

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-77269; File No. SR-FINRA-2016-010)

March 1, 2016

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change to Adopt FINRA Rule 4554 (Alternative Trading Systems - Recording and Reporting Requirements of Order and Execution Information for NMS Stocks)

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 February 29, 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, II, and III below, which Items have been prepared by FINRA. 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 the Substance of the Proposed Rule Change

FINRA is proposing to adopt FINRA Rule 4554 to require alternative trading systems (“ATs”) to submit additional order information to FINRA.

The text of the proposed rule change is available on FINRA’s website at <http://www.finra.org>, at the principal office of FINRA and at the Commission’s Public Reference Room.

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.

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

FINRA is proposing to adopt FINRA Rule 4554 to require ATs to report additional order information to FINRA. While ATs already submit order information to FINRA that is required by the Order Audit Trail System (“OATS”) rules, there is additional order information not currently required to be reported to OATS, 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, that, if available to FINRA, would greatly enhance FINRA’s ability to perform certain order-based surveillance, including layering, quote spoofing and mid-point pricing manipulation surveillance, by enabling FINRA to more fully reconstruct an AT’s order book. FINRA therefore is proposing to require ATs to report additional AT-specific data elements in existing OATS reports for orders in NMS stocks. ATs would be required to report this information to FINRA consistent with current OATS reporting requirements (no later than 8:00 a.m. Eastern Time on the calendar day following receipt of the order in an electronic form as prescribed by FINRA).

As described in more detail in Item C, FINRA initially solicited comment on this proposal in Regulatory Notice 14-51.³ Based on concerns raised by commenters about potential burdens associated with the original proposal, FINRA has revised the original proposal to narrow some aspects of the order information required to be reported while still enhancing FINRA’s ability to reconstruct an AT’s order book for surveillance purposes. The proposal sets forth

³ See Regulatory Notice 14-51 (November 2014).

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. The proposed requirements would apply to order and execution information for NMS stocks.⁴

Proposed Order Receipt Reporting Requirements Applicable to All ATSS That Trade NMS Stocks

The first category of proposed changes applies to all ATSS when reporting the receipt of an order to OATS. Specifically, the proposed rule would require each ATS to indicate on all orders received whether it displays subscriber orders outside of the ATS (other than to alternative trading system employees).⁵ This requirement will enable FINRA to distinguish between ATSS that display orders outside the ATS, either to subscribers or through consolidated quote data (“display ATS”) and ATSS that do not display orders outside the ATS (“non-display ATS”).⁶ A display ATS would also indicate whether the order book is displayed to subscribers only, or distributed for publication in the consolidated quotation data. Each ATS would also be required to identify whether it is an ADF Trading Center as defined in FINRA Rule 6220. An ATS would make these determinations on a general basis, but would provide this information through flags submitted on every order event. Each ATS also would be required to identify whether a specific

⁴ See 17 CFR 242.600(b)(47).

⁵ The proposed requirements apply to any alternative trading system, as defined in Rule 300(a)(1) of SEC Regulation ATS, that has filed a Form ATS with the SEC and is subject to FINRA’s OATS and equity trade reporting rules. See 17 CFR 242.300(a)(1).
For purposes of this rule, the term “order” includes a broker-dealer’s proprietary quotes that are transmitted to an ATS.

⁶ If an ATS meets the applicable volume thresholds, it is required to make its best bid and best offer available for publication in the consolidated quotation data. See 17 CFR 242.301(b)(3).

order can be routed away from the ATS for execution, and whether there are any counter-party restrictions on the order. ATSs would also be required to provide FINRA with a unique identifier representing the specific order type other than market and limit orders that have no other special handling instructions. In order for FINRA to map the identifier to a specific order type, an ATS will also be required to provide FINRA with a list of all of its order types twenty days before such order types become effective, and if the ATS makes any subsequent changes to its order types, twenty days before such changes become effective.⁷

An ATS also would be required to report, for all orders, 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); as part of this report, the ATS must identify the market data feed it used to obtain the NBBO (or relevant reference price).⁸ FINRA believes that

⁷ In a Regulatory Notice announcing the implementation of this proposal, FINRA will provide a deadline prior to the implementation date by which current ATSs must initially submit lists of their existing order types to FINRA.

