

undue burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act given that not a single ETP Holder has qualified for the credits under either of the pricing tiers that are the subject of this proposed rule change for the last six months. To the extent the proposed rule change places a burden on competition, any such burden would be outweighed by the fact that none of the pricing tiers proposed for deletion have served their intended purpose of incentivizing ETP Holders to more broadly participate on the Exchange. Moreover, ETP Holders can choose to trade on other venues to the extent they believe that the credits provided are too low or the qualification criteria are not attractive.

*Intermarket Competition.* The Exchange believes the proposed rule change does not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange operates in a highly competitive market in which market participants can readily choose to send their orders to other exchanges and off-exchange venues if they deem fee levels at those other venues to be more favorable. Market share statistics provide ample evidence that price competition between exchanges is fierce, with liquidity and market share moving freely from one execution venue to another in reaction to pricing changes. In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and with off-exchange venues. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, the Exchange does not believe this proposed fee change would impose any burden on intermarket competition.

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

No written comments were solicited or received with respect to the proposed rule change.

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

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)<sup>12</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>13</sup>

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(2).

thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such 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 under Section 19(b)(2)(B)<sup>14</sup> of the Act to determine whether the proposed rule change 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2021-78 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-NYSEArca-2021-78. 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 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-NYSEArca-2021-78, and should be submitted on or before October 7, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2021-19971 Filed 9-15-21; 8:45 am]

BILLING CODE 8011-01-P

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-92932; File No. SR-FINRA-2021-014]

**Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Granting Approval of a Proposed Rule Change Relating to Members' Filing Requirements Under FINRA Rule 6432 (Compliance With the Information Requirements of SEA Rule 15c2-11)**

September 10, 2021.

**I. Introduction**

On June 9, 2021, 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 amend member firms' filing requirements under FINRA Rule 6432 (Compliance with the Information Requirements of SEA Rule 15c2-11). The proposed rule change was published for comment in the **Federal Register** on June 15, 2021.<sup>3</sup> The Commission received one comment letter regarding the proposed rule

<sup>15</sup> 17 CFR 200.30-3(a)(12).

<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. 92139 (June 9, 2021), 86 FR 31774 (June 15, 2021) ("Notice"). Comments on the proposed rule change can be found at: <https://www.sec.gov/comments/sr-finra-2021-014/srfinra2021014.htm>.

<sup>14</sup> 15 U.S.C. 78s(b)(2)(B).

change,<sup>4</sup> and a response to the comment from FINRA.<sup>5</sup>

## II. Summary of the Proposal

As further described below, in light of the Commission's recent amendments to Rule 15c2-11 under the Exchange Act,<sup>6</sup> FINRA proposes to amend members' filing requirements under FINRA Rule 6432 (Compliance with the Information Requirements of SEA Rule 15c2-11), including (i) the addition of a requirement that a qualified inter-dealer quotation system ("Qualified IDQS")<sup>7</sup> submit a modified Form 211 filing to FINRA in connection with each initial information review that it conducts; (ii) the addition of a requirement that a Qualified IDQS that makes a certain publicly available determination under Rule 15c2-11 submit a daily security file to FINRA containing applicable summary information for all securities quoted on its system; and (iii) other changes to FINRA Rule 6432 and the Form 211 to further clarify the operation

<sup>4</sup> Letter from OTC Link LLC to SEC (July 6, 2021) ("OTC Link Letter").

<sup>5</sup> See Letter from Robert McNamee to Vanessa Countryman (August 4, 2001) ("FINRA Response").

