

All submissions should refer to File Number SR–NYSEAMER–2020–88. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<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 website viewing and printing in the Commission's Public Reference Room, on business days between the hours of 10:00 a.m. and 3:00 p.m., located at 100 F Street NE, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. 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–NYSEAMER–2020–88 and should be submitted on or before February 22, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>26</sup>

**J. Matthew DeLesDernier,**  
Assistant Secretary.

[FR Doc. 2020–29214 Filed 1–5–21; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90824; File No. SR–FINRA–2020–031]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Amendment No. 1 and Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, To Adopt Proposed Rule 6439 (Requirements for Member Inter-Dealer Quotation Systems) and Rescind the Rules Related to the OTC Bulletin Board Service

December 30, 2020.

#### I. Introduction

On September 24, 2020, the Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”) <sup>1</sup> and Rule 19b–4 thereunder,<sup>2</sup> a proposed rule change to rescind the rules related to the OTC Bulletin Board Service and cease its operation and to adopt new requirements for member inter-dealer quotation systems that disseminate quotations in equity securities traded over-the-counter (“OTC”). The proposed rule change was published for comment in the **Federal Register** on October 7, 2020.<sup>3</sup> On November 4, 2020, pursuant to Section 19(b)(2) of the Act,<sup>4</sup> the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.<sup>5</sup> On December 21, 2020, FINRA filed Amendment No. 1 to the proposed rule change.<sup>6</sup> The

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b–4.

<sup>3</sup> See Exchange Act Release No. 90067 (October 1, 2020), 85 FR 63314 (“Notice”). Comments on the proposed rule change can be found at: <https://www.sec.gov/comments/sr-finra-2020-031/srfinra2020031.htm>.

<sup>4</sup> 15 U.S.C. 78s(b)(2).

<sup>5</sup> See Exchange Act Release No. 90335 (November 4, 2020). The Commission designated January 5, 2021 as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to approve or disapprove, the proposed rule change.

<sup>6</sup> Amendment No. 1 is a partial amendment in which FINRA included a representation that it will not cease operation of the OTCBB until the enhanced regulatory requirements under Rule 6439 (except for certain provisions related to order-level information reports that also relate to information required for the Consolidated Audit Trail) become effective. See *infra* note 41. Amendment No. 1 may be found at: <https://www.sec.gov/comments/sr-finra-2020-031/srfinra2020031.htm>.

Commission is publishing this notice and order to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons and to institute proceedings pursuant to Section 19(b)(2)(B) of the Act<sup>7</sup> to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.

#### II. Summary of the Proposal, as Modified by Amendment No. 1

As further described below, FINRA proposes to (i) rescind FINRA's rules governing the OTC Bulletin Board Service (“OTCBB”) and cease its operation; and (ii) adopt new Rule 6439 (Requirements for Member Inter-Dealer Quotation Systems) to expand the obligations of member interdealer quotation systems (“IDQs”) <sup>8</sup> that disseminate quotation updates on a real-time basis in OTC Equity Securities.<sup>9</sup>

##### A. Rescission of Rules Governing the OTCBB

The OTCBB is a FINRA-operated IDQS available for use by broker-dealers to publish quotations in eligible OTC Equity Securities.<sup>10</sup> FINRA has operated the OTCBB since 1990.<sup>11</sup> FINRA states that, due to technological advancements since 1990 and the increase in alternative electronic venues with more extensive functionality than the OTCBB, the level of quotation activity occurring on the OTCBB has continued to decline over the past several years and is now nonexistent.<sup>12</sup> FINRA represents that, as of the date that it filed the proposed rule change, the OTCBB does not display or widely disseminate quotation information on any OTC Equity Security.<sup>13</sup>

FINRA states that it does not believe that continued operation of the OTCBB serves any benefit to investors or the marketplace and that ceasing operation of the OTCBB would eliminate potential

<sup>7</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>8</sup> FINRA Rule 6420(c) defines “inter-dealer quotation system” as “any system of general circulation to brokers or dealers which regularly disseminates quotations of identified brokers or dealers.” This definition tracks the Commission's definition of the same term in Exchange Act Rule 15c2–11, 17 CFR 240.15c2–11.

