

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-76484; File No. SR-FINRA-2015-048)

November 19, 2015

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change to Adopt FINRA Rule 6191(b) and Amend FINRA Rule 7440 to Implement the Data Collection Requirements of the Regulation NMS Plan to Implement A Tick Size Pilot Program

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 13, 2015, 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 Substance of the Proposed Rule Change

FINRA is proposing to adopt FINRA Rule 6191 and amend Rule 7440 to implement the Regulation NMS Plan to Implement a Tick Size Pilot Program (Plan).

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

On August 25, 2014, NYSE Group, Inc., on behalf of BATS Exchange, Inc., BATS Y-Exchange, Inc., Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc. (“FINRA”), NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, the Nasdaq Stock Market LLC, New York Stock Exchange LLC (“NYSE”), NYSE MKT LLC, and NYSE Arca, Inc. (collectively “Participants”), filed with the Commission, pursuant to Section 11A of the Act³ and Rule 608 of Regulation NMS thereunder,⁴ the Plan to Implement a Tick Size Pilot Program (“Pilot”).⁵ The Participants filed the Plan to comply with an order issued by the Commission on June 24, 2014.⁶ The Plan⁷ was published for comment in the Federal Register on November 7, 2014, and approved by the Commission, as modified, on May 6, 2015.⁸

The Plan is designed to allow the Commission, market participants, and the public to study and assess the impact of increment conventions on the liquidity and trading of the common

³ 15 U.S.C. 78k-1.

⁴ 17 CFR 242.608.

⁵ See Letter from Brendon J. Weiss, Vice President, Intercontinental Exchange, Inc., to Secretary, Commission, dated August 25, 2014.

⁶ See Securities Exchange Act Release No. 72460 (June 24, 2014), 79 FR 36840 (June 30, 2014).

⁷ Unless otherwise specified, capitalized terms used in this rule filing are based on the defined terms of the Plan.

⁸ See Securities Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27513 (May 13, 2015) (“Approval Order”).

stocks of small-capitalization companies. Each Participant is required to comply, and to enforce compliance by its member organizations, as applicable, with the provisions of the Plan. As is described more fully below, the proposed rules would require member organizations to comply with the applicable data collection requirements of the Plan.

The Pilot will include stocks of companies with \$3 billion or less in market capitalization, an average daily trading volume of one million shares or less, and a volume weighted average price of at least \$2.00 for every trading day. The Pilot will consist of a control group of approximately 1400 Pilot Securities and three test groups with 400 Pilot Securities in each (selected by a stratified random sampling process).⁹ During the pilot, Pilot Securities in the control group will be quoted at the current tick size increment of \$0.01 per share and will trade at the currently permitted increments. Pilot Securities in the first test group (“Test Group One”) will be quoted in \$0.05 minimum increments but will continue to trade at any price increment that is currently permitted.¹⁰ Pilot Securities in the second test group (“Test Group Two”) will be quoted in \$0.05 minimum increments and will trade at \$0.05 minimum increments subject to a midpoint exception, a retail investor order exception, and a negotiated trade exception.¹¹ Pilot Securities in the third test group (“Test Group Three”) will be subject to the same quoting and trading increments as Test Group Two and also will be subject to the “Trade-at” requirement to prevent price matching by a market participant that is not displaying at a Trading Center’s “Best Protected Bid” or “Best Protected Offer,” unless an enumerated exception applies.¹² In addition to the exceptions provided under Test Group Two, an exception for Block Size orders and

⁹ See Section V of the Plan for identification of Pilot Securities, including criteria for selection and grouping.

¹⁰ See Section VI(B) of the Plan.

¹¹ See Section VI(C) of the Plan.

¹² See Section VI(D) of the Plan.

exceptions that mirror those under Rule 611 of Regulation NMS¹³ will apply to the Trade-at requirement.