<sup>6</sup> Rule 15c2-11 specifies key, basic issuer information that must be obtained and reviewed before a broker-dealer may initiate (or resume) quotations for a security in a market other than a national securities exchange, subject to exception. On October 27, 2020, the Commission published in the *Federal Register* amendments to Rule 15c2-11. See Exchange Act Release No. 89891 (Sept. 16, 2020), 85 FR 68124 (Oct. 27, 2020) ("Rule 15c2-11 Adopting Release"). Among the amendments to Rule 15c2-11 are those to permit broker-dealers to publish quotations in reliance on a qualified interdealer quotation system's publicly available determination that it complied with the rule's information review requirement, see 17 CFR 240.15c2-11(a)(1)(ii), as well as those that provide certain requirements in order for the qualified interdealer quotation system to make such a publicly available determination, see 17 CFR 240.15c2-11(a)(2)(i) through (iv). In addition, the amendments allow broker-dealers to publish quotations in reliance on a qualified interdealer quotation system's publicly available determination that certain exceptions apply, see 17 CFR 240.15c2-11(f)(7), and to rely on a publicly available determination as to whether certain issuer information is current and publicly available, see 17 CFR 240.15c2-11(f)(2)(iii)(B), (f)(3)(ii)(A). The amendments set forth certain policies and procedures requirements in order for the qualified interdealer quotation system to make any such publicly available determination. See 17 CFR 240.15c2-11(a)(3).

<sup>7</sup> As discussed below in Part IIC, FINRA proposes to define in FINRA Rule 6432(g) the term "qualified inter-dealer quotation system" as "any interdealer quotation system that meets the definition of an 'alternative trading system' under [Rule] 300(a) of [Regulation ATS] and operates pursuant to the exemption from the definition of an 'exchange' under [Rule] 3a1-1(a)(2) of [the Exchange Act]." This definition would track the Commission's definition of the term "qualified interdealer quotation system" in Exchange Act Rule 15c2-11. See 17 CFR 240.15c2-11(e)(6).

of the rule and conform it to amended Rule 15c2-11.

FINRA states that, if the proposed rule changes are approved by the Commission, FINRA will publish a *Regulatory Notice* with technical details on the revised standard Form 211, modified Form 211, and daily file submission process.<sup>8</sup> In addition, FINRA states that the effective date of any such rule changes would be the same date as the general compliance date of the Commission's amendments to Rule 15c2-11 (except for paragraph (b)(5)(i)(M) of Rule 15c2-11),<sup>9</sup> including any extensions to such compliance date.

### A. Proposed Modified Form 211 Submission Requirement

FINRA Rule 6432 sets forth the standards applicable to member firms quoting equity securities for demonstrating compliance with Rule 15c2-11 under the Exchange Act, unless an exception or exemption is available. Under FINRA Rule 6432, no member may publish quotations for a non-exchange-listed security<sup>10</sup> in a quotation medium unless the member has demonstrated compliance with FINRA Rule 6432 and the applicable requirements for information maintenance under Rule 15c2-11 by making a filing with, and in the form required by, FINRA (*i.e.*, the Form 211). FINRA states that it uses the Form 211 in connection with its oversight of member compliance with Rule 15c2-11.<sup>11</sup> FINRA also states that the Form 211 is designed to gather pertinent information regarding the subject issuer and its security, the member's knowledge of and relationship to the issuer, and the member's intended quotation activities with respect to the security.<sup>12</sup>

To account for the new role of a Qualified IDQS resulting from the amendments to Rule 15c2-11,<sup>13</sup> FINRA proposes to amend FINRA Rule 6432 by adding a new provision to establish an after-the-fact filing requirement for a Qualified IDQS that performs an initial

<sup>8</sup> See Notice, *supra* note 3, at 31775 n.16.

<sup>9</sup> See Rule 15c2-11 Adopting Release, *supra* note 6 at 68172. The compliance date for the amendments to Rule 15c2-11 (except for provisions involving paragraph (b)(5)(i)(M)) is September 28, 2021.

<sup>10</sup> The term "non-exchange-listed security" is defined in FINRA Rule 6432(e) as any equity security, other than a Restricted Equity Security, that is not traded on any national securities exchange. A "Restricted Equity Security" means any equity security that meets the definition of "restricted security" contained in Rule 144(a)(3) under the Securities Act of 1933. See 17 CFR 230.144.

<sup>11</sup> See Notice, *supra* note 3, at 31775.