FINRA notes that, under current Rule 301(b)(2)(ii) of Regulation ATS, ATSs are required to file an amendment on Form ATS at least 20 calendar days prior to implementing a material change to the operation of the ATS. See 17 CFR 242.301(b)(2)(ii). In the adopting release for Regulation NMS, the Commission noted that a material change to the operation of the ATS would include any change to: the operating platform of the ATSs, the types of securities traded, or the types of subscribers. The Commission also noted that ATSs implicitly make materiality decisions in determining when to notify their subscribers of changes. See Securities Exchange Act Release No. 40760 (December 8, 1998) 63 FR 70844, 70864 (December 22, 1998). Under a proposed rule that would alter the reporting requirements for ATSs that trade NMS stocks, an ATS would be required to amend its effective form at least 30 calendar days prior to the date of implementation of a material change to the operations of the ATS or to the activities of the broker-dealer operator or its affiliates that are subject to disclosure on the form. The Commission stated that a scenario that is likely to implicate a material change to the operations of an ATS would likely include the introduction or removal of a new order type on the ATS. See Regulation of NMS Stock Alternative Trading Systems, Securities Exchange Act Release No. 76474 (November 18, 2015), 80 FR 80998, 81027-28 (December 28, 2015).

⁸ An ATS may use a relevant reference price other than the NBBO if, for example, it pegs to the primary market for a security or pegs to the Protected Best Bid or Offer.

there may be some time difference, however small, between the time that an ATS receives an order and places it on the order book, and the time that the ATS records the NBBO. Reporting both fields will enable FINRA to ascertain if the NBBO changed between the time of order receipt and the time the ATS captured the effective NBBO.

If, for any reason, the ATS uses an alternative feed to the one that was reported on its ATS data submission, the ATS must notify FINRA via email of the fact that an alternative source was used, identify the alternative source, and specify the date(s), time(s) and securities for which the alternative source was used. Finally, each ATS would be required to provide the sequence number assigned to the order event by the ATS's matching engine.

Proposed Order Execution Reporting Requirements Applicable to All ATSs That Trade NMS Stocks

The second category of proposed changes applies to all ATSs when reporting the execution of an order to OATS. Specifically, each ATS must record and report the NBBO (or relevant reference price) in effect at the time of order execution, and the timestamp of when the ATS captured the effective NBBO (or relevant reference price). An ATS must identify the market data feed used by the ATS to obtain the NBBO (or other reference price). If for any reason, the ATS uses an alternative feed than the one that was reported on its ATS data submission, the ATS must notify FINRA via email of the fact that an alternative source was used, identify the alternative source, and specify the date(s), time(s) and securities for which the alternative source was used.

Proposed Reporting Requirements Applicable to Display ATSs That Trade NMS Stocks

The third category of changes applies only to display ATSs and requires that those ATSs report the following additional order receipt information: (1) whether the order is hidden or displayable; (2) display quantity; (3) reserve quantity, if applicable; (4) displayed price; and (5)

the price entered. If the matching engine re-prices a displayed order or changes the display quantity of a displayed order, the ATS must report the time of such modification and the applicable new display price or size.

The initial proposal applied these requirements to both display and non-display ATSs and would have required reporting of all changes to the price and size of orders, whether or not displayed. Commenters raised concerns with these proposed requirements, especially those related to non-displayed orders, because they would have required ATSs to record and report information that they indicated that they do not currently capture.⁹ While FINRA understands the additional burdens associated with reporting this information, FINRA believes it is important that FINRA receive this information for display ATSs because the pricing and size changes are being displayed to others and FINRA needs to have an accurate, time sequenced audit trail to reconstruct the displayed market. Therefore, rather than requiring that all ATSs report changes to the price and size of orders as set forth in the initial proposal, FINRA is proposing that only those ATSs that display subscriber orders report changes to the price or size of a displayed order. FINRA believes that this information is particularly relevant to display ATSs, and that this

⁹ FINRA notes that ATSs are currently required to capture and maintain several categories of order-specific information for both displayed and non-displayed orders. For example, ATSs are required to capture the time an order was received, the number of shares to which the order applies, any limit or stop price prescribed by the order, any instructions to modify or cancel the order, the time the order was executed, the price at which the order was executed, and the size at which the order was executed. See 17 CFR 242.302(c).

Similarly, ATSs are currently required to report a variety of order-specific information to FINRA via OATS. For example, upon receipt of an order, a member must report the number of shares to which the order applies, any limit or stop price prescribed in the order, special handling requests, and the time at which the order is received. See Rule 7440(b). Upon the modification or execution of an order, the member must report the time of modification or execution, whether the order was fully or partially executed, the number of unexecuted shares remaining if the order was only partially executed, and the execution price. See Rule 7440(d).

requirement will enhance FINRA's surveillance of displayed ATSS while not imposing undue reporting burdens on non-display ATSS.

