



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

OFFICE OF
THE SECRETARY

June 21, 2021

Robert Colby
Executive Vice President and
Chief Legal Officer
FINRA
1735 K Street, NW
Washington, D.C. 20006

Re: Designation of the FINRA OTC Reporting Facility, Together with Any Interdealer Quotation System that Meets Specific Requirements, as an Automated Interdealer Quotation System for the Purposes of the Definition of “Penny Stock” in Exchange Act Rule 3a51-1, and as a Qualifying Electronic Quotation System for Purposes of the Penny Stock Rules

Dear Mr. Colby,

In your letter dated June 16, 2021,¹ the Financial Industry Regulatory Authority (“FINRA”) requests that the Securities and Exchange Commission (“Commission”) designate the FINRA OTC Reporting Facility (“ORF”),² together with any FINRA-member interdealer

¹ See Letter from Robert Colby, Executive Vice President and Chief Legal Officer, FINRA, to Emily Westerberg Russell, Chief Counsel, Division of Trading and Markets, Re: Request for QEQS Designation of the FINRA OTC Reporting Facility and One or More Eligible Inter-Dealer Quotation Systems dated June 16, 2021 (“FINRA Letter”). A copy of the FINRA Letter is attached. Unless otherwise defined in this letter, defined terms have the meaning described in the FINRA Letter.

² The ORF is a FINRA-operated system that provides last sale information on over-the-counter (“OTC”) equity securities. See FINRA Letter at 1 n.1. See also FINRA Rule 7300 Series (OTC Reporting Facility); FINRA Rule 6600 Series (OTC Reporting Facility). FINRA members generally are required to report trades in OTC equity securities to the ORF within 10 seconds of execution and FINRA widely disseminates this transaction information in real-time. See FINRA Rule 6622(a)(2). “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 (17 CFR 242.600-612); provided, however, that the term “OTC Equity Security” shall not include any Restricted Equity Security. See FINRA Rule 6420(f) and 17 CFR 242.600(b)(47). See also Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 2, to Adopt Proposed Rule 6439 (Requirements for Member Inter-Dealer Quotation Systems) and Rescind the Rules Related to the

quotation system (each, an “IDQS”)³ that meets specific requirements, including heightened governance (each, an “Eligible IDQS”),⁴ as a “Qualifying Electronic Quotation System” (“QEQS”)⁵ for purposes of the penny stock rules (“Penny Stock Rules”)⁶ under the Securities Exchange Act of 1934 (“Exchange Act”)⁷ (the requested designation, the “QEQS Designation”).

I. Background

The Securities Enforcement Remedies and Penny Stock Reform Act of 1990 (“Penny Stock Act”)⁸ was intended to address, among other things, regulatory concerns related to the lack of reliable market information on penny stocks traded over-the-counter.⁹ Exchange Act Section

OTC Bulletin Board Service, Exchange Act Release No. 34-92105 (June 3, 2021), 86 FR 30663 (June 9, 2021) (“Order”).

³ FINRA defines an “inter-dealer quotation system” as “any system of general circulation to brokers or dealers which regularly disseminates quotations of identified brokers or dealers.” See FINRA Rule 6420. This definition tracks the definition of IDQS in Exchange Act Rule 15c2-11(e)(3) (defining an IDQS as any system of general circulation to brokers or dealers that regularly disseminates quotations of identified brokers or dealers). 17 CFR 240.15c2-11(e)(3). The present request applies to a FINRA-member IDQS, whether or not such IDQS also is an alternative trading system or “ATS” as defined by Rule 300(a) of Regulation ATS. 17 CFR 242.300 et seq. Of note, IDQSs are broker-dealers subject to Commission regulation, including examination, which is in addition to FINRA’s oversight. See, e.g., 15 U.S.C. §§ 78o and 78q.

⁴ As discussed further below, an Eligible IDQS is a system that: (1) is an IDQS; (2) permits quotation updates on a real-time basis in OTC Equity Securities; and (3) FINRA has determined has in place written policies and procedures reasonably designed to comply with FINRA Rule 6439 before identifying it as an Eligible IDQS on the FINRA website. See infra note 32 and accompanying text.