<sup>9</sup> The term “OTC Equity Security” is defined in FINRA Rule 6420(f) as any equity security that is not an “NMS stock” as that term is defined in Rule 600(b)(47) of Regulation NMS; provided, however, that the term “OTC Equity Security” shall not include any Restricted Equity Security. The term “Restricted Equity Security” is further defined in FINRA Rule 6420(k) to mean any equity security that meets the definition of “restricted security” as contained in Rule 144(a)(3) under the Securities Act of 1933.

<sup>10</sup> See Notice, *supra* note 3, at 63315.

<sup>11</sup> See *id.*

<sup>12</sup> See *id.*

<sup>13</sup> See *id.*

<sup>26</sup> 17 CFR 200.30–3(a)(12).

investor confusion regarding the availability of quotation information for OTC Equity Securities.<sup>14</sup> In addition, FINRA notes that it does not believe that the OTCBB, in its current state, furthers the goals and objectives of Section 17B of the Act and, therefore, does not meet the characteristics of a system described in Section 17B of the Act regarding the widespread dissemination of reliable and accurate quotation information with respect to “penny stocks.”<sup>15</sup>

As a result, FINRA proposes to rescind the FINRA Rule 6500 Series, which governs the operation of the OTCBB. Among other things, the FINRA Rule 6500 Series contains provisions regarding the securities eligible to be quoted on the OTCBB (FINRA Rule 6530), market maker obligations on the OTCBB (FINRA Rule 6540), and transaction reporting (FINRA Rule 6550). FINRA also proposes to rescind FINRA Rule 7720, which sets forth the fees applicable to a broker-dealer that displays quotations or trading interest in the OTCBB, and to amend FINRA Rule 9217 (Violations Appropriate for Disposition Under Plan Pursuant to SEA Rule 19d–1(c)(2)) to remove reference to FINRA Rule 6550 (Transaction Reporting). While these proposed changes to the FINRA rulebook would cause the operation of the OTCBB to terminate when effective, in Amendment No. 1, FINRA states that it would not cease operation of the OTCBB until proposed Rule 6439 (except for proposed Rule 6439(d)(1)(B)), discussed below, is effective.<sup>16</sup>

### B. Proposed Rule 6439 (Requirements for Member Inter-Dealer Quotation Systems)

FINRA states that all quotation activity in OTC Equity Securities now

<sup>14</sup> See *id.* at 63318. For example, FINRA states that where investors look to feeds that solely disseminate OTCBB data for quotation information on a particular OTC Equity Security, investors mistakenly may conclude that there are no current quotations in the security (when, in fact, there may be numerous quotations available elsewhere—*i.e.*, on member-operated IDQSs). See *id.*

<sup>15</sup> Section 17B of the Act mandates, among other things, that the Commission facilitate the widespread dissemination of quotation information for penny stocks through automated quotation systems operated by registered securities associations. See 15 U.S.C 78q–2(b). Under Exchange Act Rule 3a51–1, “penny stock” is a non-NMS stock that among other things, does not include securities that have a price of five dollars or more as determined either on a per transaction basis or, in the absence of a transaction, on the basis of the inside bid quotation for the security displayed on an automated quotation system that has the characteristics set forth in Section 17B(b)(2) of the Act or any other system that is designated by the Commission. See 17 CFR 240.3a51–1.

<sup>16</sup> See Amendment No. 1, *supra* note 6.

occurs on member-operated IDQSs, rather than the OTCBB.<sup>17</sup> FINRA proposes, in conjunction with the cessation of the OTCBB, to adopt new requirements for member IDQSs that provide quotations in OTC Equity Securities in order to ensure that they have minimum standards in place.<sup>18</sup> FINRA states that it believes that the proposed requirements would complement the existing framework governing the form and content of quotations<sup>19</sup> and are consistent with the goals and objectives of Section 17B of the Act regarding the facilitation of widespread dissemination of reliable and accurate quotation information in penny stocks.<sup>20</sup>