Proposed Reporting Requirements Applicable to ATSS that are ADF Trading Centers That Trade NMS Stocks

Finally, FINRA is proposing to require that ATSS that are ADF Trading Centers report information in addition to the requirements for all ATSS and display ATSS described above. Specifically, under the proposed rule, if a change to the displayed size or price of an order resulted in a new quote being transmitted to the ADF, the ADF Trading Center would be required to report the quote identifier provided to the ADF. In addition, an ADF Trading Center would be required to provide a new quote identifier if an order held by the ADF Trading Center becomes associated with a quote identifier based on an action by the matching engine related to different order(s), (e.g., another order is cancelled making the order being held the best priced order in the matching engine). The following example illustrates the operation of this last provision:

10:00:01 a.m.: ATS receives order #7896 to buy 500 shares of XYZ at \$10.

10:00:02 a.m.: ATS receives order #8521 to buy 500 shares of XYZ at \$10.

10:00:03 a.m.: ATS submits a quote to the ADF to buy 1,000 shares of XYZ at \$10, and assigns the quote ID of #1234.

The ATS would be required to report the quote ID of #1234 with orders #7896 and #8521 so that FINRA would be able to identify the specific orders that were represented in quote ID #1234.

10:00:20 a.m.: Order #7896 to buy 500 shares at \$10 is cancelled.

10:00:21 a.m.: The ATS must update its bid to reflect the cancellation of order #7896. Since quote ID #1234 reflected the now-cancelled order, the ATS must assign a new quote identifier when it updates its bid to reflect the cancellation of order #7896.

10:00:22 a.m.: The ATS updates its quote on the ADF to buy 500 shares of XYZ at \$10, and assigns the quote ID of #5678.

The ATS will be required to submit a report to OATS for order #8521 to reflect the new quote ID of #5678 now associated with the order. This report is necessary so that FINRA is able to identify the specific order that is represented in quote ID #5678.

The proposed requirements for ADF Trading Centers largely replicate the requirements applicable to ADF Trading Centers that were proposed in Regulatory Notice 14-51. In response to comments, however, FINRA modified the types of identifiers that ADF Trading Centers are required to report to FINRA. As proposed in Regulatory Notice 14-51 proposal, ADF Trading Centers were required to report, for each order that is part of the displayed bid or offer, the unique identifier that the ADF Trading Center assigned to the order. ADF Trading Centers were also required to report the quote identifier that it provided to the ADF. In this proposal, FINRA is requiring that an ADF Trading Center report the quote identifier that it provided to the ADF if a new order is transmitted to the ADF, or a new quote identifier even when there is no change in the order itself (e.g., another order is cancelled making the order being held the best-priced order in the matching engine). These requirements will enable FINRA to identify all orders that make up a specific quote displayed on the ADF, thereby enhancing surveillance of the ADF, while not unduly burdening ATSS that are ADF Trading Centers by requiring them to submit their own internal identifiers.

If the Commission approves the proposed rule change, FINRA will announce the effective date of the proposed rule change no later than 90 days following Commission approval. The effective date will be no later than 180 days following Commission approval.

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, and Section

¹⁰ 15 U.S.C. 78o-3(b)(6).

15A(b)(9) of the Act,¹¹ which requires that FINRA rules not impose any burden on competition that is not necessary or appropriate.

FINRA believes that this proposed rule change is consistent with the Act because it will greatly enhance FINRA's ability to surveil activity occurring within an ATS, and by extension FINRA's ability to surveil for potentially abusive algorithmic trading activity more generally across markets. For example, to effectively conduct quotation-based surveillance such as layering and quote spoofing, FINRA needs access to comprehensive order information and to the identity of firms that are generating ATS quotations. The proposed rule change would address such information gaps and would provide FINRA with additional information that can be integrated into FINRA's surveillance patterns to support alert generation and analysis. In addition, the proposed rule change would also increase FINRA's ability to detect the use of a display or non-display ATS by a market participant to further a wide range of other potential market-specific and cross-market manipulative activities that market participants may engage in by placing orders or executing trades on the ATS itself or across multiple ATSs or exchanges.

FINRA believes that applying this proposal to NMS stocks is consistent with the Act because the potentially abusive trading activity that the proposal is designed to detect, including, but not limited to, layering, quote spoofing, and mid-point pricing manipulation within ATSs and across markets is of particular concern with respect to NMS stocks.¹² While some of the data required to be reported under the proposed rule change may be captured as part of the Consolidated Audit Trail ("CAT"), FINRA strongly believes that gaps in ATS order book data must be addressed in the near-term, weighing the burdens to firms and the necessity of the

¹¹ 15 U.S.C. 78o-3(b)(9).

