as a market maker in OTC Equity Securities by entering firm quotations into [the OTC Bulletin Board Service (OTCBB) (or) any [other] inter-dealer quotation system that permits quotation updates on a real-time basis[]] must honor those quotations for the minimum size defined in the table below. In this regard, it is the market maker's responsibility to determine the minimum size requirement applicable to its firm bid and/or offer in each of its registered securities (excluding OTC Equity Securities for which [the OTCBB will not accept firm] quotations are not firm). Depending on the price level of the bid or offer, a different minimum size can apply to each side of the market being quoted by the member firm in a given security.

Price (Bid or Offer)	Minimum Quote Size
0–.50 ¹	5,000
.51–1.00	2,500
1.01–10.00	500
10.01–100.00	200
100.01–200.00	100
200.01–500.00	25
500.01–1000.00	10
1000.01–2500.00	5
2500.01 +	1

¹ The [OTCBB] QCF can accept bids/offers [expressed in fractions as small as 1/256 or] in decimals up to [six] four places. In applying the price test for minimum quotation size, any increment beyond an upper limit in the right hand column will trigger application of the minimum quote size for the next tier. For example, a bid (or offer) of \$.505 must be firm for a size of 2,500 shares.

* * * * *

[6500. OTC BULLETIN BOARD[®] SERVICE]

[6510. Applicability]

[These Rules shall be known as the “OTC Bulletin Board Rules” and govern the operation and use of the OTC Bulletin Board[®] service (OTCBB or “Service”) by broker-dealers admitted to membership in FINRA and their associated persons. Unless otherwise indicated, the requirements of the OTC Bulletin Board Rules are in addition to the requirements contained in the other FINRA rules, By-Laws, and Schedules to the By-Laws.]

[6520. Operation of the Service]

[The OTCBB provides an electronic quotation medium for subscribing members to reflect market making interest in OTCBB-eligible securities. Subscribing market makers can utilize the Service to enter, update, and display their proprietary quotations in individual securities on a real-time basis. Such quotation entries may consist of a priced bid and/or offer; an unpriced indication of interest (including “bid wanted” or “offer wanted” indications); or a bid/offer accompanied by a modifier to reflect unsolicited

customer interest. A subscribing market maker can also access the proprietary quotations that other firms have entered into the Service along with highest bid and lowest offer (i.e., an inside bid-ask calculation) in any OTCBB-eligible security with at least two market makers displaying two-sided markets.]

[6530. OTCBB-Eligible Securities]

[A member shall be permitted to quote the following categories of securities in the Service:]

[(a) any domestic equity security that satisfies the requirements of subparagraph (1) and either subparagraph (2) or (3) or (4) below:]

[(1) the security is not listed on a national securities exchange in the U.S., except that an equity security shall be considered eligible if it:]

[(A) is listed on one or more regional stock exchanges, and]

[(B) does not qualify for dissemination of transaction reports via the facilities of the Consolidated Tape; and]

[(2) the issuer of the security is required to file reports pursuant to Section 13 or 15(d) of the Exchange Act or the security is described in Section 12(g)(2)(B) of the Exchange Act, and, subject to a thirty calendar day grace period, the issuer of the security is current in its reporting obligations, or]

[(3) the security is described in Section 12(g)(2)(G) of the Exchange Act and, subject to a sixty calendar day grace period, the issuer of the security is current in its reporting obligations, or]

[(4) the issuer of the security is a bank or savings association (or a holding company for such an entity) that is not required to file reports with the

SEC pursuant to Section 13 or 15(d) of the Exchange Act and, subject to a sixty calendar day grace period, the issuer of the security is current with all required filings with its appropriate Federal banking agency or State bank supervisor (as defined in 12 U.S.C. 1813).]

[(5) The grace periods set forth in paragraphs (a)(2), (a)(3) and (a)(4) above shall be calculated from the date notice is published on the OTCBB Daily List that the symbol of a delinquent issuer will be modified.]

[(b) any foreign equity security or American Depositary Receipt (ADR) that meets all of the following criteria:]

[(1) the security is registered with the SEC pursuant to Section 12 of the Exchange Act and the issuer of the security is current in its reporting obligations; or the security satisfies the requirements of paragraph (a)(2) or (3) or (4) above; and]

[(2) the security is not listed on a national securities exchange in the U.S., except that a foreign equity security or ADR shall meet this subparagraph (2) if it is:]

[(A) listed on one or more regional stock exchanges, and]

[(B) does not qualify for dissemination of transaction reports via the facilities of the Consolidated Tape.]