⁵ The term “QEQS” also includes an “automated interdealer quotation system” as that term is used in Rule 3a51-1(d)(1)(iii) under the Exchange Act. 17 CFR 240.3a51-1(d)(1)(iii).

⁶ See 17 CFR 240.3a51-1, 15g-1 through 15g-9 and 15g-100. See also Exchange Act Release No. 30608 (April 20, 1992), 57 FR 18004 (April 28, 1992) (“Penny Stock Rules Adopting Release”). As discussed infra notes 13-14 and accompanying text, the Penny Stock Rules require broker-dealers engaging in certain transactions in low-priced OTC securities to provide customers with specified information.

⁷ 15 U.S.C. § 78a et seq.

⁸ Pub. L. No. 101-429, 104 Stat. 931 (1990).

⁹ Exchange Act Section 17B(a) reflects Congress’s findings that the market for penny stocks suffered from a lack of reliable and accurate quotation and last sale information available to investors and regulators; that it was in the public interest and appropriate for the protection of investors and the maintenance of fair and

17B(b), which was added by the Penny Stock Act, directs the Commission to facilitate the widespread dissemination of reliable and accurate last sale and quotation information with respect to penny stocks through the establishment of one or more automated quotation systems that will collect and disseminate information regarding penny stocks and that meet certain minimum characteristics.¹⁰ To give effect to Exchange Act Section 17B¹¹ and other provisions of the Penny Stock Act, the Commission adopted the Penny Stock Rules,¹² which are designed, in part, to improve price transparency and compensation practices through adequate disclosure to customers by broker-dealers effecting transactions in penny stocks.¹³

The Penny Stock Rules permit a broker-dealer to fulfill some of these disclosure obligations by relying on pricing information available from a QEQS. The rules define a QEQS

orderly markets to significantly improve the information available to brokers, dealers, investors, and regulators with respect to quotations for and transactions in penny stocks; and that a fully implemented automated quotation system for penny stocks would meet the information needs of investors and market participants and would add visibility, and regulatory and surveillance data to that market. See 15 U.S.C. §78q-2(a).

¹⁰ Specifically, Exchange Act Section 17B(b)(2) provides that the automated quotation system must: be operated by a registered securities association or a national securities exchange in accordance with such rules as the Commission and these entities shall prescribe; collect and disseminate quotation and transaction information; provide bid and ask quotations of participating brokers or dealers or comparably accurate and reliable pricing information, which shall constitute firm bids or offers for at least such minimum numbers of shares or minimum dollar amounts as the Commission and the registered securities association or national securities exchange shall require; and provide for the reporting of the volume of penny stock transactions, including last sale reporting, when the volume reaches appropriate levels that the Commission shall specify by rule or order. See 15 U.S.C. §78q-2(b)(1) and (2).

¹¹ 15 U.S.C. §78q-2.

¹² See Penny Stock Rules Adopting Release.

¹³ For example, under Exchange Act Rule 15g-3, a broker-dealer must provide its customers certain pricing information prior to effecting a transaction in a penny stock. Under Exchange Act Rule 15g-4, a broker-dealer must, under certain circumstances, disclose to its customers its compensation for effecting a penny stock transaction by using the security's prevailing market price as a reference point for calculating this compensation. In addition, under Exchange Act Rule 15g-6, a broker-dealer must provide to penny stock customers account statements that include, among other things, the market value of the penny stocks in the customer's account.

as either an automated interdealer quotation system that has the characteristics set forth in Exchange Act Section 17B(b)(2), or any other automated interdealer quotation system designated by the Commission for these purposes.¹⁴ The Commission has identified the criteria it will consider in determining whether to provide the designation. These criteria consider whether the system: (1) is operated by or under the auspices of a self-regulatory organization (“SRO”) or subject to comparable Commission review and oversight; (2) collects and disseminates quotation and volume information; (3) has effective surveillance capabilities and procedures; and (4) makes widely available, on an electronic basis, bid and offer quotations of participating broker-dealers, or comparably accurate and reliable pricing information, including firm bid and offer quotations for at least such minimum number of shares or dollar amounts as the Commission and SRO may require.¹⁵

