



October 13, 2009

Ms. Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: SR-FINRA-2009-054 (Release No. 34-60515):
Proposed rule change to adopt FINRA Rules 6434 (Minimum Price
Increment for OTC Equity Securities), 6437 (Prohibition from Locking or
Crossing Quotations in OTC Equity Securities), 6450 (Restrictions on Access
Fees) and 6460 (Display of Customer Limit Orders)

Dear Ms. Murphy:

The Securities Industry and Financial Markets Association (“SIFMA”)¹ appreciates the opportunity to comment on FINRA’s recent rule filing, in which FINRA proposes to adopt Rule 6434 (Minimum Price Increment for OTC Equity Securities), Rule 6437 (Prohibition from Locking or Crossing Quotations in OTC Equity Securities), Rule 6450 (Restrictions on Access Fees) and Rule 6460 (Display of Customer Limit Orders).

SIFMA notes that it filed a comment letter in February 2006 on a similar proposal filed by FINRA’s predecessor, the NASD, expressing numerous concerns.² In this regard, we wish to incorporate by reference the comments set forth therein, as they apply

¹ The Securities Industry and Financial Markets Association brings together the shared interests of more than 600 securities firms, banks and asset managers. SIFMA’s mission is to promote policies and practices that work to expand and perfect markets, foster the development of new products and services and create efficiencies for member firms, while preserving and enhancing the public’s trust and confidence in the markets and the industry. SIFMA works to represent its members’ interests locally and globally. It has offices in New York, Washington D.C., and London and its associated firm, the Asia Securities Industry and Financial Markets Association, is based in Hong Kong.

² http://www.sifma.org/regulatory/comment_letters/comment_letter_archives/CommentLetter-SR-NASD-2005-095-Feb17-2006.pdf

for the most part to the instant rule proposals as well. In addition, we wish to note that SIFMA firms generally agree with the arguments articulated in the comment letter filed recently by Knight Capital Group, Inc. on this recent FINRA rule filing, and thus incorporate by reference those arguments herein as well.³

SIFMA recognizes that FINRA has been reviewing the regulations that pertain to the OTC equity market, with the goal of making them consistent wherever appropriate with those regulations imposed on the listed equity markets by Regulation NMS. Usually, SIFMA firms are the first to applaud efforts by regulators to achieve consistency in regulations across markets; such consistency contributes considerably to the efficiency and vibrancy of our markets. However, in this case, SIFMA firms believe that the structure of the OTC equity market is substantially different from the NMS marketplace, such that particular care should be taken in any rulemaking effort to recognize these differences and to ensure that any new regulations do not inadvertently harm the OTC equity market.

In this regard, SIFMA firms have considerable concerns that these new FINRA rule proposals could have a net negative impact on the OTC market, which is already less liquid and therefore more fragile than the NMS market. Not only the OTC market but of course the investors that use it could potentially be harmed by these rule changes as they are presently proposed.

Overall, firms believe that FINRA's new rule proposals are not necessary and therefore should be discarded or at least clarified. Specifically,

- **Proposed Rule 6434** to prohibit sub-penny quoting in stocks priced above \$1.00 a share (similar to the prohibition in Regulation NMS for NMS stocks) and to introduce a smaller trading increment for stocks priced below that amount:
 - Most SIFMA firms see no evidence that the OTC equity market has been harmed by stocks priced above \$1.00 a share trading in sub-penny increments, and therefore recommend that this rule change not be adopted.⁴ Indeed, SIFMA believes that such traditionally less liquid stocks have benefited from this feature. SIFMA firms also are concerned with the proposal to allow for a price increment of \$0.000001 for stocks priced below \$0.01 a share. SIFMA firms believe that this change could lead to considerable operational difficulties, and potentially negatively impact the integrity of the OTC equity market. SIFMA believes that FINRA should discard this rule proposal.

³ <http://www.sec.gov/comments/sr-finra-2009-054/finra2009054-6.pdf>

⁴ At least one firm, however, does support FINRA's proposal to prohibit the trading in sub-penny increments of stocks priced at \$1.00 a share or over.

- **Proposed Rule 6437** to prohibit the locking or crossing of quotations in OTC equity securities:
 - SIFMA firms support, in general, regulatory efforts to discourage the locking and crossing of markets. SIFMA is not convinced, however, that the OTC equity market has been experiencing significant difficulties in this regard, and to a degree that this rule change is warranted. SIFMA believes that the OTC equity market has in fact experienced only a minor degree of locked and crossed markets, due in large part to the current requirement for market participants to display access fees in a quote. Indeed, SIFMA is concerned that, if Rule 6450 is adopted and the display requirement is eliminated, then there could actually be an increase in the number of locked and crossed markets in the OTC equity market.

- **Proposed Rule 6450** to allow market participants to charge non-subscriber access fees but without having to display that fee in their quotation.
 - This rule change, if adopted, would therefore favor – or encourage – one business model over another. SIFMA does not believe that FINRA and the SEC should sanction an approach that favors one type of business model over another in such a manner. In addition, this rule change could encourage more locked and crossed markets, as mentioned above, as well as create considerable confusion in the market due to less transparency. Many of the arguments made in this regard in SIFMA’s February 2006 letter still hold, including the following:
 - Elimination of this requirement [the requirement for a participant ECN or ATS to reflect non-subscriber access fees in their posted quotes on the OTCBB] would result in an unlevel playing field in the OTCBB market, if in fact only an ECN or ATS could charge access fees to non-subscribers in the OTCBB and not display that fee in their posted quotes on the OTCBB.
 - The current pricing practice should remain, as it offers greater transparency – what you see is what you get.
 - Access fees tend to be a larger problem with low-priced securities and, since there do not appear to be any sub-penny quoting issues with regard to including fees in the quote if the quote is below \$1.00, the status quo should remain.
 - Elimination of this requirement would distort the time/price auction with undue parity given to an inferior net price.
 - Elimination of this requirement would reduce displayed liquidity and encourage instead undisplayed sub-penny price jumping.
 - Since no ECN or ATS currently charges a non-subscriber access fee, they must not be experiencing any adverse effect on their business model that needs addressing.

- **Proposed Rule 6460** to require the display of limit orders in the OTC equity market.
 - Although this proposal may be less problematic than the others, SIFMA firms believe that, at a minimum, this proposed rule change should be clarified. Specifically, it is unclear what the appropriate definition of “block-size” should be in the OTC market based upon the lack of liquidity in these types of securities. Again, the definition should take into account the differences between the OTC market and the NMS marketplace. We believe that the current minimum quote size (tier sizes in OTC equities based on prevailing price) is a much better standard for the required display size. This would significantly decrease the chance of a client order being disadvantaged and still allow for execution as it would be continuously displayed until the time that the order is completed or decremented below tier size. SIFMA would welcome the opportunity to work with FINRA and/or the SEC to craft such a definition and to otherwise ensure that the application of this rule is clear and appropriate.

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As noted above, SIFMA strongly recommends that FINRA reconsider these proposed rule changes, and that the Commission not approve them as written. If you have any questions or require additional information, please do not hesitate to contact me at 202-962-7300. Thank you.

Sincerely,

Ann L. Vlcek
 Managing Director and
 Associate General Counsel

cc: The Hon. Mary Schapiro, Chairman
 The Hon. Kathleen Casey, Commissioner
 The Hon. Troy Paredes, Commissioner
 The Hon. Elisse Walter, Commissioner
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