In approving the Plan, the Commission noted that the Trading Center data reporting requirements would facilitate an analysis of the effects of the Pilot on liquidity (e.g., transaction costs by order size), execution quality (e.g., speed of order executions), market maker activity, competition between trading venues (e.g., routing frequency of market orders), transparency (e.g., choice between displayed and hidden orders), and market dynamics (e.g., rates and speed of order cancellations).¹⁴ The Commission noted that Market Maker profitability data would assist the Commission in evaluating the effect, if any, of a widened tick increment on market maker profits and any corresponding changes in the liquidity of small-capitalization securities.¹⁵

Compliance with the Data Collection Requirements of the Plan

The Plan contains requirements for collecting and transmitting data to the Commission and to the public. Specifically, Appendix B.I to the Plan (Market Quality Statistics) requires Trading Centers¹⁶ to submit variety of market quality statistics, including information about an order's original size, whether the order was displayable or not, the cumulative number of orders, the cumulative number of shares of orders, and the cumulative number of shares executed within specific time increments, e.g., from 30 seconds to less than 60 seconds after the time of order receipt. This information shall be categorized by security, order type, original order size, hidden

¹³ 17 CFR 242.611.

¹⁴ See Approval Order, 80 FR at 27543.

¹⁵ See Approval Order, 80 FR at 27543.

¹⁶ The Plan incorporates the definition of a "Trading Center" from Rule 600(b)(78) of Regulation NMS. Regulation NMS defines a "Trading Center" as "a national securities exchange or national securities association that operates an SRO trading facility, an alternative trading system, an exchange market maker, an OTC market maker, or any other broker or dealer that executes orders internally by trading as principal or crossing orders as agent." See 17 CFR 242.600(b)(78).

status, and coverage under Rule 605.¹⁷ Appendix B.I to the Plan also contains additional requirements for market orders and marketable limit orders, including the share-weighted average effective spread for executions of orders; the cumulative number of shares of orders executed with price improvement; and, for shares executed with price improvement, the share-weighted average amount per share that prices were improved.

Appendix B.II to the Plan (Market and Marketable Limit Order Data) requires Trading Centers to submit information relating to market orders and marketable limit orders, including the time of order receipt, order type, the order size, the National Best Bid and National Best Offer (“NBBO”) quoted price, the NBBO quoted depth, the average execution price-share-weighted average, and the average execution time-share-weighted average.

The Plan requires Appendix B.I and B.II data to be submitted by Participants that operate a Trading Center, and by members of the Participants that operate Trading Centers. The Plan provides that each Participant that is the Designated Examining Authority (“DEA”) for a member of Participant that operates a Trading Center shall collect such data in a pipe delimited format, beginning six months prior to the Pilot Period and ending six months after the end of the Pilot Period. The Plan also requires the Participant, operating as DEA, to transmit this information to the SEC within 30 calendar days following month end.

FINRA is therefore proposing Rule 6191(b) to set forth the requirements for the collection and transmission of data pursuant to Appendix B.I and B.II of the Plan. Proposed Rule 6191(b)(1) requires that a member that operates a Trading Center shall establish, maintain and enforce written policies and procedures that are reasonably designed to comply with the data collection and transmission requirements of Items I and II to Appendix B of the Plan, and a

¹⁷ 17 CFR 242.605.

member that is a Market Maker shall establish, maintain and enforce written policies and procedures that are reasonably designed to comply with the data collection and transmission requirements of Item IV of Appendix B to the Plan and Item I of Appendix C of the Plan.

Rule 6191(b)(2) requires that a member that operates a Trading Center subject to the Plan and for which FINRA is the DEA shall collect and transmit to FINRA the data described in Items I and II of Appendix B of the Plan with respect to each Pre-Pilot Data Collection Security for the period beginning six months prior to the Pilot Period through the trading day immediately preceding the Pilot Period; and each Pilot Security for the period beginning on the first day of the Pilot Period through six months after the end of the Pilot Period.

