

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-82153; File No. SR-FINRA-2017-035]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Tier Size Pilot of Rule 6433 (Minimum Quotation Size Requirements for OTC Equity Securities)

November 22, 2017.

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 November 20, 2017, 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 and II below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a “non-controversial” rule change under paragraph (f)(6) of Rule 19b-4 under the Act,³ which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend FINRA Rule 6433 (Minimum Quotation Size Requirements for OTC Equity Securities) to extend the Tier Size Pilot, which currently is scheduled to expire on December 8, 2017, until June 7, 2018.

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.

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

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

FINRA proposes to amend FINRA Rule 6433 (Minimum Quotation Size Requirements for OTC Equity Securities) (the “Rule”) to extend, until June 7, 2018, the amendments set forth in File No. SR-FINRA-2011-058 (“Tier Size Pilot” or “Pilot”), which currently are scheduled to expire on December 8, 2017.⁴

The Tier Size Pilot was filed with the SEC on October 6, 2011,⁵ to amend the minimum quotation sizes (or “tier sizes”) for OTC Equity Securities.⁶ The goals of the Pilot were to simplify the tier structure, facilitate the display of customer limit orders, and expand the scope of the Rule to apply to additional quoting participants. During the course of the Pilot, FINRA collected and provided to the SEC specified data with which to assess the impact of the Pilot tiers on market quality and limit order display.⁷ On September 13, 2013, FINRA provided to the Commission an assessment on the operation of the Tier Size Pilot utilizing data covering the period from November 12, 2012 through June 30, 2013.⁸ As noted in the 2013 Assessment, FINRA believed that the

⁴ See Securities Exchange Act Release No. 80727 (May 18, 2017), 82 FR 23953 (May 24, 2017) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2017-014).

⁵ See Securities Exchange Act Release No. 65568 (October 14, 2011), 76 FR 65307 (October 20, 2011) (Notice of Filing of File No. SR-FINRA-2011-058).

⁶ “OTC Equity Security” means any equity security that is not an “NMS stock” as that term is defined in Rule 600(b)(47) of SEC Regulation NMS; provided, however, that the term OTC Equity Security shall not include any Restricted Equity Security. See FINRA Rule 6420.

⁷ FINRA ceased collecting Pilot data for submission to the Commission on February 13, 2015.

⁸ The assessment is part of the SEC’s comment file for SR-FINRA-2011-058 and also is available on FINRA’s Web site at: <http://www.finra.org/Industry/Regulation/RuleFilings/2011/P124615> (“Pilot Assessment”).

analysis of the data generally showed that the Tier Size Pilot had a neutral to positive impact on OTC market quality for the majority of OTC Equity Securities and tiers; and that there was an overall increase of 13% in the number of customer limit orders that met the minimum quotation sizes to be eligible for display under the Pilot tiers. In the 2013 Assessment, FINRA recommended adopting the tiers as permanent, but extended the Pilot period to allow more time to gather and analyze data after the November 12, 2012 through June 30, 2013 assessment period.⁹ The purpose of this filing is to further extend the operation of the Tier Size Pilot until June 7, 2018, to provide additional time to finalize a permanent proposal with regard to the Tier Size Pilot.¹⁰

FINRA has filed the proposed rule change for immediate effectiveness. The operative date of the proposed rule change will be December 8, 2017.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,¹¹ which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA also believes that the proposed rule change is consistent with the provisions of Section 15A(b)(11) of the Act.¹² Section 15A(b)(11) requires that FINRA rules include provisions governing the form and content of quotations relating to securities sold otherwise than on a national securities exchange which may be distributed or published by any member or person associated with a member, and the persons to whom such quotations may be supplied.

FINRA believes that the extension of the Tier Size Pilot until June 7, 2018, is consistent with the Act in that it would provide the Commission and FINRA with additional time to finalize a proposal with regard to the Tier Size Pilot.

⁹ See Securities Exchange Act Release No. 70839 (November 8, 2013), 78 FR 68893 (November 15, 2013) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2013-049).

¹⁰ FINRA reviewed the post-June 30, 2013 data, and stated that the impact described in the 2013 Assessment continued to hold (and improved in certain areas). See June 2016 Extension.

¹¹ 15 U.S.C. 78o-3(b)(6).

¹² 15 U.S.C. 78o-3(b)(11).

¹⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹³ and Rule 19b-4(f)(6) thereunder.¹⁴

A proposed rule change filed under Rule 19b-4(f)(6)¹⁵ normally does not become operative prior to 30 days after the date of filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁶ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

The Commission is waiving the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because such waiver will allow the pilot program to continue without interruption. Therefore, the Commission designates the proposal operative upon filing.¹⁷

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of

investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

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 email to rule-comments@sec.gov. Please include File Number SR-FINRA-2017-035 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-FINRA-2017-035. 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 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 Web site 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 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FINRA-2017-035 and should be submitted on or before December 19, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

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SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549-2736

Extension:

Rule 489 and Form F-N, SEC File No. 270-361, OMB Control No. 3235-0411

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) ("Paperwork Reduction Act"), the Securities and Exchange Commission (the "Commission") has submitted to the Office of Management and Budget ("OMB") a request for extension of the previously approved collection of information discussed below.

Rule 489 (17 CFR 230.489) under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) requires foreign banks and foreign insurance companies and holding companies and finance subsidiaries of foreign banks and foreign insurance companies that are exempted from the definition of "investment company" by virtue of rules 3a-1 (17 CFR 270.3a-1), 3a-5 (17 CFR 270.3a-5), and 3a-6 (17 CFR 270.3a-6) under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*) to file Form F-N (17 CFR 239.43) to appoint an agent for service of process when making a public offering of securities in the United States. The information is collected so that the Commission and private plaintiffs may serve process on foreign entities in actions and administrative proceedings arising out of or based on the offer or sales of securities in the United States by such foreign entities.

The Commission received an average of 30 Form F-N filings from 22 unique filers each year for the last three years (2014-2016). The Commission has previously estimated that the total annual burden associated with information collection and Form F-N preparation and submission is one hour per filing. Based on the Commission's experience with disclosure documents generally, the Commission continues to

¹⁸ 17 CFR 200.30-3(a)(12).

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f)(6). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change.

¹⁵ 17 CFR 240.19b-4(f)(6).

¹⁶ 17 CFR 240.19b-4(f)(6)(iii).

¹⁷ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).