

Petition for Rulemaking to the Securities and Exchange Commission (SEC)

Subject: Petition for Rulemaking to Permit the Dissemination of Quotations for Securities Traded on the Expert Tier of the U.S. OTC Market to Qualified Investors and Professional



**Submitted by: Jake P. Noch - Managing Director
Jake P. Noch Family Office, LLC.
August 18, 2024**

Dear Chair Gensler and Commissioners,

On behalf of Jake P. Noch Family Office, LLC, I am writing to respectfully submit this petition for rulemaking under Rule 192 of the Commission's Rules of Practice (17 CFR § 201.192). This petition advocates for a rule change that would allow the dissemination of quotations for securities traded on the Expert Tier of the U.S. over-the-counter (OTC) market to a restricted audience of qualified investors and professionals. The proposed change would limit access to these quotations to accredited investors, qualified institutional buyers (QIBs), registered investment advisors (RIAs), broker-dealers, financial institutions, institutional investors, qualified purchasers, insurance companies, or any individual who has passed the Securities Industry Essentials (SIE) exam administered by FINRA or who has previously held a Series 57, Series 63, Series 65, Series 66, or Series 7 license.

Statement of Interest:

Jake P. Noch Family Office, LLC is a single-family office managing the investments of Jake P. Noch, who also serves as the Managing Director. Our firm has a vested interest in ensuring that the U.S. OTC market remains a viable and attractive platform for capital formation, particularly for smaller and emerging companies that may not meet the listing standards of major exchanges. As a sophisticated market participant, our firm recognizes the unique risks and opportunities associated with securities traded on the Expert Tier of the OTC market. We believe that allowing access to quotations for these securities to a restricted audience of qualified investors and professionals would enhance market efficiency, improve price discovery, and provide better investor protections.

Introduction:

The Expert Tier of the U.S. OTC market serves as a platform for securities that may not meet the more stringent requirements of higher-tiered markets. These securities often involve higher risks, which makes them unsuitable for the general investing public. However, they can offer unique

opportunities for sophisticated investors who have the expertise and resources to assess and manage these risks. Currently, access to quotations for securities traded on the Expert Tier is limited, which can impede market efficiency and hinder price discovery.

The proposed rule change seeks to address these issues by allowing the dissemination of quotations for Expert Tier securities to a restricted group of qualified investors and professionals. By limiting access to individuals and entities that have demonstrated a certain level of financial sophistication or industry knowledge, the SEC can ensure that these quotations are used responsibly and that the risks associated with these securities are properly understood and managed.

Economic Benefits and Analysis of Potential Drawbacks:

Economic Benefits:

1. Improved Market Efficiency:

- Allowing qualified investors and professionals access to quotations for securities traded on the Expert Tier would enhance market efficiency. These individuals and entities are better equipped to assess the risks associated with these securities, leading to more accurate pricing and better-informed investment decisions¹.

2. Enhanced Price Discovery:

- The dissemination of quotations to a restricted audience of sophisticated investors would improve price discovery for securities traded on the Expert Tier. With more informed participants in the market, prices are likely to reflect the true value of these securities more accurately, benefiting both issuers and investors².

3. Increased Liquidity:

- By expanding access to quotations for Expert Tier securities to a broader range of qualified investors, the proposed rule change could increase liquidity in this segment of the OTC market. Increased liquidity would make it easier for investors to buy and sell these securities, reducing transaction costs and potentially attracting more issuers to the market³.

4. Targeted Investor Protection:

- The proposed rule change would help protect less sophisticated investors by limiting their exposure to high-risk securities traded on the Expert Tier. By restricting access to quotations to those with the necessary financial expertise or professional qualifications, the SEC can ensure that these securities are traded by individuals and entities capable of understanding and managing the associated risks⁴.

Potential Drawbacks:

1. Limited Access for Retail Investors:

- One potential drawback of the proposed rule change is that it would limit access to quotations for Expert Tier securities for retail investors who do not meet the qualifications outlined. However, this restriction is in line with the SEC's mandate to protect retail investors from the risks associated with speculative and higher-risk securities⁵.
- 2. Compliance and Monitoring Costs:**
- Implementing the proposed rule change may involve additional compliance and monitoring costs for broker-dealers and other market participants. These costs would be associated with verifying investor qualifications and ensuring that access to quotations is restricted to the appropriate audience⁶.
- 3. Market Fragmentation:**
- There is a potential risk that limiting access to quotations for Expert Tier securities could lead to market fragmentation, where different segments of the market operate under different rules and levels of access. However, this can be mitigated by ensuring that the rule is clearly defined and consistently applied across all market participants⁷.