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

<sup>13</sup> See *supra* note 6.

review under Rule 15c2-11(a)(2). This new filing requirement would supplement FINRA's existing standard Form 211 review process for quoting broker-dealer members, which would continue to apply where a broker-dealer is not relying on a Qualified IDQS's publicly available determination with respect to an initial review of issuer information.<sup>14</sup>

FINRA states its belief that requiring a Qualified IDQS to submit a modified Form 211 is appropriate because the submission would provide FINRA with information with which to perform oversight of a Qualified IDQS's compliance with Rule 15c2-11's requirements for an initial information review, without involving any additional delay for FINRA to review and process the form prior to members being permitted to initiate quotations in reliance on the Qualified IDQS's publicly available determination.<sup>15</sup> In addition, FINRA states that the modified Form 211 requirement, together with the required submission of the daily file, as discussed below in Part II.B, would make a focused, after-the-fact review more manageable and able to be accomplished in a shorter period of time.<sup>16</sup>

Under the proposed provision, a Qualified IDQS must demonstrate compliance with Rule 15c2-11 by making a filing with, and in the form required by FINRA, no later than 6:30:00 p.m. Eastern Time on the business day following the Qualified IDQS's publicly available determination under Rule 15c2-11(a)(2) (*i.e.*, a "modified Form 211" filing). Like the standard Form 211, the modified Form 211 would contain requests for the items of information specified in Rule 15c2-11(b) with respect to the type of issuer involved.<sup>17</sup> In addition, as

<sup>14</sup> See Notice, *supra* note 3, at 31775. A quoting broker-dealer member relying on a Qualified IDQS would not be required to separately submit any sort of Form 211 in connection with the publication of its initial quotation pursuant to Rule 15c2-11(a)(1)(ii). See *id.*, at 31775 n.19. FINRA states that permitting quoting members to rely on a Qualified IDQS's publicly available determination to initiate quotations in a security is consistent with the Commission's goals to reduce burdens on broker-dealers while maintaining investor protection. See *id.*, at 31776.

<sup>15</sup> See *id.*, at 31775. Broker-dealers must initiate their quotations in reliance on any such publicly available determination within three business days after the publicly available determination is made. See 17 CFR 240.15c2-11(a)(1)(ii)(B).

<sup>16</sup> See Notice, *supra* note 3, at 31776.

<sup>17</sup> FINRA proposes several technical, non-substantive changes to update cross-references to the renumbered and re-lettered provisions of Rule 15c2-11 in light of the amendments. FINRA states that both the modified and standard Form 211 would conform to the Commission's amendments to

discussed in Part II.C below, the modified Form 211, like the standard Form 211, must be reviewed and signed by a principal of the Qualified IDQS, who must certify, among other things, that neither the firm nor its associated persons have accepted or will accept any payment or other consideration prohibited by FINRA Rule 5250 for filing the Form 211.<sup>18</sup>

### B. Proposed Daily Security File Submission Requirement

To account for the new role of a Qualified IDQS, FINRA also proposes to amend Supplementary Material .02 to FINRA Rule 6432 by requiring any Qualified IDQS that makes one or more publicly available determinations described in any of the following provisions to submit to FINRA a daily security file containing certain information: Rule 15c2–11(a)(2) (compliance with Rule 15c2–11’s information review requirement); (f)(2)(iii)(B) (information is current and publicly available); (f)(3)(ii)(A) (information is no longer current and publicly available); or (f)(7) (the availability of the exchange-traded security exception, the “piggyback” exception, the municipal security exception, or the ADTV and asset test exception). FINRA states that it would use the information contained in the daily file as part of its oversight program to perform surveillance and periodic reviews of Qualified IDQS and quoting member compliance with Rule 15c2–11.<sup>19</sup>

Under this proposed requirement, the daily security file must contain the following information for all non-exchange-listed equity securities quoted on the Qualified IDQS’s system:

- Security symbol;
- Issuer name;
- If the non-exchange-listed equity security is being quoted pursuant to a processed Form 211 under FINRA Rule 6432(a);
- If applicable, the type of publicly available determination made by the Qualified IDQS (e.g., that the Qualified IDQS conducted an initial review

pursuant to Rule 15c2–11(a)(2), that the specified information is current and publicly available pursuant to Rule 15c2–11(f)(2)(iii)(B) or (f)(3)(ii)(A), or that an exception under Rule 15c2–11(f)(7) is available) and the date on which such publicly available determination was made by the Qualified IDQS;

- With respect to a non-exchange-listed equity security for which the Qualified IDQS has made a publicly available determination under Rule 15c2–11(f)(7) relating to the availability of the piggyback exception under Rule 15c2–11(f)(3), whether the issuer is a shell company and, if a shell company, the number of days remaining in the applicable 18-month period under Rule 15c2–11(f)(3)(i)(B)(2);
- If applicable, that the security is being quoted pursuant to an exception that does not rely on the Qualified IDQS’s publicly available determination and, if so, identify the exception relied upon by the subscriber; and
- Such other information as specified by FINRA in a *Regulatory Notice* (or similar communication).