[(c) any equity security that meets the following criteria:]

[(1) the security is undergoing delisting from either the New York Stock Exchange, Inc. (NYSE), The NASDAQ Stock Market LLC (Nasdaq), or the American Stock Exchange, Inc. (AMEX) for non-compliance with maintenance-

of-listing standards; and]

[(2) the security is subject to a trading suspension imposed by the NYSE, Nasdaq, or AMEX preceding the actual delisting; and]

[(3) the security satisfies the requirements of paragraph (a)(2) or (3) or (4) above.]

[(d) any Direct Participation Program as defined in Rule 6642 that is not listed on a national securities exchange in the U.S. and that satisfies the requirements of paragraph (a)(2) or (3) or (4) above.]

[(e) (1) Notwithstanding the foregoing paragraphs, a member shall not be permitted to quote a security if:]

[(A) while quoted on the OTCBB, the issuer of the security has failed to file a complete required annual or quarterly report by the due date for such report (including, if applicable, any extensions permitted by SEA Rule 12b-25) three times in the prior two-year period; or]

[(B) the security has been removed from the OTCBB due to the issuer's failure to satisfy paragraph (a)(2), (3) or (4), above, two times in the prior two-year period.]

[(2) If an issuer's security becomes ineligible for quotation on the OTCBB pursuant to paragraph (e)(1)(A) above, the security will be removed from quotation on the OTCBB without the benefit of any grace period for the third delinquency, except that FINRA will provide seven calendar days from the date notification is mailed to the issuer pursuant to paragraph (f)(1) to permit an aggrieved party to request a review of the determination by a Hearing Officer (as

defined in Rule 9120(r)) pursuant to paragraph (f) below. Following the removal of an issuer's security pursuant to this paragraph (e), such security shall not be eligible for quotation until the issuer has timely filed in a complete form all required annual and quarterly reports due in a one-year period. For purposes of this paragraph, a report filed within any applicable extensions permitted by SEA Rule 12b-25 will be considered timely filed.]

[(f) (1) Upon determining that an issuer's security would be ineligible for quotation under this Rule, FINRA will send a notification to the address on the cover of the issuer's last periodic report. This notification will state the date upon which the security will be removed, following any applicable grace period, unless the condition causing the ineligibility has been cured by that date. When a security becomes ineligible for quotation pursuant to paragraph (e) above, however, the issuer may not cure the condition that caused the ineligibility. In all cases, FINRA will provide at least seven calendar days from the date the notification is mailed to the issuer to permit an aggrieved party to request review pursuant to paragraph (f)(2) below, before removal of the security.]

[(2) Pursuant to the Rule 9700 Series, as modified herein, an aggrieved party may request a review by a Hearing Officer of the determination that an issuer's security is ineligible for quotation under this Rule. FINRA must receive the request for review at least two business days prior to the scheduled removal of the security, together with a \$4,000 hearing fee payable to FINRA to cover the cost of review. A request for review under this paragraph (f)(2) will stay the removal of the issuer's security from the Service until the Hearing Officer issues a

decision under Rule 9750. The Hearing Officer will consider only the issues of whether the issuer's security is then eligible for quotation in the Service and/or whether the issuer filed a complete report by the applicable due date taking into account any extensions pursuant to SEA Rule 12b-25. The Hearing Officer shall not have discretion to grant any extensions of time for ineligible securities to become eligible. Notwithstanding any contrary provision in the Rule 9700 Series, hearings will be conducted via telephone and FINRA will provide the aggrieved party at least five business days notice of the hearing unless the aggrieved party waives such notice.]