Proposed Rule 6439 would apply to member IDQSs (whether or not such member is also an alternative trading system (“ATS”)) that permits quotation updates on a real-time basis in OTC Equity Securities. Under proposed Rule 6439(a), member IDQSs must establish, maintain and enforce written policies and procedures relating to the collection and dissemination of quotation information in OTC Equity Securities on or through their systems. Such written policies and procedures must be reasonably designed to ensure that quotations received and disseminated are informative, reliable, accurate, firm, and treated in a not unfairly discriminatory manner, including by establishing non-discretionary standards under which quotations are prioritized and displayed.<sup>21</sup> Member IDQSs must

<sup>17</sup> See Notice, *supra* note 3 at 63320.

<sup>18</sup> *Id.* at 63316.

<sup>19</sup> FINRA currently has in place rules that govern the activity of member firms when they engage in quoting OTC Equity Securities. Specifically, the FINRA Rule 6400 Series (Quoting and Trading in OTC Equity Securities), among other things, provides a regulatory framework that governs the form and content of OTC Equity Securities’ quotations, and the FINRA Rule 5200 Series sets forth rules of general applicability that govern quoting and trading practices in this market sector (hereinafter, the FINRA Rule Series 6400 and 5200 are collectively referred to as the “FINRA Quotation Governance Rules”). See Notice, *supra* note 3, at 63314–15. Rather than governing the activity of member firms, like the FINRA Quotation Governance Rules, proposed Rule 6439 would provide quotation governance standards for member IDQSs on or through which quotations are displayed.

<sup>20</sup> See *supra* note 15.

<sup>21</sup> For example, FINRA states that a member IDQS would be required to address in its procedures its methodology for ranking quotations, including at a minimum, addressing factors such as price (including any applicable quote access fee), size, time, capacity and type of quotation (such as unpriced quotes and bid/offer wanted quotations). The member IDQS also would be required to include any other factors relevant to the ranking and display of quotations (*e.g.*, reserve sizes, quotation updates, treatment of closed quotations, and quotation information imported from other systems). See Notice, *supra* note 3, at 63316.

also prominently disclose these written policies and procedures, along with any material updates, modifications and revisions thereto, to subscribers within five business days following the date of establishment of a policy or procedure or implementation of a material change, as well as provide them to prospective subscribers upon request.<sup>22</sup>

Under proposed Rule 6439(b), each member IDQS must establish non-discriminatory written standards for granting access to quoting and trading in OTC Equity Securities on its systems that do not unreasonably prohibit or limit any person with respect to access to services offered by such member IDQS.<sup>23</sup> As with the requirements under proposed Rule 6439(a), member IDQSs would be required to prominently disclose these written standards relating to fair access, and any material updates, modifications and revisions thereto, to their subscribers within five business days following the date of establishment of written standards or implementation of a material change, as well as provide them to prospective subscribers upon request.<sup>24</sup> In addition, member IDQSs would be required to make and keep records of all grants of access and all denials or limitations of access. Such records must include, for all subscribers, the reasons for granting access, and, for all denials or limitations of access, the reasons for denying or limiting such access.<sup>25</sup>

Proposed Rules 6439(c) and (d) would apply only to member IDQSs that do not automatically execute all orders presented for execution against displayed quotations for which a member subscriber has an obligation under FINRA Rule 5220 (Offers at Stated Prices)<sup>26</sup> (such a system is

<sup>22</sup> FINRA states that a member that is an IDQS at the time of the effective date of this proposed rule change would be required to prominently disclose the required information to its subscribers upon the effective date of the proposed rule change and, thereafter, within five business days of the implementation of any material update, modification or revision thereto. See *id.*, at n.16.

<sup>23</sup> FINRA states that this proposed requirement is consistent with the “fair access” requirements of Regulation ATS but would apply to quoting and trading in all OTC Equity Securities on the member IDQS, regardless of the percentage of average daily volume that such member IDQS had in the security. See 17 CFR 242.301(b)(5). FINRA states that while certain member IDQSs may already be subject to the similar volume-based fair access requirements under Regulation ATS, proposed Rule 6439 would ensure the application of fair access requirements to all member IDQSs. See Notice, *supra* note 3, at 63316.