### C. Proposed Clarifying and Conforming Amendments

In addition to the proposals discussed above with respect to member Qualified IDQS requirements, FINRA proposes several amendments to clarify the operation of FINRA Rule 6432 and conform the rule provisions to Rule 15c2–11, as amended. First, with respect to existing member obligations, FINRA proposes to clarify that a member firm must receive notification from FINRA that a standard Form 211 has been processed (i) before initiating or resuming quotations in a quotation medium for a security, as in paragraph (a) of FINRA Rule 6432; and (ii) before entering a priced quotation for the security, as in paragraph (d) of FINRA Rule 6432.<sup>20</sup> As part of this rule change, FINRA proposes to delete the requirement that the Form 211 be received by FINRA at least three business days before the filing firm’s quotation is published or displayed.

Second, to ease burdens on broker-dealers when filing a Form 211, FINRA proposes in paragraph (c)(1)<sup>21</sup> to expand FINRA Rule 6432’s treatment currently allowed for documents made available through the Commission’s Electronic Data Gathering, Analysis, and Retrieval (“EDGAR”) system. In

particular, FINRA proposes to allow a member firm or Qualified IDQS submitting a Form 211, in lieu of filing a copy of the applicable specified issuer information, to include identifying information<sup>22</sup> for each issuer report or statement upon which the filer relied in satisfying the requirements of Rule 15c2–11’s review of issuer information, with respect to information that is publicly available through the website of a Qualified IDQS or its affiliate broker-dealer (but is not available on EDGAR). FINRA states its belief that this expansion of treatment is appropriate in light of the new role of a Qualified IDQS under the amendments to Rule 15c2–11.<sup>23</sup>

Third, FINRA proposes in new paragraph (g) of FINRA Rule 6432 to provide the same definition for term “qualified inter-dealer quotation system” that the term “qualified interdealer quotation system” has under Rule 15c2–11(e)(6). Finally, to assist with oversight of member firm compliance with Rule 15c2–11, FINRA proposes to require that members include in the standard and modified Form 211 the names of all officers and directors of the subject issuer.

### III. Discussion and Commission Findings

After carefully reviewing the proposed rule changes, the comment letter, and the FINRA letter, the Commission finds that the proposed rule changes are consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities association.<sup>24</sup> In particular, the Commission finds that the proposed rule changes are consistent with Section 15A(b)(6) of the Exchange Act<sup>25</sup> in that they are designed, among other things, 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. In addition, the Commission finds that the proposed rule changes are consistent with Section 15A(b)(11) of the Exchange Act<sup>26</sup> in that they include provisions designed to produce fair and informative quotations,

<sup>22</sup> Such identifying information may include the type of report, report date, the permanent website address of the location of the information on the website of the Qualified IDQS or its affiliate broker-dealer, and any other information as may be requested by FINRA.

<sup>23</sup> See Notice, *supra* note 3 at 31776.

<sup>24</sup> In approving this proposed rule change, the Commission has considered the proposed rule changes’ impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>25</sup> 15 U.S.C. 78o–3(b)(6).

<sup>26</sup> 15 U.S.C. 78o–3(b)(11).

Rule 15c2–11, as applicable. See *id.*, at 31776 n.20. In addition, in light of the addition of the modified Form 211 provision in FINRA Rule 6432(b), FINRA is re-letting all FINRA Rule 6432 paragraphs that follow that provision. Finally, FINRA proposes a technical, non-substantive change to correct FINRA Rule 6432.01 to read “.01” rather than “.01.” per FINRA rulebook style. See *id.*, at 31776.