In 1992, the Commission designated the OTC Bulletin Board Service (“OTCBB”), then operated by FINRA’s predecessor the National Association of Securities Dealers, Inc. (“NASD”), as an automated interdealer quotation system and QEQS for purposes of the Penny Stock Rules.¹⁶ FINRA represents that since then, there have been significant changes in the

¹⁴ See, e.g., Exchange Act Rule 15g-3(c)(5). In addition, Exchange Act Rule 3a51-1(d)(1)(iii) defines the term “penny stock” by reference to, among other things, quotations on “an automated interdealer quotation system that has the characteristics set forth in section 17B(b)(2) of the Act, or such other automated interdealer quotation system designated by the Commission for purposes of this rule.”

¹⁵ See Penny Stock Rules Adopting Release, 57 FR at 18012 n.64 (setting forth standards the Commission would consider when designating a QEQS). These QEQS designation criteria are based on the Exchange Act Section 17B characteristics of an automated quotation system that would facilitate the widespread dissemination of reliable and accurate last sale and quotation information with respect to penny stocks. See supra note 9 and 15 U.S.C. § 78q-2(b)(1) and (2).

¹⁶ See Letter from Margaret H. McFarland, Deputy Secretary, Securities and Exchange Commission, to Richard Ketchum, Executive Vice President, NASD, Inc., dated December 30, 1992. The Commission thereafter granted the NASD’s request for an extension of QEQS status. See Securities Exchange Act Release No. 38101 (Dec. 31, 1996), 62 FR 1010 (Jan. 7, 1997).

marketplace for OTC Equity Securities, including technological advancements that have led to an increase in alternative IDQs with more extensive functionality than the OTCBB. As a result, market participants no longer quote on the OTCBB.¹⁷ In response to changes in market practices, FINRA has requested that the Commission provide a QEQS Designation to the ORF, a FINRA-operated system that provides last sale information on OTC Equity Securities, together with any FINRA-member Eligible IDQs.¹⁸

FINRA requests this QEQS Designation concurrently with a rule change approval that would terminate the OTCBB, and enhance its oversight of Eligible IDQs (“Rule Change”).¹⁹ FINRA represents that FINRA Rule 6439 (Requirements for Member Interdealer Quotation Systems) will improve the governance of IDQs displaying quotations in OTC Equity Securities, specifically by improving the reliability, integrity, fairness of, and access to quotations for OTC Equity Securities, consistent with the goals of Section 17B.²⁰ Following its effective date, IDQs subject to FINRA Rule 6439 (including Eligible IDQs) are required to:

- (1) Establish, maintain, and enforce, as well as prominently disclose to subscribers (and disclose to prospective subscribers upon request), its written policies and procedures relating to the collection and dissemination of quotation information in OTC Equity Securities;

¹⁷ FINRA states that no firms have quoted on the OTCBB since October 29, 2019. See FINRA Letter at 4.

¹⁸ See FINRA Letter at 1-2.

¹⁹ See Order at 30664-65. Related to terminating the OTCBB, FINRA shall rescind FINRA Rule 6500 Series (OTC Bulletin Board Service), which governs the operation of the OTCBB, and FINRA Rule 7720, which sets the fees applicable to displaying quotations or trading interest in the OTCBB, as well as remove references to the OTCBB in other FINRA rules. See id.

²⁰ See FINRA Letter at 4-5. Rule 6439 applies to all IDQs that permit quotation updates on a real-time basis in OTC Equity Securities. As discussed below, an Eligible IDQ is an IDQ that permits quotation updates on a real-time basis in OTC Equity Securities and that FINRA has determined has in place written policies and procedures reasonably designed to comply with FINRA Rule 6439 before identifying it as an Eligible IDQ on the FINRA website. See discussion in fra note 33 and accompanying text.