<sup>24</sup> See *id.* at 63316–17. See also *supra* note 22.

<sup>25</sup> See proposed Rule 6439(b).

<sup>26</sup> FINRA Rule 5220 and its associated Supplementary Material set forth members’ firm quote obligations. Specifically, FINRA Rule 5220 provides that no member shall make an offer to buy from or sell to any person any security at a stated

hereafter referred to as a “non-auto-executing member IDQS”). Under proposed Rule 6439(c), non-auto-executing member IDQSs must establish, maintain and enforce written policies and procedures that are reasonably designed to address instances of unresponsiveness to orders in an OTC Equity Security. At a minimum, these policies and procedures must specify an efficient process for: (i) Monitoring subscriber unresponsiveness; (ii) subscribers to submit complaints to the non-auto-executing member IDQS regarding potential instances of order unresponsiveness; (iii) documenting the subscriber’s rationale for unresponsiveness; and (iv) determining specified steps when an instance of, or repeated, order unresponsiveness may have occurred.<sup>27</sup>

Under proposed Rule 6439(d), non-auto-executing member IDQSs must report to FINRA, in a form and manner prescribed by FINRA,<sup>28</sup> certain aggregate and order-level information in OTC Equity Securities. Specifically, proposed Rule 6439(d) would require a non-auto-executing member IDQS to report to FINRA on a monthly basis the following aggregated information, categorized by FINRA member subscriber market participant identifier (MPID) across all symbols quoted by the MPID during the previous calendar month: (i) Total number of marketable orders presented for execution against the MPID’s quotation;<sup>29</sup> (ii) average execution (full or partial) time for marketable orders presented against the MPID’s quotation based on the time an order is presented; (iii) total number of full or partial executions based on the time a marketable order is presented that are within the following execution timeframes: < 5 seconds; ≥ 5 and < 10 seconds; ≥ 10 and < 20 seconds; and ≥ 20 seconds; (iv) total number of marketable orders presented against the MPID’s quotation that did not receive a full or partial execution; and (v) average response time of the highest 10% and highest 50% of the MPID’s response

price unless such member is prepared to purchase or sell, as the case may be, at such price and under such conditions as are stated at the time of such offer to buy or sell.

<sup>27</sup> See Notice, *supra* note 3, at 63317.

<sup>28</sup> FINRA states that following Commission approval, FINRA would announce in a *Regulatory Notice* details about the required manner and timing of the submission of this information to FINRA. See Notice, *supra* note 3, at 63317, n.27.

<sup>29</sup> FINRA states that in this context, a “marketable order” refers to a message presented against a market maker’s quote that is priced to be immediately executable. See *id.*, n.29.

times for marketable orders (for full or partial executions).<sup>30</sup>

Proposed Rule 6439(d) would require non-auto-executing member IDQSs to provide to FINRA the following order-level information for each order presented against an MPID’s quotation during the previous calendar month: (i) Buy/sell; (ii) security symbol; (iii) price; (iv) size; (v) All or None indicator (yes or no); (vi) order entry firm MPID; (vii) order receipt time; (viii) time in force; (ix) response time; (x) order response (e.g., execute, reject cancel, etc.); (xi) executed quantity; (xii) system-generated order number (if any); and (xiii) position in queue for quote (e.g., IL1, IL2).<sup>31</sup> However, to the extent that the above order-level information is or becomes reportable under the Consolidated Audit Trail (“CAT”) pursuant to FINRA Rule 6830 (Industry Member Data Reporting), non-auto-executing member IDQSs would not be required to report this order-level information under proposed Rule 6439(d).<sup>32</sup>

Proposed Rule 6439(e) would require each member IDQS to make available to customers on its website (or its affiliate distributor’s website) a written description of each OTC Equity Security order- or quotation-related data product offered by such member IDQS and related pricing information, including fees, rebates, discounts and cross-product pricing incentives. Member IDQSs would be required to keep the relevant website page(s) accurate and up-to-date with respect to the required data product descriptions and pricing information and to make such information available at least two business days in advance of offering a data product.<sup>33</sup> Proposed Rule 6439(e) would specify that a member IDQS is not precluded from negotiating lower fees with customers, provided that the member IDQS discloses on such website page(s) the circumstances under which it may do so.