Section IV of the Plan (Policies and Procedures) provides that each Participant that is the DEA of a member of a Participant operating a Trading Center is required to develop appropriate policies and procedures for collecting and reporting the data described in Items I and II of Appendix B, as applicable, to the DEA Participant. FINRA has determined that much of the data required by Appendix B.I and B.II to the Plan currently is reported to FINRA through the Order Audit Trail System (“OATS”). In the interest of increasing the efficiency of the data collection process and the consistency of that data to be collected under the Plan, FINRA proposes to use OATS as the vehicle through which Trading Centers must comply with their reporting obligations pursuant to Appendix B.I and B.II.

Accordingly, proposed Rule 6191(b)(2) provides that members that operate Trading Centers that are subject to the Plan, and for which FINRA serves as the DEA, shall meet the data collection and reporting requirements in Items I and II of Appendix B by reporting the necessary order information in Pilot Securities and Pre-Pilot Data Collection Securities to OATS; however, because the current OATS reports do not contain all of the information required by Appendix B

to the Plan, the proposed rule change adds four new fields to OATS to capture the necessary information for Pilot Securities and Pre-Pilot Data Collection Securities.¹⁸ Specifically, the proposed rule change would require OATS Reporting Members¹⁹ that operate a Trading Center to record and report the following information for orders involving Pilot Securities and Pre-Pilot Data Collection Securities if FINRA serves as the member's DEA:

- Whether the member is a Trading Center in either a Pilot Security or a Pre-Pilot Data Collection Security and, if the member is a participant on the Alternative Display Facility (“ADF”), the display size of the order;
- Whether the order is routable; and
- Whether the member is relying on the retail investor order exception with respect to the order.

As an initial matter, only those OATS Reporting Members that operate a Trading Center and for which FINRA is the DEA are required to make any changes to their OATS reporting. OATS Reporting Members that do not operate Trading Centers or that have another self-regulatory organization as DEA will be permitted to leave the new fields blank (*i.e.*, they are not required to populate the new Trading Center field to affirmatively indicate that they are not a Trading Center). OATS Reporting Members that operate Trading Centers will be required to

¹⁸ In addition to adding the new fields in the proposed rule change, FINRA will add additional values to existing fields that are necessitated by the Tick Size Pilot. These new values will be described fully in the OATS Reporting Technical Specifications. FINRA anticipates that, for order receipt or origination as well as on Desk Reports, there would be new Special Handling Codes, including one for slides and for counterparty restrictions. FINRA also will provide additional guidance in the OATS Reporting Technical Specifications regarding the use of existing values that may be affected by members participating in the Tick Size Pilot.

¹⁹ Rule 7410(o) generally defines “Reporting Member” as a member that receives or originates an order and has an obligation to record and report information under Rules 7440 and 7450.

indicate their status as a Trading Center on all OATS reports for new orders involving Pre-Pilot Data Collection Securities and Pilot Securities, including new order reports, combined order/route reports, combined order execution reports, and cancel/replace reports. In addition, OATS Reporting Members that operate Trading Centers and that also are ADF Market Participants²⁰ will be required to indicate their status as an ADF Market Participant and must indicate the display size of the order so that OATS can capture the information required by Appendix B regarding hidden and displayed size.²¹

As described above, the proposed rule change adds new OATS fields to capture whether an order in a Pre-Pilot Data Collection Security or a Pilot Security received by an OATS Reporting Member that operates a Trading Center is routable and whether the member is relying on the retail investor order exception in the Plan with respect to the order. These additional fields are necessary so that OATS can capture the information required by Item II(n) and II(o) of Appendix B to the Plan. This information will be required on all OATS reports for new orders, including New Order Reports, Combined Order/Route Reports, Combined Order/Execution Reports, and Cancel/Replace Reports.

In addition to information on new orders, the proposed rule change requires OATS Reporting Members that operate Trading Centers and for which FINRA is the DEA to report executions in Pre-Pilot Data Collection Securities and Pilot Securities when the order, or any part of the order, is executed on a venue that does not provide execution information to FINRA. Currently, OATS Reporting Members report to OATS the routing of any order to a non-FINRA

²⁰ Rule 6220(a)(3) defines “ADF Market Participant” or “Market Participant” as a Registered Reporting ADF Market Maker, as defined in Rule 6220(a)(13), or a Registered Reporting ADF ECN, as defined in Rule 6220(a)(12).