[(3) The decision of the Hearing Officer may be called for review by the Review Subcommittee of the National Adjudicatory Council as set forth in Rule 9760. This review will only consider whether the issuer's security, at the time of the initial review under paragraph (f)(2), was eligible for quotation in the Service and/or whether the issuer filed a complete report by the applicable due date taking into account any extensions pursuant to SEA Rule 12b-25. There will be no discretion to grant extensions of time for ineligible securities to become eligible. The removal of the issuer's security from the Service will be stayed until the earlier of written notice that the National Adjudicatory Council's Review Subcommittee will not call the decision for review, the expiration of the time allowed to exercise a call for review under Rule 9760 or a decision is issued by the National Adjudicatory Council as set forth in Rule 9760. Notwithstanding any contrary provision in the Rule 9700 Series, a review under this paragraph (f)(3) will be based on the written record, unless additional hearings are ordered by the

Subcommittee as set forth in Rule 9760. If any further hearings are ordered, the hearings may be conducted via telephone and FINRA will provide the aggrieved party at least five business days notice of the hearing unless the aggrieved party waives such notice.]

[6540. Requirements Applicable to Market Makers]

[(a) Market-maker participation in the OTCBB is voluntary and open to any FINRA member firm that satisfies the financial/operational requirements applicable to member firms engaged in over-the-counter market making; subscribes to the service designated by FINRA that permits OTCBB quotations; and demonstrates compliance with (or qualifies for an exception from) SEA Rule 15c2-11 at the time of initiating (or resuming) the quotation of any OTCBB-eligible security in the Service. Rule 6440 sets forth the procedure for demonstrating compliance with SEA Rule 15c2-11.]

[(b) An alternative trading system (ATS), as defined in Rule 300(a) of SEC Regulation ATS, or electronic communications network (ECN), as defined in Rule 600(b)(23) of SEC Regulation NMS, shall be eligible to participate in the Service, provided however, that such ATS or ECN is a FINRA member and otherwise meets the requirements for participation set forth in the OTC Bulletin Board Rules. Where used in the OTC Bulletin Board Rules, the term “market maker” shall be construed to include a participating ATS or ECN.]

[(c) A participating ATS or ECN shall reflect non-subscriber access or post-transaction fees in the ATS’s or ECN’s posted quote in the OTC Bulletin Board montage.]

[(d) OTCBB-eligible securities that meet the frequency-of-quotation requirement

for the so called “piggyback” exception in SEA Rule 15c2-11(f)(3)(i) are identified in the Service as “active” securities. A member can commence market making in any active security by registering as a market maker through the service designated by FINRA that permits OTCBB quotations. In all other instances, a member must follow the procedure contained in this Rule to become qualified as a market maker in a particular OTCBB-eligible security.^{1]}

[(1) Permissible Quotation Entries]

[(A) A member firm that has qualified as a market maker in a particular OTCBB-eligible security may enter into the Service a priced bid and/or offer, an unpriced indication of interest (including “bid wanted” and “offer wanted” indications) or a bid or offer accompanied by a modifier to reflect unsolicited customer interest. Every quotation entry must include the appropriate telephone number for the firm’s trading desk.]

[(B) A priced bid and/or offer entered into the Service for a domestic equity security must be firm up to the minimum quotation size specified in Rule 6450. This firmness requirement applies only during normal business hours, i.e., 9:30 a.m. to 4:00 p.m. Eastern Time.]

[(C) A priced bid and/or offer entered into the Service for a Direct Participation Program security shall be non-firm.² Moreover, a market maker is only permitted to update quotation entries in such securities twice daily, i.e., once between 8:30 a.m. and 9:30 a.m. Eastern Time, and once between noon and 12:30 p.m. Eastern Time.^{3]}

[(2) Impermissible Quotation Entries]

[(A) No member or person associated with a member shall enter into the Service a priced bid and/or offer, an unpriced indication of interest (including “bid wanted” or “offer wanted” indications), or a bid or offer accompanied by a modifier to reflect unsolicited customer interest in any security that does not satisfy the requirements of Rule 6530.]

[(B) No member or person associated with a member shall enter into the Service a priced bid and/or offer, an unpriced indication of interest (including “bid wanted” or “offer wanted” indications), or a bid or offer accompanied by a modifier to reflect unsolicited customer interest in any security of an issuer that does not make filings with the SEC through the Interactive Data Electronic Applications (“IDEA”) system (or in paper format, if specifically permitted by SEC rules) unless the member:]

[(i) notifies FINRA of the issuer of the security’s schedule for the filing of all periodic reports or financial reports required pursuant to the Exchange Act or regulatory authority, respectively, and the identity of the regulatory authority with which such reports are filed, or ensures that such notice is provided; and]

[(ii) provides to FINRA the issuer’s periodic reports required pursuant to the Exchange Act, or the issuer’s financial reports required by regulatory authority, prior to the expiration of the grace period described in Rule 6530(a)(3), or ensures that the required periodic reports are provided to FINRA within that time

period.]