¹² FINRA notes that OATS reporting requirements apply to OTC equity securities, as defined in Rule 6420, in addition to NMS stocks.

change, to ensure effective surveillance of ATSS and by extension abusive algorithmic trading activity more generally across markets. FINRA therefore believes that this ATS reporting requirement should not be delayed due to the future implementation of CAT.¹³ To the extent this proposed rule change requires the reporting of information that will also be captured by the CAT, FINRA would sunset the rule upon the implementation of the CAT requirement.

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 changes will apply equally to all similarly situated ATSS. FINRA also notes that the proposed rule change is designed to assist FINRA in meeting its regulatory obligations by enhancing its ability to efficiently surveil activity occurring within ATSS and across markets.

Economic Impact Assessment

The purpose of the proposed rule change is to enhance FINRA's surveillance of potential abusive trading activity, including, but not limited to, layering, quote spoofing, and mid-point pricing manipulation within ATSS and across markets. Specifically, the proposal requires ATSS to report additional order information to FINRA, such as specific order types, and whether an order can be routed away from the ATS for execution, so that FINRA has the relevant information to reconstruct an ATS's order book for surveillance purposes.

For purposes of this rule proposal, FINRA defines the economic baseline as the current regulatory reporting requirements of an ATS to FINRA. Currently, each ATS has the same

¹³ By its terms, Rule 613 of SEC Regulation NMS, which sets forth the requirements for the CAT, will not require all broker-dealers to report to CAT until three years after the CAT plan is approved. See 17 CFR 242.613 (a)(3)(vi).

reporting requirements to FINRA related to OATS that apply to all FINRA members.¹⁴ For instance, these obligations accrue when an ATS acts as a party to a securities transaction, such as matching buy and sell orders from its subscribers. Currently, ATSs do not have to notify FINRA of any amendments or additions to existing order types. FINRA requires each member, including an ATS, to associate its order types with one of the existing special handling codes defined in the OATS technical documentation. This association is not perfect, as the conditions on a specific order type offered by a firm or ATS may differ from the approximately 70 special handling codes identified in OATS.¹⁵

FINRA does not believe that this proposed rule change will impose a significant burden on its member firms that are ATSs. Given the level of order activity generated on ATSs, ATSs currently report a significant amount of order information to OATS. The proposed rule change would require an ATS to supplement its current submissions with the additional information described herein using the existing OATS gateway. In so doing, the proposal minimizes duplication with OATS reporting and the potential impact on ATSs, while providing FINRA with the necessary order information to perform more comprehensive order-based surveillance of ATSs and the market as a whole. FINRA does not believe that this proposed rule change would require ATSs to generate significant new information relating to orders; rather it would require ATSs to report information already compiled as part of operating their order books, and for

¹⁴ In addition to the OATS reporting requirements, ATSs were required to calculate their volume information pursuant to Rule 4552 through January 31, 2016, and were required to report this data to FINRA by February 9, 2016. FINRA began calculating ATS volume data based on trade reports on February 1, 2016.

¹⁵ See “OATS Reporting Technical Specifications” at http://www.finra.org/sites/default/files/OATSTechSpec_01112016.pdf for a full list of special handling codes.

which the ATSS are already obligated to capture under Regulation ATS.¹⁶ In addition, as described above, FINRA has revised the proposal as published in Regulatory Notice 14-51 so that FINRA will obtain order information that will enhance its surveillance of ATS activity, while not imposing undue reporting requirements on ATSS.

FINRA expects that there will be approximately 42 ATSS that will be impacted by the rule change, where they will be required to report additional information at the time of the order receipt and order execution. Of those, five are identified as display ATSS, and therefore will be subject to additional reporting requirements at the time of the order receipt such as whether the order is hidden or displayable, display quantity, reserve quantity, displayed price and price entered.¹⁷ However, based on a series of communications with a sample of ATSS, FINRA understands that ATSS already collect and store such information, including the NBBO at the time of the order receipt and execution.

FINRA also acknowledges that ATSS may incur some costs associated with updating their reporting systems to reflect the new requirements introduced by this rule proposal. However, some of the reporting requirements under this Rule, such as an indicator whether the order can be routed away from the ATS and display size, have already been implemented due to the National Market System Plan to Implement a Tick Size Pilot Program,¹⁸ and reporting additional data fields are expected to create marginal reporting costs for member firms that are ATSS. Therefore, the proposed rule change is not expected to create an unnecessary burden on member firms that are ATSS.