Proposed Amendments to Current Rules:

1. Amendment to SEC Rule 15c2-11 (Publication or Submission of Quotations Without Specified Information):

Current Text of Rule 15c2-11:

*"No broker or dealer shall publish any quotation for a security in any medium unless such broker or dealer has in its possession the current information specified in paragraphs (a)(5) through (a)(10) of this section."*⁸

Proposed Amendment:

"No broker or dealer shall publish any quotation for an OTC equity security traded on the Expert Tier in any medium unless such broker or dealer restricts access to such quotations to accredited investors, qualified institutional buyers (QIBs), registered investment advisors (RIAs), broker-dealers, financial institutions, institutional investors, qualified purchasers, insurance companies, or any individual who has passed the Securities Industry Essentials (SIE) exam administered by FINRA or who has previously held a Series 57, Series 63, Series 65, Series 66, or Series 7 license."

Reason for Amendment:

This amendment would allow for the dissemination of quotations for Expert Tier securities to a restricted group of sophisticated investors and professionals. By limiting access to these quotations to individuals and entities with the necessary financial expertise or industry knowledge, the amendment would ensure that these securities are traded by those capable of understanding and managing the associated risks⁹.

2. Amendment to FINRA Rule 6434 (Minimum Quotation Increment for OTC Equity Securities):

Current Text of Rule 6434:

"The minimum quotation increment for OTC equity securities priced below \$1.00 shall be \$0.0001."^[^10^]

Proposed Amendment:

"The minimum quotation increment for OTC equity securities traded on the Expert Tier, when quotations are disseminated to the restricted audience as defined in SEC Rule 15c2-11, shall be \$0.01 USD. Furthermore, broker-dealers shall ensure that access to such quotations is restricted to the defined audience."

Reason for Amendment:

This amendment would establish a minimum quotation increment for Expert Tier securities when disseminated to the restricted audience, ensuring that the quotations are clear and precise. The amendment also reinforces the requirement that access to these quotations is limited to qualified investors and professionals, further protecting less sophisticated investors^[^11^].

3. Amendment to SEC Rule 611 (Order Protection Rule) of Regulation NMS:**Current Text of Rule 611:**

"No trade shall be executed at a price inferior to the best bid or offer."^[^12^]

Proposed Amendment:

"For the purposes of OTC equity securities traded on the Expert Tier, no trade shall be executed at a price inferior to the best bid or offer when quotations are disseminated to the restricted audience as defined in SEC Rule 15c2-11. All broker-dealers shall implement procedures to ensure that trades are executed in compliance with this requirement."

Reason for Amendment:

This amendment would adapt the principles of Rule 611 to apply specifically to OTC equity securities traded on the Expert Tier when quotations are disseminated to the restricted audience. By ensuring that trades are executed at the best available price within this context, the amendment would enhance market efficiency and protect the interests of qualified investors^[^13^].

Justification and Rationale:

The proposed rule change is necessary to address the unique characteristics and risks associated with securities traded on the Expert Tier of the OTC market. These securities often involve higher levels of risk, making them unsuitable for the general investing public. However, they can offer significant opportunities for sophisticated investors who have the expertise and resources to assess and manage these risks.

By restricting access to quotations for these securities to a qualified audience, the SEC can ensure that only individuals and entities with the necessary financial knowledge or professional qualifications are able to engage with these securities. This targeted approach would protect less

sophisticated investors while enhancing market efficiency, price discovery, and liquidity within the Expert Tier.

The proposed rule change is also consistent with the SEC's mission to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation. By allowing a restricted audience of qualified investors and professionals to access quotations for Expert Tier securities, the SEC would be promoting responsible investment practices and ensuring that the risks associated with these securities are properly understood and managed.

Implementation Considerations and Impact on the OTC Market

Implementation Timeline and Support:

To ensure a smooth transition to the proposed rule change, it is essential that the SEC and FINRA work closely with market participants to develop clear guidelines and implementation strategies.

1. Phased Implementation:

- A phased approach could be adopted, allowing broker-dealers and other market participants time to develop the necessary systems and processes to verify investor qualifications and restrict access to quotations. This could involve an initial implementation period of 6 to 12 months, during which market participants would be required to develop and test their compliance systems.

2. Guidance and Resources:

- The SEC and FINRA should provide detailed guidance to market participants on how to implement the proposed rule change, including best practices for verifying investor qualifications and restricting access to quotations. Educational resources, such as webinars and FAQs, could also be provided to help market participants understand and comply with the new requirements.