[(3) Voluntary Termination of Registration]

[A market maker can voluntarily terminate its registration in an OTCBB-eligible security by withdrawing its quotations in that security from the Service. The firm may re-register to quote the security by satisfying the requirements specified above.]

[(4) More Than One Trading Location]

[In cases where a market maker has more than one trading location, a fifth-character, geographic indicator shall be appended to the market maker's identifier for that security. Indicators are established by FINRA and published from time to time in the Nasdaq/CQS symbol directory.]

[(5) Clearance and Settlement]

[(A) A market maker shall clear and settle transactions in OTCBB-quoted securities through the facilities of a registered clearing agency that uses a continuous net settlement system. This requirement applies only to transactions in OTCBB securities that are clearing eligible.]

[(B) The foregoing requirement may be satisfied by direct participation, use of direct clearing services, or by entry into a correspondent clearing arrangement with another member that clears trades through such an agency.]

[(C) Notwithstanding subparagraph (A) hereof, transactions in OTCBB-quoted securities may be settled "ex-clearing" provided that both

parties to the transactions agree.]

[(e) Compliance with Market Maker Requirements]

[Failure of a member or a person associated with a member to comply with this Rule may be considered conduct inconsistent with high standards of commercial honor and just and equitable principles of trade, in violation of Rule 2010.]

[¹ (1) On February 28, 1992, the SEC granted FINRA's request to create a limited exemption from SEA Rule 15c2-11 that permits a broker-dealer to publish in or submit to a quotation medium quotations for a security immediately after such security is no longer authorized for quotation in The Nasdaq Stock Market, without having information specified by that Rule. This exemption is only available if all the following conditions are satisfied:]

[(a) the security's removal was attributable solely to the issuer's failure to satisfy the revised maintenance standards approved in Release No. 34-29638 (August 30, 1991), 56 F.R. 44108 (September 6, 1991);]

[(b) the security must have been quoted continuously in Nasdaq during the thirty calendar days preceding its delisting, exclusive of any trading halt not exceeding one day to permit the dissemination of material news concerning the security's issuer;]

[(c) the issuer must not be the subject of bankruptcy

proceedings;]

[(d) the issuer must be current in its reporting pursuant to Section 13(a) or 15(d) of the Exchange Act; and]

[(e) a broker-dealer relying upon this exemption must have been a market maker registered with FINRA in the security during the thirty day period preceding its removal from Nasdaq.]

[(2) By letter dated December 20, 1993, the SEC granted FINRA's request for a limited exemption from SEA Rule 15c2-11 for broker-dealers that publish or submit quotations for publication in the OTCBB Service for certain OTC equity securities. This exemption is not available for American Depositary Receipts or OTC equities issued by a foreign private issuer, within the meaning of SEA Rule 3b-4. Regarding domestic OTC equities, the exemption is available to a broker-dealer, subject to the following conditions at the time such broker-dealer submits or initiates quotations in the OTCBB:]

[(a) The security is eligible for piggybacking pursuant to SEA Rule 15c2-11(f)(3) in another inter-dealer quotation system;]

[(b) A broker-dealer relying upon this exemption must itself have published quotations in the security in that inter-dealer quotation system on at least 12 business days during the preceding 30 calendar days, with not more than four

consecutive business days without quotations;]

[(c) The issuer of the security is not the subject of bankruptcy proceedings;]

[(d) The issuer of the security is not delinquent in any of its reporting obligations under the Exchange Act or rules thereunder, if subject to Section 13(a) or 15(d) of the Exchange Act; and]

[(e) If at any time the SEC subsequently suspends trading in a domestic OTC equity security pursuant to Section 12(k) of the Exchange Act, no broker or dealer will initiate or resume quotations in that security in the OTCBB unless the broker-dealer complies with SEA Rule 15c2-11.]

[² The non-firm or indicative nature of a priced entry is specifically identified on the montage of market maker quotations for this subset of OTCBB-eligible securities.]