- (2) Establish and prominently disclose to subscribers (and disclose to prospective subscribers upon request) its non-discriminatory written standards for granting access to quoting and trading on its system;
- (3) With respect to IDQs that do not automatically execute orders presented for execution against displayed quotations for which a member subscriber has a firm quote obligation pursuant to FINRA Rule 5220, establish, maintain, and enforce written policies and procedures addressing subscriber unresponsiveness with respect to the display of firm quotations in OTC Equity Securities and, unless the member IDQs is subject to Consolidated Audit Trail²¹ reporting, submit reports to FINRA on a monthly basis that include specified order and response information;
- (4) Make available to customers 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; and
- (5) Provide FINRA prompt notification with specified information concerning the integrity of their systems.²²

In advance of the discontinuance of the OTCBB, FINRA has undertaken that it will take steps to ensure a smooth transition for issuers and members.²³ Specifically, although there are no members currently using the OTCBB, FINRA will publicize announcements of the transition through its website.²⁴ Thereafter, FINRA will continue to assess the widespread availability of

²¹ The Consolidated Audit Trail was established pursuant to the National Market System Plan contemplated in Exchange Act Rule 613 of Regulation NMS. 17 CFR 242.613.

²² See Order at 30665-66.

²³ See id. at 30671.

²⁴ See id.

quotation transparency to investors and market participants through non-SRO sources on a regular basis.²⁵ If the availability of quotation information to investors declines, FINRA will revisit and, if necessary, file a proposed rule change to establish an SRO-operated interdealer quotation system (or other measure) to facilitate the type of widespread quotation transparency described in Section 17B of the Act.²⁶

On June 3, 2021, the Division of Trading and Markets approved, pursuant to authority delegated by the Commission, the Rule Change.²⁷

II. Standards for QEQS Designation

As noted above, the Penny Stock Rules permit broker-dealers to rely on pricing information available from a QEQS in fulfilling the disclosure obligations under the rules. The Commission has identified four standards for determining whether a particular system should be designated as a QEQS.²⁸ As explained more fully below, the Commission finds that the FINRA ORF and any Eligible IDQs, when considered together with the requirements of FINRA Rule 6439, satisfy the four standards for QEQS Designation. The Commission understands that at present FINRA anticipates that two members, Global OTC® and OTC Link®, would initially

²⁵ See id.

²⁶ See id. See also FINRA Letter at 11 n.30.

²⁷ See Order at 30671.

²⁸ See supra note 15 and accompanying text.

fall within the scope of the term “Eligible IDQS.”²⁹ The standards for QEQS Designation are as follows:

1. The system is operated by or under the auspices of an SRO, or subject to comparable Commission review and oversight.

The ORF is a system operated by an SRO (FINRA) that provides last sale information on OTC Equity Securities. Eligible IDQSs would operate under the auspices of FINRA: Eligible IDQSs must be FINRA members and, as such, subject to FINRA oversight and obligated to comply with all applicable FINRA rules, including the heightened requirements of FINRA Rule 6439.³⁰ Moreover, FINRA, as an SRO, and an Eligible IDQS, as a registered broker-dealer, are also subject to Commission oversight and review.³¹

FINRA represents it will maintain and keep current a list of each Eligible IDQS on the FINRA website, enabling members and others to ascertain which members fall within the scope of an “Eligible IDQS,” and, when updates are made to this list, communicate this updated information to members through existing communication channels, such as the FINRA weekly

²⁹ See FINRA Letter at 7 nn.16-18 and accompanying text. The QEQS Designation is not limited to these entities. This QEQS Designation would similarly be available to the ORF together with any additional IDQSs that may in the future become subject to FINRA Rule 6439, provided the designation standards outlined herein continue to be satisfied. Id.

³⁰ See supra notes 2-3. See also FINRA Letter at 6 n.14 (describing FINRA’s rules that govern member activity when quoting OTC Equity Securities, including FINRA Rule 6400 Series (Quoting and Trading in OTC Equity Securities) and rules of general applicability that govern quoting and trading practices in the FINRA Rule 5200 Series (Quotation and Trading Obligations and Practices)).