¹⁶ See 17 CFR 242.302.

¹⁷ Of the five ATSS that are display ATSS, one ATS is an ECN that displays quotes on an exchange.

¹⁸ See Securities Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27514 (May 13, 2015) (File No. 4-657).

As of February 2016, there are no ATSS that are also ADF Trading Centers and the requirements on reporting quote identifiers would not be applicable to the approximately 42 ATSS that are active at the time of the writing of this filing.

Pursuant to Section 19(b)(1) of the Act¹⁹ and Rule 19b-4 thereunder,²⁰ exchanges have to file with the SEC when they intend to eliminate, amend and add to the existing order types, modifiers and related references. The proposed rule change introduces similar pre-use reporting requirements for ATSS which currently have no such reporting requirements to FINRA, and hence would impose comparable obligations between execution venues as it relates to the introduction of new order types.²¹

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

This proposal, in addition to another proposal involving OATS order reporting, was published for comment in Regulatory Notice 14-51 (November 2014).²² Five comments were received in response to the Regulatory Notice.²³ A copy of Regulatory Notice 14-51 is attached

¹⁹ 15 U.S.C. 78s(b)(1).

²⁰ 17 CFR 240.19b-4.

²¹ FINRA notes that, under current Rule 301(b)(2)(ii) of SEC Regulation ATS, ATSS are required to file an amendment on Form ATS at least 20 calendar days prior to implementing a material change to the operation of the ATS. See 17 CFR 242.301(b)(2)(ii).

²² The OATS non-member reporting proposal also described in Regulatory Notice 14-51 is not reflected in the current proposed rule change; consequently, comments on that proposal are not addressed.

²³ See Letter from Manisha Kimmel, Managing Director, Financial Information Forum, to Marcia E. Asquith, Secretary, FINRA, dated February 20, 2015 (“FIF”); Letter from John A. McCarthy, General Counsel, KCG Holdings, Inc., to Marcia E. Asquith, Secretary, FINRA, dated February 20, 2015 (“KCG”); Letter from Howard Meyerson, General Counsel, Liquidnet Inc., to Marcia E. Asquith, Secretary, FINRA, dated February 20, 2015 (“Liquidnet”); Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, to Marcia E. Asquith, Secretary, FINRA, dated February 24, 2015 (“SIFMA”); and Letter from Mark

as Exhibit 2a. A list of comment letters received in response to Regulatory Notice 14-51 is attached as Exhibit 2b, and copies of the five comment letters that addressed the proposed rule change are attached as Exhibit 2c.²⁴

As proposed in Regulatory Notice 14-51, ATSs would be required to report additional order information that is not currently captured in OATS, which would enable FINRA to better recreate the full ATS order book. This would include all events and order attributes that would change the ATS's system quantity (the number of shares of an order, whether displayed or undisplayed, that can currently execute within the ATS), the displayed quantity, highest (buy orders) or lowest (sell orders) price at which the order may be executed, and the displayed price for an order. As initially proposed, an ATS also would have been required to provide, for every order, the associated OATS identifier, which would link information about that order to the related information and full lifecycle reported to OATS. That proposal would have applied to any ATS that accounted for more than 0.25% of consolidated market share in any security over a one-month period. Once an ATS had exceeded the threshold for one security, it would have been required to report order information for all securities for which the ATS receives an order. As proposed, an ATS that triggered the reporting requirement would have had to fall under the 0.25% threshold and remain there for six months before being relieved of its reporting obligation.

While some of the commenters supported the overall goal of increased surveillance of ATSs and increased transparency of ATS operations,²⁵ all the commenters opposed some aspect

Holder, Managing Director, UBS Securities LLC, to Marcia E. Asquith, Secretary, FINRA, dated February 26, 2015 ("UBS").

²⁴ The Commission notes that the exhibits referred to in the Notice, 2a, 2b, and 2c, are exhibits to the proposed rule change, not to this Notice.