[³ Examples of entries that would be considered an update include a market maker inserting a new, non-firm priced quotation, substituting an unpriced indication for a non-firm priced entry, or an initial registration without a price.]

[6550. Transaction Reporting]

[Member firms that effect transactions in OTCBB-eligible securities shall report them pursuant to the requirements of the Rule 6620 Series, except for transactions in Direct Participation Program securities, which shall be reported pursuant to the

requirements of the Rule 6640 Series.]

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**7000. CLEARING, TRANSACTION AND ORDER DATA REQUIREMENTS,
AND FACILITY CHARGES**

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**7700. CHARGES FOR OTC REPORTING FACILITY, [OTC BULLETIN
BOARD] QUOTATION CONSOLIDATION FACILITY AND TRADE
REPORTING AND COMPLIANCE ENGINE SERVICES**

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7720. [OTC Bulletin Board Service] Quotation Consolidation Facility

The following charge shall apply to a [broker-dealer] member that directly (or indirectly through a Reporting Agent or other service provider) reports or is required to report its quotations to the QCF pursuant to Rule 6430 [displays quotations or trading interest in the OTC Bulletin Board service]:

Position Charge	[\$6.00] \$4.00/security/month
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7740. Historical Research and Administrative Reports

(a) The charge to be paid by the purchaser of a[n] Historical Research Report regarding [OTC Bulletin Board security or other] an OTC Equity [s]Security [through the OTCBB.com website] shall be determined in accordance with the following schedule:

	Number of fields of information in the report		
	1–10	11–15	16 or more

A. Issues Summary Statistics			
For a security for a day	\$10	\$15	\$20
For a security for a month, quarter, or year	\$20	\$30	\$40
For all issues for a day	\$50	\$75	\$100
For all issues for a month, quarter, or year	\$100	\$150	\$200
B. Intra-Day Quote and Intra-Day Time and Sales Data			
For a security and/or a market participant for a day	\$15	\$25	\$35
For all market participants for a day or for all securities for a day	\$30	\$40	\$50
[(For purposes of this report, market participants are those entities qualified to participate in the OTC Bulletin Board Service pursuant to Rule 6540(a) and (b)).]			
<p>C. FINRA may, in its discretion, choose to make a report that purchasers wish to obtain every trading day available on a subscription discount basis. In such cases, the price for a subscription to receive a report every trading day in a month shall be the applicable rate to receive the report for a day times 20; the price for a subscription to receive the report for every trading day in a quarter shall be the applicable rate to receive the report every day times 60; and the price for a subscription to receive a report every trading day in a year shall be the applicable rate to receive the report for a day times 240.</p>			
D. [All OTCBB] <u>Directory of all Issuers of OTC Equity Securities</u> [Directory]		\$250	

(b) Administrative Reports — \$25 per user, per month.

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9000. CODE OF PROCEDURE

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9200. DISCIPLINARY PROCEEDINGS

9210. Complaint and Answer

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9217. Violations Appropriate for Disposition Under Plan Pursuant to SEA Rule

19d-1(c)(2)

Any member of FINRA that is also a member of the New York Stock Exchange LLC (“NYSE”) (“Dual Member”) (including any persons affiliated with such member) may be subject to a fine under Rule 9216(b) with respect to any rule or By-Law provision listed in this Rule that applies to such member or person. However, any Dual Member that was not also a member of NASD as of July 30, 2007 and that does not engage in any activities that otherwise would require it to be a FINRA member (and its affiliated persons that are not otherwise subject to NASD rules) shall only be subject to a fine under Rule 9216(b) with respect to the following rules or By-Law provisions listed in this Rule: any FINRA By-Law or Schedule to the By-Laws, FINRA rule, SEA rule, or NYSE rule.

Any member of FINRA that is not also a member of the NYSE (and its associated persons that are not otherwise subject to NYSE rules) may be subject to a fine under Rule 9216(b) with respect to any rule or By-Laws provision listed in this Rule, with the exception of the NYSE rules.

- Article IV of the FINRA By-Laws — Failure to timely submit amendments to Form BD.
- Article V of the FINRA By-Laws — Failure to timely submit amendments to Form U4.
- Article V of the FINRA By-Laws — Failure to timely submit amendments to Form U5.
- Rule 2360(b)(3) and (b)(4) — Failure to comply with options position and exercise

limits.