³¹ The Commission has oversight authority, including under Exchange Act Sections 6, 15A, 19 and 21, to require registration of SROs, such as national securities associations and national securities exchanges, to approve and abrogate SRO rules, suspend and revoke SRO registration, censure and impose other sanctions on SROs, review SRO disciplinary actions and investigate potential violations under the Exchange Act and its rules and regulations. 15 U.S.C. §§ 78f, 78o-3, 78s, and 78u. As noted above, IDQSs, as registered broker-dealers, are both operated under the auspices of FINRA and subject to Commission regulation and examination. See supra note 3.

email or by issuing an informational notice.³² Prior to identifying an IDQS as an “Eligible IDQS” on the FINRA website, FINRA will assess whether the IDQS permits quotation updates on a real-time basis and has in place written policies and procedures reasonably designed to comply with FINRA Rule 6439 and, going forward, FINRA will periodically review such members for ongoing compliance with Rule 6439. After the initial effectiveness of FINRA Rule 6439, FINRA will conduct a targeted exam of impacted IDQSS and incorporate a Rule 6439 review as part of the regular exam program for identified Eligible IDQSS.

FINRA intends to identify potential new Eligible IDQSS that may arise in the future based on information received by FINRA in the new and continuing membership application review processes.³³ Where a new system that quotes OTC Equity Securities is identified in a firm’s membership application, FINRA’s assessment will include a determination of whether the system is an IDQS that is subject to Rule 6439 (i.e., the system must meet the definition of IDQS and permit quotation updates on a real-time basis).³⁴ Where such a system is identified, FINRA will perform a review of whether the firm has in place written policies and procedures reasonably designed to comply with FINRA Rule 6439 prior to identifying the new system as an Eligible IDQS on the FINRA website.

Accordingly, the ORF and any Eligible IDQS would satisfy the criterion that the system must be operated by or under the auspices of an SRO by virtue of FINRA’s operation of the system (with regard to the ORF), and an Eligible IDQS’s status as a FINRA member subject to

³² See FINRA Letter at 7. See also supra note 4.

³³ See FINRA Letter at 7.

³⁴ See supra note 4.

FINRA oversight and obligated to comply with all FINRA rules, including the provisions of FINRA Rule 6439.

2. The system collects and disseminates quotation and volume information.

Eligible IDQs, as defined, collect and disseminate quotation information, and the ORF collects and disseminates last sale and volume information.³⁵ An Eligible IDQS is required under FINRA Rule 6439 to adopt written policies and procedures relating to the collection and dissemination of quotation information in OTC Equity Securities, to provide access to its system on a non-discriminatory basis, and to provide its customers with descriptions of all data products offered and related pricing information.³⁶ The ORF will continue to provide last sale price and volume information on OTC Equity Securities, including for penny stock transactions. FINRA represents that transaction reporting through the ORF is comprehensive, because FINRA members generally are required to report substantially all trades in OTC Equity Securities to the ORF within ten seconds of execution, and FINRA widely disseminates this trade information in real time.³⁷

3. The system has effective surveillance capabilities and procedures.

FINRA's oversight over the ORF and Eligible IDQs will provide effective surveillance capabilities and procedures. First, the ORF is an established trade reporting facility that is

³⁵ See supra notes 2 and 3. See also FINRA Letter at 8 n.20 and accompanying text (noting FINRA Rule 6600 Series (OTC Reporting Facility)).

³⁶ See Order at 30667-70; see also FINRA Rule 6439(a) and (b).

³⁷ See FINRA Rule 6622(a)(2); see also FINRA Letter at 8 n.22 (noting real-time last sale price and volume information for transactions in OTC Equity Securities would continue to be disseminated through the Trade Data Dissemination Service under the joint market plans governing unlisted trading privileges, or UTP Plans).

operated by FINRA, which is an SRO subject to Commission oversight.³⁸ As part of its regulatory program, FINRA receives all trades in OTC Equity Securities reported by members to the ORF. Information reported to the ORF is incorporated into a variety of FINRA's automated surveillance reviews, including those that assess member firm compliance with requirements related to best execution, locked or crossed markets, firm quotes, and limit order display.³⁹