²⁵ See KCG Letter at 4; SIFMA Letter at 2; UBS Letter at 1.

of the proposal, with commenters primarily criticizing the proposed requirement that ATSs report re-pricing events for pegged orders. Multiple commenters argued that this part of the proposal would require ATSs to record and generate information that they do not currently capture.²⁶ Commenters noted that an ATS may not necessarily re-price an order due to a change in the NBBO, especially if it does not display or route orders to other market centers.²⁷ Commenters noted that the proposal, and particularly the requirement to report re-pricing events for pegged orders, would generate a substantial number of new OATS records, which would place an additional burden on ATSs and might create latency.²⁸ Liquidnet noted that midpoint pegged orders constitute all of its order flow, and that reporting re-pricings of pegged orders would impose a heavy reporting burden on it.²⁹ Commenters stated that the new requirements might also necessitate the creation of real-time OATS generation, rather than end-of-day batching.³⁰

Several commenters also stated that the proposal should be modified to reflect the differences between exchanges and ATSs. Commenters noted that ATSs may use variants of price/time priority, and may also allow subscribers to opt out of executing against certain order flow.³¹ As a result, it may appear that an ATS is not executing against available interest.

²⁶ See FIF Letter at 2, KCG Letter at 4-5; SIFMA Letter at 3; UBS Letter at 2.

²⁷ See FIF Letter at 2; KCG Letter at 4; UBS Letter at 2. One commenter suggested that some of the stated goals of the proposal, e.g., detection of spoofing and layering, may not be applicable to ATSs that do not display or route orders. See FIF Letter at 3.

²⁸ See FIF Letter at 2; KCG Letter at 4; SIFMA Letter at 3-4.

²⁹ See Liquidnet Letter at 2.

³⁰ See FIF Letter at 2; KCG Letter at 5; UBS Letter at 3.

³¹ See FIF Letter at 3; SIFMA Letter at 3.

Commenters also noted that the proposal should be modified to reflect the fact that not all ATSS operate similarly, e.g., order handling and execution methodologies may differ among ATSS.³²

FIF recommended that the proposed 0.25% volume threshold should be modified so that it is consistent with the current fair access threshold of Regulation ATS (ADV of five percent or more of the aggregate average daily share volume) or the Regulation SCI ATS threshold.³³

Liquidnet noted that FINRA already has access to NBBO data and suggested an alternative whereby the ATS could report, in connection with the execution of a midpoint pegged order, the BBO that the ATS referenced to derive its execution price.³⁴ UBS suggested enhancing existing OATS order attributes, rather than the current proposal, e.g., the addition of special handling codes.³⁵

After the close of the comment period, FINRA engaged in discussions with representatives of several ATSS to better understand their concerns with the proposal and to solicit input on possible alternatives to the proposal. In response to commenters and in furtherance of those discussions, FINRA has amended the proposal in several respects as noted above in Item II.A.1. The most significant change is the removal of the requirement for non-displayed ATSS to report changes in price or size, including changes to pegged orders each time the pegging price changes. Based on the comment letters and FINRA's subsequent discussions with several ATSS, such events generally would not be created by an ATS matching engine unless a new order on the opposite side of the market that is eligible to execute against that

³² See supra note 29.

³³ See FIF Letter at 2. FIF also suggested that any changes to order reporting should not be undertaken through OATS but through changes to the functionality of CAT. See FIF Letter at 3.

³⁴ See Liquidnet Letter at 2.

³⁵ See UBS Letter at 3.

resting order is received and can match against the resting order. Consequently, the initial requirement to report re-pricing events would have required ATSS to create such events for the specific purpose of reporting to FINRA. FINRA believes that removing the requirement to report changes to price or size for non-displayed ATSS responds to commenters' concerns that the proposal is complex, will significantly impact members' OATS reporting practices, and will require members to create information that they do not currently capture. At the same time, FINRA believes that the revised proposal still enhances FINRA's surveillance capabilities by requiring ATSS that display subscriber orders to report this information. FINRA believes that this information is particularly relevant to display ATSS, and that FINRA does not currently possess this information.

FINRA has also amended the proposal to remove the volume-based threshold that would trigger the reporting requirements. FINRA believes that removing the reporting threshold will increase the number of ATSS that report the proposed order information, and by extension increase FINRA's ability to enhance its surveillance of trading and order activity occurring on or through ATSS. At the same time, FINRA notes that removing the proposed reporting threshold should not significantly impact the reporting status of most ATSS, since the majority of ATSS would have satisfied the proposed reporting requirement. To the extent that FINRA is distinguishing among ATSS in setting forth reporting requirements, FINRA believes that a more useful distinction is between non-display and display ATSS, as it is currently proposing.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be 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-2016-010 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-2016-010. 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-2016-010, 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.³⁶

Robert W. Errett
Deputy Secretary

³⁶ 17 CFR 200.30-3(a)(12).