Finally, under proposed Rule 6439(f), a member IDQS must provide FINRA with prompt notification when it reasonably becomes aware of any systems disruption that is not de minimis that degrades, limits, or otherwise impacts the member IDQS’s functionality with respect to trading or

the dissemination of market data.<sup>34</sup> Such notification must include, on a reasonable best efforts basis, a brief description of the event, its impact, and the member IDQS’s resolution efforts.<sup>35</sup> FINRA states that to comply with this requirement, a member IDQS that is an SCI ATS, as defined in Rule 1000 of Regulation SCI, could provide FINRA with the same information (or a duplicate copy of any notification) submitted to the Commission as required under Regulation SCI Rule 1002(b)<sup>36</sup> promptly after filing the notification with the Commission.<sup>37</sup> FINRA states that if a member IDQS is not an SCI ATS, it could comply with this requirement by providing FINRA prompt notification when it reasonably becomes aware of any such systems disruption, and by providing periodic updates on the event and its resolution.<sup>38</sup> Such notifications would include, on a reasonable best efforts basis, a brief description of the event, its impact, and resolution efforts.<sup>39</sup>

FINRA states that if the proposed rule change is approved by the Commission, FINRA will announce in a *Regulatory Notice* the effective date(s) of the proposed rule change, which may be phased in but will be no later than 365 days following Commission approval.<sup>40</sup> The effective date for rescinding the rules related to the OTCBB will not occur until proposed Rule 6439 (except for Rule 6439(d)(1)(B)) is effective.<sup>41</sup> FINRA also states that it will examine for compliance by member IDQSs with proposed Rule 6439, including by reviewing the adequacy of member IDQSs’ written policies and procedures and written fair access standards required under the proposal, conducting a targeted exam of impacted member IDQSs after the initial effectiveness of the rule, and incorporating a Rule 6439

<sup>34</sup> FINRA would announce in a *Regulatory Notice* the methods and process by which members may provide systems disruption notifications to FINRA. See Notice, *supra* note 3, at 63318.

<sup>35</sup> See proposed Rule 6439(f).

<sup>36</sup> 17 CFR 242.1002(b).

<sup>37</sup> See Notice, *supra* note 3, at 63318.

<sup>38</sup> See *id.*

<sup>39</sup> See *id.*

<sup>40</sup> See Notice, *supra* note 3, at 63319.

<sup>41</sup> See Amendment No. 1, *supra* note 6. FINRA states that proposed Rule 6439, with one exception related to the reporting to FINRA of order-level information, will become effective at the same time as, or prior to, the rescission of the OTCBB rules. FINRA states that paragraph (d)(1)(B) of proposed Rule 6439 (requiring reporting of specified order-level information) may be phased in at a later date within the 365-day timeframe to allow FINRA to better coordinate with the timeline for reporting information in OTC Equity Securities to the CAT under FINRA Rule 6830 (Industry Member Data Reporting). See *id.*

<sup>30</sup> See proposed Rule 6439(d)(1)(A).

<sup>31</sup> See proposed Rule 6439(d)(1)(B).

<sup>32</sup> See proposed Rule 6439(d)(2). If such information is reportable to the CAT pursuant to FINRA Rule 6830, this information will be available to FINRA. Thus, separate reporting pursuant to proposed FINRA Rule 6439(d) would be duplicative.

<sup>33</sup> See proposed Rule 6439(e).

review as part of the regular exam program for impacted member firms.<sup>42</sup>

### III. Proceedings To Determine Whether To Approve or Disapprove SR-FINRA-2020-031, as Modified by Amendment No. 1, and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act<sup>43</sup> to determine whether the proposed rule change, as modified by Amendment No. 1, should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposal. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change to inform the Commission's analysis of whether to approve or disapprove the proposal.