<sup>18</sup> See *id.*; *Regulatory Notice* 14–26 (June 2014) (stating that the “Rule 5250 prohibition on receiving payments for market making includes within its scope the receipt of payments for submitting a Form 211 to FINRA pursuant to Rule 6432”); see also FINRA Rule 5250 (Payments for Market Making).

<sup>19</sup> See Notice, *supra* note 3, at 31776.

<sup>20</sup> FINRA proposes a technical, non-substantive change to re-letter existing paragraph (c) to paragraph (d). See *supra* note 17.

<sup>21</sup> FINRA proposes a technical, non-substantive change to re-letter existing paragraph (b)(1) to paragraph (c)(1). See *supra* note 17.

to prevent fictitious or misleading quotations, and to promote orderly procedures for collecting, distributing, and publishing quotations.

#### A. Proposed Modified Form 211 Submission Requirement

The Commission finds that the proposed requirements set forth in FINRA Rule 6432(b), with respect to the modified Form 211 submission, are consistent with the Exchange Act.

First, the proposed requirement on any member Qualified IDQS that makes a publicly available determination pursuant to Rule 15c2–11(a)(2) to file a Form 211 with FINRA to demonstrate compliance with Rule 15c2–11 is designed, among other things, 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. As FINRA noted, “[t]he amendments to Rule 15c2–11 make substantial changes to the prior framework.”<sup>27</sup> This filing requirement, therefore, was proposed primarily to account for the new role of a Qualified IDQS under Rule 15c2–11’s amendments.<sup>28</sup> FINRA’s proposal to extend the existing obligation for any member firm representing that it complied with the requirements of Rule 15c2–11’s review of specified issuer information to any member Qualified IDQS that makes a publicly available determination that it complied with the requirements for such review<sup>29</sup> would update FINRA’s framework for its oversight of member Qualified IDQSs, facilitate its oversight efforts, and enhance investor protection.<sup>30</sup>

Second, the requirement for a member Qualified IDQS’s modified Form 211 to be received by FINRA no later than 6:30:00 p.m. Eastern Time on the business day following the Qualified IDQS’s publicly available determination made pursuant to Rule 15c2–11(a)(2) is

designed to produce fair and informative quotations, to prevent fictitious or misleading quotations, and to promote orderly procedures for collecting, distributing, and publishing quotations. The Commission believes that the proposed deadline for the modified Form 211 filing (*i.e.*, after-the-fact) appropriately balances the protection of investors, with respect to the prevention of fraudulent and manipulative schemes involving fictitious quotations, while preventing the potential for undue delay in the initiation of quoted markets following a Qualified IDQS’s publicly available determination that it has complied with Rule 15c2–11’s requirements for the review of specified issuer information.<sup>31</sup> Further, the Commission believes that the after-the-fact nature of the submission of the modified Form 211, together with the requirement for the submission of a daily security file, could facilitate FINRA’s oversight of a member Qualified IDQS’s compliance with the Rule 15c2–11 review by making FINRA’s efforts more focused and efficient.

Finally, not requiring quoting member firms to file any Form 211 if they are relying on a Qualified IDQS’s publicly available determination regarding its compliance with Rule 15c2–11’s review of specified issuer information is designed to produce fair and informative quotations, to prevent fictitious or misleading quotations, and to promote orderly procedures for collecting, distributing, and publishing quotation. The Commission believes that its goal, among others, in amending Rule 15c2–11 to reduce burdens on broker-dealers while maintaining investor protection<sup>32</sup> would be furthered, in part, by the modified Form 211 submission. In light of this requirement, the Commission believes that also requiring quoting member firms (relying on a Qualified IDQS’s publicly available determination

regarding its review of issuer information) to file a Form 211 would be redundant, including with respect to the information provided, without necessarily providing any new information for FINRA or the Commission to use in its oversight efforts to prevent fictitious or misleading quotations and to protect investors.

#### B. Proposed Daily Security File Submission Requirement

The Commission finds that the proposed requirements set forth in Supplementary Material .02 to FINRA Rule 6432, with respect to the daily file submission requirement for any member Qualified IDQS that makes certain publicly available determinations, are consistent with the Exchange Act.