Second, Eligible IDQs are FINRA members, subject to FINRA's oversight and examination with regard to their order- or quotation-related activity. Specifically, FINRA Rule 6439 requires each Eligible IDQ to prominently disclose to subscribers (and to prospective subscribers upon request) its quotation policies and system access standard.⁴⁰ FINRA Rule 6439 also requires enhanced reporting of quotation and trade information to FINRA by Eligible IDQs that do not automatically execute orders, which FINRA represents will assist FINRA in surveilling for member compliance with firm quote obligations and unresponsiveness.⁴¹ FINRA further represents that it will examine for compliance with FINRA Rule 6439. Specifically, FINRA will conduct a targeted exam of impacted Eligible IDQs after the initial effectiveness of the rule and incorporate a Rule 6439 review as part of the regular exam program for impacted member firms.⁴² Separately, the quotation information displayed on an Eligible IDQ would be subject to ongoing FINRA surveillance, and FINRA will review for conduct relating to, among

³⁸ See supra note 31.

³⁹ See FINRA Letter at 9.

⁴⁰ See FINRA Rule 6439(a)-(d).

⁴¹ See Order at 30668-69. See also FINRA Rule 6439(a)-(d).

⁴² See Order at 30670. See also FINRA Letter at 7 n.17.

other things, rules that are integral to the integrity of the over-the-counter market.⁴³ As such, based on the above surveillance capabilities, FINRA will effectively surveil Eligible IDQSs and, together with its oversight of members in connection with the reporting of last sale information to the ORF, will have effective surveillance capabilities and procedures in place with regard to the systems that are designated as a QEQS.

4. The system makes widely available, on an electronic basis, bid and offer quotations of participating broker-dealers (or comparably accurate and reliable pricing information), including firm bid or offer quotations for at least such minimum number of shares or dollar amounts as the Commission and the SRO may require.

FINRA expects that by virtue of the definition of IDQS⁴⁴ and applicable FINRA requirements concerning quotation governance, any Eligible IDQS will make quotations “widely available” through subscription agreements with members, vendors, and other market participants.⁴⁵ Consistent with FINRA rules, a member broker-dealer quoting on an IDQS may only display quotations that are accurate and reliable for the minimum number of shares prescribed by FINRA rules.⁴⁶ Further, FINRA Rule 6439 requires an Eligible IDQS to establish policies and procedures that are reasonably designed to ensure that the quotations it receives and

⁴³ See FINRA Letter at 9-11.

⁴⁴ See supra note 4.

⁴⁵ See FINRA Letter at 10-11. Historically, FINRA ORF and OTCBB data has been disseminated through the Level 1 service of the UTP SIP, to which members and other parties can subscribe. The Level 1 feed contains real-time information on quotation data (where available, for OTCBB) and includes last sale ORF data. In addition, members and other parties could access quotation information on individual OTC Equity Securities on a delayed basis, free of charge, through FINRA’s website. See id.

⁴⁶ Specifically, pursuant to FINRA Rules 5210 (Publication of Transactions and Quotations) and 5220 (Offers at Stated Prices), members’ quotations must be *bonafide* and firm (if not identified as indicative). In addition, FINRA Rule 6433 (Minimum Quotation Size Requirements for OTC Equity Securities) sets forth the minimum number of shares of an OTC Equity Security that may be quoted by a member firm on any IDQS. FINRA Letter at 11.

disseminates are informative, reliable, accurate, firm, and treated in a not unfairly discriminatory manner.⁴⁷ The two entities that FINRA currently anticipates initially will meet, together with the ORF, the QEQS designation criteria each make available quotation information on OTC Equity Securities through subscriptions to various data product offerings. One of the entities also currently makes available on its website real-time top-of-book quotation information.⁴⁸

Furthermore, FINRA will continue to collect and disseminate last sale transaction information through the ORF and, therefore, will continue to operate a system that facilitates the widespread dissemination of reliable and accurate last sale information with respect to OTC equity securities, including penny stocks.⁴⁹ Specifically, real-time last sale price and volume information for transactions in OTC Equity Securities, including for penny stock transactions, will continue to be disseminated through the Trade Data Dissemination Service.⁵⁰ Also, and importantly, FINRA has undertaken to assess regularly the widespread availability of quotation transparency to investors and market participants through member IDQSSs.⁵¹ If FINRA detects a

