

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-79289; File No. SR-FINRA-2016-041)

November 10, 2016

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Implementation Date for Alternative Trading Systems to Report Sequence Numbers Under Rule 4554

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 November 8, 2016, 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.

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

FINRA is proposing to delay implementation of Rule 4554(b)(8). The proposed rule change would not make any other changes to FINRA rules.

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

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

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, the Proposed Rule Change

1. Purpose

In May 2016, the SEC approved Rule 4554 to further enhance FINRA’s ability to reconstruct an ATS’s order book and better perform its order-based surveillance, which includes surveillance for layering, quote spoofing, and mid-point pricing manipulation. To accomplish this, Rule 4554 requires ATSs to report order information for each order they receive in an NMS stock beyond that set forth in the OATS rules, such as order re-pricing events (e.g., changes to an order that is pegged to the National Best Bid or Offer (“NBBO”)) and order display and reserve size information.⁴ Rule 4554 sets forth four categories of reporting requirements: (1) data to be reported by all ATSs at the time of order receipt; (2) data to be reported by all ATSs at the time of order execution; (3) data to be reported by ATSs that display subscriber orders; and (4) data specific to ATSs that are registered as ADF Trading Centers.

Rule 4554(b) requires that all ATSs report eight categories of information at the time of order receipt, including the sequence number assigned to the order event by the ATS’s matching engine.⁵ When FINRA announced the SEC’s approval of Rule 4554, it established an

⁴ See Securities Exchange Act Release No. 77798 (May 10, 2016), 81 FR 30395 (May 16, 2016) (SR-FINRA-2016-010). Some of these requirements do not apply to all ATSs.

⁵ Rule 4554(b)(8). Rule 4554(b) also requires all ATSs, at the time of order receipt, to report: (1) whether the ATS displays subscriber orders outside of the ATS and, if the ATS displays subscriber orders outside of the ATS, whether subscriber orders are displayed to subscribers only, or are distributed for publication in the consolidated quotation data; (2) whether the ATS is an ADF Trading Center as defined in FINRA Rule 6220; (3) whether the order can be routed away from the ATS for execution; (4) whether there are any counter-party restrictions on the order; (5) a unique identifier representing the specific order type other than market and limit orders that have no other special

implementation date of November 7, 2016; however, FINRA noted that it anticipated submitting a proposed rule change to the SEC that would require ATSS to provide a sequence number for all OATS event types.⁶ FINRA noted that it “is deferring the implementation of this requirement to report a sequence number for new orders.”⁷ In this proposed rule change, FINRA is proposing that the requirement that ATSS report a sequence number when reporting new orders not be implemented on November 7, 2016.

FINRA anticipates filing a proposed rule change with the SEC in the near future to extend the requirement to report a sequence number beyond order receipt because, without a sequence number on all order events, FINRA is unable to properly sequence events when a single ATS MPID reports order events in the same symbol with identical timestamps. However, because a proposed rule change has not yet been filed, FINRA is filing this proposed rule change to delay the implementation of the requirement in Rule 4554(b)(8) that ATSS report the sequence number assigned to the order event by the ATS’s matching engine at the time of order receipt. FINRA will announce the implementation date for this requirement at the time it announces the implementation date for the extension of the requirement to all OATS order events.

FINRA has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, so FINRA can implement the proposed rule change immediately.

handling instructions; (6) the NBBO (or relevant reference price) in effect at the time of order receipt and the timestamp of when the ATS captured the effective NBBO (or relevant reference price); and (7) the market data feed the ATS used to obtain the NBBO (or relevant reference price).

⁶ See Regulatory Notice 16-28, at n.3 (August 2016).

⁷ Id.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁸ 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 the proposed rule change is consistent with the Act in that it will provide ATSS with additional time to implement the requirement in Rule 4554(b)(8) and will not require ATSS to begin reporting the sequence number assigned to the order event by the ATS's matching engine at the time of order receipt until such time as sequence numbers are required for all OATS event types.

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. The proposed delay in implementation of Rule 4554(b)(8) will reduce the burden on members by allowing additional time to implement the requirement to report the sequence number assigned to the order event by the ATS's matching engine at the time of order receipt.

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

⁸ 15 U.S.C. 78o-3(b)(6).

Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act⁹ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹⁰

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)¹¹ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. FINRA has requested that the Commission waive the 30-day operative delay so that the proposed rule change will become operative on filing. FINRA stated that it anticipates extending the requirement to report a sequence number beyond order receipt because, without a sequence number on all order events, FINRA is unable to properly sequence events when a single ATS MPID reports order events in the same symbol with identical timestamps. However, because a proposed rule change has not been filed, FINRA is delaying the implementation of the requirement in Rule 4554(b)(8). For these reasons, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission designates the proposed rule change to be operative upon filing.¹²

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

⁹ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁰ 17 CFR 240.19b-4(f)(6).

¹¹ 17 CFR 240.19b-4(f)(6)(iii).

¹² For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

Commission shall institute proceedings 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 e-mail to rule-comments@sec.gov. Please include File Number SR-FINRA-2016-041 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-FINRA-2016-041. 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-2016-041, 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.¹³

Brent J. Fields
Secretary

¹³ 17 CFR 200.30-3(a)(12).