The proposed requirement under Supplementary Material .02 regarding the submission of a daily security file is designed, among other things, 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. Under this proposed requirement, a member Qualified IDQS must submit a daily file containing certain information<sup>33</sup> regarding all non-exchange-listed equity securities quoted on its system if the Qualified IDQS makes a publicly available determination involving any of the following: Whether the Qualified IDQS complied with the requirements of Rule 15c2–11’s review of specified issuer information; whether an issuer’s information is current and publicly available, pursuant to Rule 15c2–11’s unsolicited quotation exception or piggyback exception; or whether Rule 15c2–11’s exchange-traded security exception, municipal security exception, piggyback exception, or ADTV and asset test exception is available.

The proposed daily security file list includes basic information regarding a quoted security, its issuer, and, as applicable, the publicly available determination or exception that already would be preserved as part of a Qualified IDQS’s compliance with its existing recordkeeping requirement under Rule 15c2–11.<sup>34</sup> The Commission

<sup>27</sup> See Notice, *supra* note 3, at 31774.

<sup>28</sup> See *id.*, at 31775.

<sup>29</sup> FINRA Rule 6432 would require a principal of the filing member Qualified IDQS to review and sign the modified Form 211, which would also include a certification that neither the firm nor its associated persons have accepted or will accept any payment or other consideration prohibited by FINRA Rule 5250 for filing the Form 211. One commenter stated that FINRA Rule 5250 does not and should not apply to a Qualified IDQS filing a Form 211. See OTC Link Letter. The question of whether Rule 5250 prohibits the Qualified IDQS from accepting issuer payments for filing Form 211 in connection with its review under 15c2–11(a)(2) is an issue concerning the interpretation of Rule 5250 (not Rule 6432) and is outside of the scope of FINRA’s proposal.

<sup>30</sup> For example, FINRA stated that it would use the modified Form 211 filings submitted by a Qualified IDQS to assess periodically the adequacy of the Qualified IDQS’s reviews. See *id.*, at 31775.

<sup>31</sup> Broker-dealers must initiate their quotations within three business days after the Qualified IDQS makes a publicly available determination regarding its review of issuer information. See 17 CFR 240.15c2–11(a)(1)(ii)(B). If broker-dealers needed to wait for notification from FINRA that the Qualified IDQS’s form has been processed before initiating or resuming quotations, as with the timing requirement of the standard Form 211, more than three days could elapse. In such case, the Qualified IDQS may need to repeat its review, a broker-dealer may need to review the issuer information itself to initiate a quoted market, or no market may develop whatsoever. Such a result would be inconsistent with the amendments’ goal, among others, of easing broker-dealers’ burdens where Rule 15c2–11’s investor protections can be achieved by alternative means. See, e.g., Rule 15c2–11 Adopting Release, *supra* note 6, at 68131.

<sup>32</sup> See Rule 15c2–11 Adopting Release, *supra* note 6, at 68131.

<sup>33</sup> See *supra* Part II.B for a list of the specified information.

<sup>34</sup> See generally 17 CFR 240.15c2–11(d) (requiring, among other things, the preservation of information related to a publicly available determination that the rule’s requirements for the review of specified information have been fulfilled, as well as information supporting a publicly available determination as to whether an issuer’s information is current and publicly available or

believes that the daily security file will facilitate FINRA's oversight efforts where FINRA might otherwise lack efficient access to such information. In this regard, FINRA's access to the daily security file could aid its oversight efforts and protect investors by providing FINRA with a wider range of information to use in determining whether a Qualified IDQS has complied with its Rule 15c2-11 obligations (*e.g.*, with respect to making a certain type of publicly available determination) or whether a publicly available determination is being used in connection with a fraudulent and manipulative scheme.<sup>35</sup>

### C. Proposed Clarifying and Conforming Amendments

The Commission finds that the proposed clarifying and conforming amendments set forth in FINRA Rule 6432 are consistent with the Exchange Act.