⁴⁷ See Order at 30668, and FINRA Rule 6439(a)-(d). Also, the system integrity requirements in FINRA Rule 6439(f) would help alert FINRA if there is an issue with an Eligible IDQS that could adversely affect the reliability, availability, or integrity of quotes. Specifically, when an Eligible IDQS reasonably becomes aware of any non-de minimis systems disruption that degrades, limits, or otherwise impacts its functionality with respect to trading or the dissemination of market data, the Eligible IDQS must provide FINRA with prompt notification, that includes a brief description of the event, its impact, and the resolution efforts. FINRA Rule 6439(f). An Eligible IDQS that is subject to the operational capability requirements of Regulation SCI may satisfy FINRA Rule 6439(f) by providing FINRA the same information submitted to the Commission under Regulation SCI Rule 1002(b). 17 CFR 242.1000 et seq.

⁴⁸ See FINRA Letter at 11.

⁴⁹ See supra note 39 and accompanying text.

⁵⁰ See FINRA Letter at 8 n.22 and accompanying text. See also supra note 37.

⁵¹ See Order at 30671. FINRA also has undertaken to maintain a list of each Eligible IDQS on its website and has committed to monitor the availability of quotation information available to investors and market participants from non-SRO sources, such as Eligible IDQSSs, on a regular basis. If the availability of quotation information to investors declines, FINRA will revisit it and, if necessary to facilitate the type of widespread quotation transparency described in Section 17B of the Act, file a proposed rule change to establish an SRO-operated IDQS (or other measure). FINRA's assessment will include a review of the

decline in available quotation information, FINRA has represented that it will revisit, and if necessary, file a proposed rule change to establish an SRO-operated IDQS or other measure consistent with Exchange Act Section 17B.⁵² FINRA's continued operation of the ORF to centralize last sale transaction reporting, along with FINRA's commitment to regularly assess the widespread availability of quotation transparency and to take any appropriate or necessary measures if there is a decline in available quotation information, help to address concerns about potential future unavailability of penny stock pricing information on a QEQS. FINRA also undertakes to make publicly available and keep current the list of Eligible IDQs that, together with the ORF, would meet the standards for QEQS Designation.⁵³

III. QEQS Designation

As explained in the Penny Stock Rules Adopting Release, if a system does not meet the requirements of Section 17B(b)(2) of the Exchange Act, the Commission will consider designating it or another system as a QEQS for purposes of compliance with the Penny Stock Rules.⁵⁴ The designation of the FINRA ORF, together with any Eligible IDQs, as a QEQS would facilitate the operation of the Penny Stock Rules, and would permit broker-dealers to satisfy their identification, pricing, and other disclosure obligations under the Penny Stock Rules.

availability of quotation information on the website of an Eligible IDQS, the costs associated with Eligible IDQS data products, and outreach to members. See FINRA Letter at 7 nn.16-19 and 11 n.30.

⁵² See Order at 30671. See also FINRA Letter at 11 n.30.

⁵³ See FINRA Letter at 7 n.16-19.

⁵⁴ See supra note 15 and accompanying text.

It also would support the market structure in OTC Equity Securities that are penny stocks upon the termination of the OTCBB.

For the reasons set forth above, the Commission hereby designates the FINRA ORF, together with any member Eligible IDQS, as a QEQS for purposes of the Penny Stock Rules. This designation is effective on the effective date of FINRA Rule 6439.⁵⁵

By the Commission,

J. Matthew DeLesDernier
Assistant Secretary

⁵⁵ FINRA requests that the QEQS Designation become effective on the date that Rule 6439 (except for Rule (d)(1)(B)) is effective. The effective date for deleting the rules related to the OTCBB will not occur until FINRA Rule 6439 (except for Rule 6439(d)(1)(B)) is effective and at least one Eligible IDQS has been listed on the FINRA website. Paragraph (d)(1)(B) of FINRA Rule 6439 (requiring reporting of specified order-level information) shall 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). FINRA states it requests the delay in implementing FINRA Rule 6439(d)(1)(B) to avoid requiring its members to expend resources to prepare to report order-level data under this provision for only a relatively short period of time if CAT reporting of this information will be forthcoming. See FINRA Letter at 5 n.13 and Order at 30666 n.46.