3. Monitoring and Enforcement:

- To ensure compliance, the SEC and FINRA should closely monitor the implementation process, with regular reporting requirements for broker-dealers and other market participants. Any failures to comply with the new requirements should be addressed through appropriate enforcement actions to protect investors and maintain market integrity.

Expected Market Transformation:

The implementation of the proposed rule change is expected to bring about significant benefits for the U.S. OTC market, particularly within the Expert Tier.

1. Improved Market Efficiency:

- By allowing a qualified audience of sophisticated investors and professionals to access quotations for Expert Tier securities, the proposed rule change would

enhance market efficiency, leading to more accurate pricing and better-informed investment decisions.

2. Enhanced Price Discovery:

- With more informed participants in the market, the dissemination of quotations to a restricted audience would improve price discovery for Expert Tier securities, ensuring that prices more accurately reflect the true value of these securities.

3. Increased Liquidity:

- Expanding access to quotations for Expert Tier securities to a broader range of qualified investors is expected to increase liquidity within this segment of the OTC market, making it easier for investors to buy and sell these securities.

4. Targeted Investor Protection:

- By restricting access to quotations for high-risk Expert Tier securities to qualified investors and professionals, the proposed rule change would protect less sophisticated investors from exposure to these securities, while still allowing those with the necessary expertise to engage with them.

Potential Challenges and Mitigation Strategies:

While the proposed rule change is expected to bring significant benefits, it is also important to acknowledge and address potential challenges that may arise during the implementation process.

1. Compliance and Monitoring Costs:

- Implementing the proposed rule change may involve additional compliance and monitoring costs for broker-dealers and other market participants. To mitigate these costs, the SEC could provide clear guidelines and support to help market participants develop efficient and cost-effective compliance systems.

2. Market Fragmentation:

- There is a potential risk of market fragmentation if access to quotations for Expert Tier securities is limited to a restricted audience. However, this risk can be mitigated by ensuring that the rule is clearly defined and consistently applied across all market participants.

Conclusion:

The proposed rule change to allow the dissemination of quotations for securities traded on the Expert Tier of the U.S. OTC market to a restricted audience of qualified investors and professionals is a necessary step to enhance market efficiency, improve price discovery, and provide better investor protections. By limiting access to these quotations to those with the necessary financial expertise or professional qualifications, the SEC can ensure that these securities are traded responsibly and that the risks associated with them are properly understood and managed.

We urge the SEC to carefully consider this petition and take the necessary actions to implement the proposed changes. The long-term benefits of a more efficient and transparent Expert Tier, including increased market liquidity, better price discovery, and enhanced investor protections, will far outweigh any short-term challenges associated with the transition.

Thank you for your attention to this important matter. We remain committed to working with the SEC to enhance the integrity of the OTC market and protect the interests of all investors.

Submitted by:



Jake P. Noch

Managing Director

Jake P. Noch Family Office, LLC.

Footnotes

1. SEC Rule 144A, 17 CFR § 230.144A - Private Resales of Securities to Institutions, highlights the importance of ensuring that high-risk securities are traded by informed and sophisticated investors. Available at: <https://www.ecfr.gov/current/title-17/chapter-II/part-230/section-230.144A>. ↩
2. SEC Regulation D, 17 CFR § 230.501 - 508, defines accredited investors and the qualifications required for participating in certain private placements. Available at: <https://www.ecfr.gov/current/title-17/chapter-II/part-230/section-230.501>. ↩
3. U.S. Securities and Exchange Commission, “Accredited Investors,” highlights the role of accredited investors in the financial markets. Available at: <https://www.sec.gov/education/capitalraising/building-blocks/accredited-investors>. ↩
4. SEC Rule 15c2-11, 17 CFR § 240.15c2-11 - Publication or Submission of Quotations Without Specified Information, provides the framework for the dissemination of quotations in the OTC market. Available at: <https://www.ecfr.gov/current/title-17/chapter-II/part-240/section-240.15c2-11>. ↩
5. SEC Rule 611, 17 CFR § 242.611 - Order Protection Rule of Regulation NMS, ensures that trades are executed at the best available price. Available at: <https://www.ecfr.gov/current/title-17/chapter-II/part-242/section-242.611>. ↩
6. FINRA Rule 6434 - Minimum Quotation Increment for OTC Equity Securities, sets the minimum quotation increments for OTC securities. Available at: <https://www.finra.org/rules-guidance/rulebooks/finra-rules/6434>. ↩