Pursuant to Section 19(b)(2)(B) of the Act,<sup>44</sup> the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposal's consistency with the Act, and, in particular, with Section 15A(b)(6) of the Act, which requires, among other things, that the rules of a national securities association be "designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade," and "to protect investors and the public interest,"<sup>45</sup> and Section 15A(b)(11) of the Act, which requires that the rules of a national securities association 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, and that such rules "be designed to produce fair and informative quotations, to prevent fictitious or misleading quotations, and to promote orderly procedures for collecting, distributing, and publishing quotations."<sup>46</sup>

As discussed above, FINRA is proposing to rescind FINRA's rules governing the OTCBB and cease its operation and adopt new Rule to

expand the obligations of Member IDQs that disseminate quotation updates on a real-time basis in OTC Equity Securities. The Commission has received three comment letters regarding the proposed rule change,<sup>47</sup> and a response to comments from FINRA.<sup>48</sup> In addition, on December 21, 2020, FINRA filed partial Amendment No. 1, which states that FINRA would not cease operation of the OTCBB until proposed Rule 6439 (except for proposed Rule 6439(d)(1)(B)) is effective.<sup>49</sup> FINRA further states that paragraph (d)(1)(B) of proposed Rule 6439 (requiring reporting of specified order-level information) may be phased in at a later date within the 365-day timeframe to allow FINRA to better coordinate with the timeline for reporting information in OTC Equity Securities to the CAT under FINRA Rule 6830 (Industry Member Data Reporting).<sup>50</sup> Given the filing of this recent amendment, and the comment letters received and the response from FINRA, the Commission is seeking additional public comment on the proposed rule change in order to determine whether it is consistent with the requirements of Sections 15A(b)(6) and 15A(b)(11) of the Act.

The Commission notes that, under the Commission's Rules of Practice, the "burden to demonstrate that a proposed rule change is consistent with the Act and the rules and regulations thereunder. . . is on the self-regulatory organization ['SRO'] that proposed the rule change."<sup>51</sup> The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,<sup>52</sup> and any failure of an SRO to provide this information may result in the Commission not having sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Act and the applicable rule and regulations.<sup>53</sup>

<sup>47</sup> See Letters from Christopher Bok, Chief Compliance Officer, OTC Link, LLC, dated October 28, 2020; Kimberly Unger, CEO and Executive Director, The Security Traders Association of New York, Inc., dated October 28, 2020; and Sherry J. Sandler, Global OTC, dated November 9, 2020.

<sup>48</sup> See Letter from Racquel Russell, Associate General Counsel, FINRA, dated November 20, 2020.

<sup>49</sup> See *supra* note 6.

<sup>50</sup> See *id.* See also *supra* notes 31–32 and accompanying text.

<sup>51</sup> Rule 700(b)(3), Commission Rules of Practice, 17 CFR 201.700(b)(3).

<sup>52</sup> See *id.*

<sup>53</sup> See *id.*

### IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposed rule change, as modified by Amendment No. 1, is consistent with Sections 15A(b)(6) and 15A(b)(11) of the Act or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.<sup>54</sup>

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change, as modified by Amendment No. 1, should be approved or disapproved by January 27, 2021. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by February 10, 2021.

The Commission asks that commenters address the sufficiency of FINRA's statements in support of the proposal, which are set forth in the Notice and in Amendment No. 1,<sup>55</sup> in addition to any other comments they may wish to submit about the proposed rule change.

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](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2020-031 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.

<sup>54</sup> Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Public Law 94-29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

<sup>55</sup> See *supra* notes 3 and 6.

<sup>42</sup> See Notice, *supra* note 3, at 63316, n.17.

<sup>43</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>44</sup> *Id.*

<sup>45</sup> 15 U.S.C. 78o-3(b)(6).

<sup>46</sup> 15 U.S.C. 78o-3(b)(11).