- Rule 2360(b)(23) — Failure to comply with contrary exercise advice procedures.
- Rule 4560 — Failure to timely file reports of short positions on Form NS-1.
- Rules 6282, 6380A, 6430, [6550,] 6622, 6730, 7130, 7160, 7230A, and 7260A — Transaction reporting in equity and debt securities.
- Rules 7440 and 7450 — Failure to submit data in accordance with the Order Audit Trail System (“OATS”).
- Rules 8211 and 8213 — Failure to submit trading data as requested.
- NASD Rule 1120 — Failure to comply with the Firm Element of the continuing education requirements.
- NASD Rules 2210, 2211, and 2220, and IM-2210-1, -2210-2, -2210-3, -2210-4, -2210-5, -2210-7, and -2210-8 — Communications with the public.
- NASD Rule 3010(b) — Failure to timely file reports pursuant to the Taping Rule.
- NASD Rule 3070 — Failure to timely file reports.
- NASD Rule 3110 — Failure to keep and preserve books, accounts, records, memoranda, and correspondence in conformance with all applicable laws, rules, regulations and statements of policy promulgated thereunder, and with NASD rules.
- NASD Rule 11870 — Failure to abide by Customer Account Transfer Contracts.
- Failure to provide or update contact information as required by FINRA or NASD rules.
- SEA Rule 17a-5 — Failure to timely file FOCUS reports and annual audit reports.
- SEA Rule 17a-10 — Failure to timely file Schedule I.
- Rule 602(b)(5) of SEC Regulation NMS — Failure to properly update published quotations in certain Electronic Communication Networks (“ECNs”).

- Rule 604 of SEC Regulation NMS — Failure to properly display limit orders.
- MSRB Rule A-14 — Failure to timely pay annual fee.
- MSRB Rule G-12 — Failure to abide by uniform practice rules.
- MSRB Rule G-14 — Failure to submit reports.
- MSRB Rule G-36 — Failure to timely submit reports.
- MSRB Rule G-37 — Failure to timely submit reports for political contributions.
- MSRB Rule G-38 — Failure to timely submit reports detailing consultant activities.
- NYSE Rule 134(c) and (e) — Failure to comply with specified QT procedures and time periods.
- NYSE Rules 312(a), (b) & (c), 313, 345.12, 345.17, 346(c), 351, 421, and 440F & G — Reporting rule violations.
- NYSE Rules 312(h) & (i), 342(c), 342.10, 346(e) and (f), and 382(a) — Failure to obtain approval rule violations.
- NYSE Rules 342(b), (d) & 342.13, 311(b)(5), and 344 — Failure of a member organization to have individuals responsible and qualified for the positions of Financial Principal, Operations Principal, Compliance Official, Branch Office Manager and Supervisory Analyst.
- NYSE Rule 343 — Requirements relating to member organization office sharing arrangements.
- NYSE Rule 345(a) — Failure of a member organization to have individuals responsible and qualified for the positions of Securities Lending Supervisor and Securities Trader Supervisor.
- NYSE Rules 345.11, 410, 432(a), 440, 440I, and 472(c) — Record retention rule

violations.

- NYSE Rule 346(b) — Failure to obtain employer’s prior written consent for engaging in an outside activity.
- NYSE Rule 352(b) and (c) — Guaranteeing a customer’s account against loss or sharing in profits or losses.
- NYSE Rule 387 — Requirements for customer COD/POD transactions.
- NYSE Rule 401A — Failure to acknowledge customer complaint within 15 business days.
- NYSE Rule 407 — Requirements for transactions of employees of the Exchange, members or member organizations.
- NYSE Rule 407A — Reporting and notification requirements for members.
- NYSE Rule 408(a) — Requirement that written authorization be obtained for discretionary power in a customer’s account.
- NYSE Rule 411(b) — Requirements to bundle multiple odd-lot orders in the same stock, which aggregate to 100 shares or more, to aggregate the orders into round-lot orders.
- NYSE Rule 416A — Failure to promptly provide or promptly update required membership profile information through the Electronic Filing Platform (“EFP”), or failure to electronically certify that required membership profile information is complete and accurate.
- NYSE Rule 445(4) — Failure to designate and identify an Anti-Money Laundering contact person or persons.

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