

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-73340; File No. SR-FINRA-2014-042)

October 10, 2014

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Implementation Date of Market Participant Identifier Requirements for Alternative Trading Systems

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 2, 2014, Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a “non-controversial” rule change under paragraph (f)(6) of Rule 19b-4 under the Act,³ which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to postpone until February 2, 2015, the implementation date of the requirement that alternative trading systems (“ATs”) use unique market participant identifiers (“MPIDs”) when reporting order and trade information to FINRA.

The proposed rule change does not make any changes to the text of FINRA rules.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

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

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

On January 17, 2014, the Commission approved SR-FINRA-2013-042, a proposed rule change to (i) adopt Rule 4552 to require ATSS to report to FINRA weekly volume information and number of trades regarding securities transactions within the ATS; and (ii) amend Rules 6160, 6170, 6480, and 6720 to require each ATS to acquire and use a single, unique MPID when reporting information to FINRA.⁴ Rule 4552 was implemented on May 12, 2014, and the MPID requirement for ATSS is currently scheduled to be implemented on November 10, 2014.⁵ The proposed rule change postpones the implementation date for ATSS to comply with the new MPID requirement until February 2, 2015.

⁴ See Securities Exchange Act Release No. 71341 (January 17, 2014), 79 FR 4213 (January 24, 2014) (Order Approving SR-FINRA-2013-042). On April 3, 2014, FINRA filed with the Commission for immediate effectiveness a proposed rule change to amend Rules 6160, 6170, 6480, and 6720 to permit an ATS that trades both TRACE-Eligible Securities and equity securities (OTC Equity Securities or NMS stocks) to use two MPIDs, rather than a single unique MPID, if each MPID is used exclusively for either TRACE-Eligible Securities or equity securities. See Securities Exchange Act Release No. 71911 (April 9, 2014), 79 FR 21316 (April 15, 2014).

⁵ See Regulatory Notice 14-07 (February 2014).

At the time FINRA filed SR-FINRA-2013-042, FINRA recognized that “given the potential systems changes required by the MPID requirement, FINRA will provide additional time for firms to implement the MPID requirement.”⁶ Because of the time necessary to make many of these systems changes, FINRA also noted in its response to comments on SR-FINRA-2013-042 that “FINRA believes increased transparency in the over-the-counter market is necessary and beneficial and can be more readily achieved through reporting requirements before the MPID requirement is implemented. Consequently, FINRA declines to eliminate the reporting requirement from the first phase of the Proposal but reaffirms its commitment to reassessing its need following implementation of the MPID requirement.”⁷ The self-reporting requirements in Rule 4552 were implemented on May 12, 2014, and FINRA began publishing ATS data on June 2, 2014; consequently, the transparency benefits of the new self-reporting rule are already in place, and ATS volume information is currently available on FINRA’s web site.⁸

For the past several months, FINRA staff has been discussing implementation issues arising with the MPID requirement with various ATSs and industry trade groups. In large part, these issues involved specific, detailed scenarios ATSs must program for to report trades to a FINRA trade reporting facility or to report order information to FINRA’s Order Audit Trail System (“OATS”). In response to these inquiries, FINRA published written guidance for ATSs on trade reporting and OATS reporting on September 15, 2014.⁹ As part of this guidance,

⁶ Securities Exchange Act Release No. 70676 (October 11, 2013), 78 FR 62862, 62856 (October 22, 2013) (Notice of Filing of SR-FINRA-2013-042).

⁷ Letter from Brant K. Brown, Associate General Counsel, FINRA, to Elizabeth Murphy, Secretary, SEC, dated January 15, 2014, at 7.

⁸ FINRA has created a page on its website dedicated to the new ATS requirements, including a link to the ATS data reported pursuant to Rule 4552. See www.finra.org/ats.

⁹ See www.finra.org/Industry/Compliance/MarketTransparency/ATS/FAQ/.

FINRA clarified ATSS' trade reporting obligations regarding the appropriate indication of MPIDs in various trade reporting scenarios, the use of tape and non-tape reports for ATS transactions, the capacity of ATSS on trade reports, and the inclusion of short sale indicators on trade reports.

Members have requested that FINRA postpone the implementation date for the ATS MPID requirement so that members can ensure that their trade reports and OATS reports comply with this guidance. FINRA believes that it would be beneficial to postpone the implementation date by approximately three months to provide firms with sufficient time to incorporate this guidance into their coding for the MPID requirement. A postponement should help ensure that firms are consistently reporting similar information to FINRA and that FINRA's audit trail information is correct and reliable. FINRA believes that, if additional time is not provided, firms may not be ready to comply with the new guidance by November 10, 2014, and FINRA's audit trail could be less accurate as a result.

FINRA has filed the proposed rule change for immediate effectiveness. The effective date and the implementation date will be the date of filing, October 2, 2014.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,¹⁰ which requires, among other things, that FINRA rules must be designed 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 believes postponing the implementation date of the ATS MPID requirement by three months will provide firms with sufficient time to incorporate FINRA's new trade reporting and OATS guidance into their coding

¹⁰ 15 U.S.C. 78o-3(b)(6).

for the MPID requirement. This additional time should help ensure that firms are reporting information to FINRA so that FINRA's audit trail information is consistent, correct, and reliable. FINRA believes that, if additional time is not provided, firms may not be ready to comply with the new guidance and FINRA's audit trail could be less accurate. Inconsistent reporting of ATS order and trade information could also adversely affect FINRA's ability to rely on automated surveillance patterns to detect potential misconduct.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. FINRA believes that extending the implementation date of the new ATS MPID requirement will provide firms with needed additional time so that they can better comply with recently-issued FINRA guidance on an ATS's trade reporting and OATS obligations.

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

Written comments were neither solicited nor received.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time

as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹¹ and Rule 19b-4(f)(6) thereunder.¹²

FINRA has requested that the Commission waive the 30-day operative delay, so that the proposed rule change would be operative on filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. By making the proposed rule change operative immediately FINRA's ATS members can immediately be afforded notice of the additional time available for compliance with the MPID requirement. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposed rule change operative upon filing.¹³

At any time within 60 days of the filing of the 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 to determine whether the proposed rule should be approved or disapproved.

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change along with a brief description and text of the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

¹³ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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 e-mail to rule-comments@sec.gov. Please include File Number SR-FINRA-2014-042 on the subject line.

Paper comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549.

All submissions should refer to File Number SR-FINRA-2014-042. This file number should be included on the subject line if e-mail 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 such filing also will be available for inspection and copying at the

principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FINRA-2014-042 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Kevin M. O'Neill
Deputy Secretary

¹⁴ 17 CFR 200.30-3(a)(12).