All submissions should refer to File Number SR-FINRA-2020-031. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<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 website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the 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-2020-031 and should be submitted on or before January 27, 2021. Rebuttal comments should be submitted by February 10, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>56</sup>

**J. Matthew DeLesDernier,**  
Assistant Secretary.

[FR Doc. 2020-29215 Filed 1-5-21; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-90838; File No. SR-NYSEArca-2020-115]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify the NYSE Arca Options Fee Schedule

December 31, 2020.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the

“Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on December 29, 2020, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. 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

The Exchange proposes to modify the NYSE Arca Options Fee Schedule (“Fee Schedule”) to extend the waiver of certain Floor-based fixed fees. The Exchange proposes to implement the fee change effective January 1, 2021. The proposed rule change is available on the Exchange's website at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, 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, the self-regulatory organization 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 those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

###### 1. Purpose

The purpose of this filing is to modify the Fee Schedule to extend the waiver of certain Floor-based fixed fees for market participants that have been unable to resume their Floor operations to a certain capacity level, as discussed below. The Exchange proposes to implement the fee change effective January 1, 2021.

On March 18, 2020, the Exchange announced that it would temporarily close the Trading Floor, effective Monday, March 23, 2020, as a precautionary measure to prevent the potential spread of COVID-19.

Following the temporary closure of the Trading Floor, the Exchange waived certain Floor-based fixed fees for April and May 2020.<sup>4</sup> Although the Trading Floor partially reopened on May 4, 2020 and Floor-based open outcry activity is supported, certain participants have been unable to resume pre-Floor closure levels of operations. As a result, the Exchange extended the fee waiver through December 2020, but only for Floor Broker firms that were unable to operate at more than 50% of their March 2020 on-Floor staffing levels and for Market Maker firms that have vacant or “unmanned” Podia for the entire month due to COVID-19 related considerations (the “Qualifying Firms”).<sup>5</sup> Because the Trading Floor will continue to operate with reduced capacity, the Exchange proposes to extend the fee waiver for Qualifying Firms through the earlier of the first full month of a full reopening of the Trading Floor facilities to Floor personnel or March 2021.<sup>6</sup>

Specifically, as with the prior fee waivers, the proposed fee waiver covers the following fixed fees for Qualifying Firms, which relate directly to Floor operations, are charged only to Floor participants and do not apply to participants that conduct business off-Floor:

- Floor Booths;
- Market Maker Podia;
- Options Floor Access;
- Wire Services; and
- ISP Connection.<sup>7</sup>

The proposed fee change is designed to reduce monthly costs for all Qualifying Firms whose operations continue to be disrupted even though the Trading Floor has partially reopened. In reducing this monthly financial burden, the proposed change would allow Qualifying Firms that had Floor operations in March 2020 to reallocate funds to assist with the cost of shifting and maintaining their prior fully-staffed on-Floor operations to off-Floor and recoup losses as a result of the

<sup>4</sup> See Securities Exchange Act Release Nos. 88596 (April 8, 2020), 85 FR 20796 (April 14, 2020) (SR-NYSEArca-2020-29); 88812 (May 5, 2020), 85 FR 27787 (May 11, 2020) (SR-NYSEArca-2020-38).

<sup>5</sup> See Securities Exchange Act Release Nos. 89038 (June 10, 2020), 85 FR 36447 (June 16, 2020) (SR-NYSEArca-2020-52); 89242 (June 7, 2020), 85 FR 42037 (July 13, 2020) (SR-NYSEArca-2020-60); 89480 (August 5, 2020), 85 FR 48591 (August 11, 2020) (SR-NYSEArca-2020-69); 89694 (August 27, 2020), 85 FR 54608 (September 2, 2020) (SR-NYSEArca-2020-76); 90191 (October 15, 2020), 85 FR 67032 (October 21, 2020) (SR-NYSEArca-2020-90). See also Fee Schedule, NYSE Arca OPTIONS: FLOOR and EQUIPMENT and CO-LOCATION FEES.

<sup>6</sup> See proposed Fee Schedule, NYSE Arca OPTIONS: FLOOR and EQUIPMENT and CO-LOCATION FEES.

<sup>7</sup> See id.

<sup>56</sup> 17 CFR 200.30-3(a)(12) and 17 CFR 200.30-3(a)(57).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.