First, the proposed clarifying amendments to Rule 6432(a) and (d), with respect to the requirement that a member firm receive notification from FINRA that its standard Form 211 has been processed before initiating or resuming quotations in a quotation medium or before entering a priced quotation for the security, respectively, are designed, among other things, 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 states that these amendments are proposed to clarify existing member firm obligations when filing a standard Form 211 under FINRA Rule 6432.<sup>36</sup> The Commission believes that stating explicitly what event must occur before a member firm may begin publishing quotations provides a greater degree of clarity as to when a member firm may initiate or resume quotations than stating when the standard Form 211 must be received by FINRA does. These clarifications could facilitate broker-dealers' compliance measures and make them more efficient by removing any uncertainty as to when quotations may begin. In addition, these

whether certain of the rule's exceptions apply, as applicable).

<sup>35</sup> FINRA states that the daily security file information would provide consolidated daily Rule 15c2-11 compliance information to complement a member Qualified IDQS's modified Form 211 submission so that FINRA could have a more complete overview of the activities of its members in the over-the-counter market, including of a Qualified IDQS's compliance with Rule 15c2-11's obligations. See Notice, *supra* note 3, at 31776.

<sup>36</sup> See *id.*

clarifications could protect investors by preventing the likelihood that a member firm would initiate a quoted market before its compliance with Rule 15c2-11's requirements for an initial information review have been subject to oversight and verified.

Second, the proposed requirements in FINRA Rule 6432(c)(1), with respect to filing member firms' ability to point FINRA to issuer information publicly available on the website of a Qualified IDQS or its affiliate broker-dealer, including the manner for doing so, are designed, among other things, 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 Commission believes that the ability of a member firm or Qualified IDQS to include in its Form 211 filing certain identifying information for the issuer reports or statements upon which it relied in complying with Rule 15c2-11's requirements for reviewing issuer information appropriately balances the protection of investors while reducing compliance burdens on the filing member. Specifically, this rule change would allow any such member to point FINRA to the applicable issuer information that is publicly available on a regulated market participant's website,<sup>37</sup> in lieu of filing a copy of the applicable issuer reports or statements, while providing FINRA with an alternative means to conduct its oversight of the member's compliance with Rule 15c2-11 in order to protect investors. In addition, the Commission believes that the list of identifying information (*i.e.*, the type of report, report date, the permanent website address of the location of the information on the website of the Qualified IDQS or its affiliate broker-dealer, and any other information as may be requested by FINRA) may aid FINRA in accessing the applicable issuer reports or statements relied upon as part of its oversight efforts.

Third, the proposed definition in FINRA Rule 6432(g) of the term "qualified inter-dealer quotation system" is designed, among other things, 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's proposed definition tracks the definition of the term "qualified

<sup>37</sup> See Rule 15c2-11 Adopting Release, *supra* note 6, at 68144.

interdealer quotation system" that is provided in Rule 15c2-11(e)(6). This uniformity between FINRA Rule 6432 and Rule 15c2-11 under the Exchange Act could facilitate compliance efforts on the part of member firms and Qualified IDQSs due to an enhanced understanding of the application of the two rules' requirements regarding that term. Similarly, such uniformity could facilitate FINRA's oversight by providing an efficient means to monitor compliance with Rule 15c2-11. The Commission continues to believe that the regulatory requirements for a member that meets the definition of a Qualified IDQS—and the concomitant FINRA and Commission oversight of this type of entity—would help to ensure investor protection and to prevent fraud and manipulation.<sup>38</sup>

Finally, the proposal in FINRA Rule 6432(c)(2) to require any member firm or Qualified IDQS to include in the standard or modified Form 211, as applicable, a list of all officers and directors of the subject issuer is designed, among other things, 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 Commission believes that this list appropriately captures persons who manage a company or have a greater degree of access to issuer information and who may have a heightened incentive to engage in fraudulent or manipulative conduct.<sup>39</sup> Such additional information, therefore, could aid FINRA in its oversight of Rule 15c2-11 compliance and the market for an issuer's security.

### IV. Conclusion

*It is therefore ordered* that, pursuant to Section 19(b)(2) of the Exchange Act,<sup>40</sup> the proposed rule change (File No. SR-FINRA-2021-014) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>41</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

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<sup>38</sup> See *id.*, at 68166.

<sup>39</sup> See, *e.g.*, *id.*, at 68167.

<sup>40</sup> 15 U.S.C. 78s(b)(2).

<sup>41</sup> 17 CFR 200.30-3(a)(12).