²¹ Sections I(a)(5), (29), and (30) of Appendix B to the Plan all require that hidden (i.e., non-displayed) order information be provided to the SEC.

member, which includes orders routed to a national securities exchange.²² For those exchanges that provide FINRA with execution information, FINRA is able to link the route to any executions occurring on the exchange. OATS data, however, does not currently link to executions occurring on venues that do not provide this information to FINRA (e.g., foreign exchanges). To provide the execution information required by Items I and II of Appendix B to the Plan, FINRA must collect the execution information, either from the venue to which the order was routed, or from the firm routing the order to the venue, to match the routed order to the execution. Because some venues do not provide execution data to FINRA, the proposed rule change would require members that route orders in a Pre-Pilot Data Collection Security or a Pilot Security to a venue that does not provide execution information to FINRA to report any execution on such venue through an OATS Execution Report or Combined Order/Execution Report.

To facilitate compliance with this provision, FINRA will identify in the OATS Reporting Technical Specifications those exchanges for which these reports are not necessary; thus, for orders routed to those identified exchanges, OATS Reporting Members would continue to report only routes to those exchanges rather than any executions occurring on those exchanges. For orders routed to a venue that is not identified, OATS Reporting Members would be required to report any executions on that venue in an OATS Execution Report or Combined Order/Execution Report.

As set forth in Section VII of the Plan (Collection of Pilot Data), proposed Rule 6191(b)(2)(B) provides that FINRA shall transmit this data collected by Trading Centers required by Items I and II of Appendix B to the Plan, and collected pursuant to paragraph

²² See Rule 7440(c)(6).

(b)(2)(A), to the SEC in a pipe delimited format on a disaggregated basis by Trading Center within 30 calendar days following month end. FINRA also shall make such data publicly available on the FINRA website on a monthly basis at no charge and will not identify the Trading Center that generated the data.

Appendix B.IV (Daily Market Maker Participation Statistics) requires a Participant to collect data related to Market Maker participation from each Market Maker²³ engaging in trading activity on a Trading Center operated by the Participant. FINRA is therefore proposing Rule 6191(b)(3) to gather data about a Market Maker's participation in Pilot Securities and Pre-Pilot Data Collection Securities. Proposed Rule 6191(b)(3)(A) provides that a member that is a Market Maker for which FINRA is the DEA shall collect and transmit to FINRA data relating to Item IV of Appendix B to the Plan with respect to activity conducted on any Trading Center in Pilot Securities and Pre-Pilot Data Collection Securities in furtherance of its status as a registered Market Maker, including a Trading Center that executes trades otherwise than on a national securities exchange, for transactions that have settled or reached settlement date. The proposed rule requires Market Makers to transmit such data in a pipe delimited format, by 12 p.m. EST on T+4 for (1) transactions in each Pre-Pilot Data Collection Security for the period beginning six months prior to the Pilot Period through the trading day immediately preceding the Pilot Period; and (2) for transactions in each Pilot Security for the period beginning on the first day of the Pilot Period through six months after the end of the Pilot Period.

Proposed Rule 6191(b)(3)(B) provides that FINRA shall transmit the data relating to Market Maker activity required by Item IV of Appendix B to the Plan, and collected pursuant to

²³ The Plan defines a Market Maker as “a dealer registered with any self-regulatory organization, in accordance with the rules thereof, as (i) a market maker or (ii) a liquidity provider with an obligation to maintain continuous, two-sided trading interest.”

paragraph (b)(3)(A) above, to the Participant operating the Trading Center on which such activity occurred in a pipe delimited format on a disaggregated basis by Market Maker during the Pre-Pilot and within 15 calendar days following month end during the Pilot Period.

As required by the Plan, proposed Rule 6191(b)(3)(C) provides that FINRA shall transmit the data relating to Market Maker activity conducted otherwise than on a national securities exchange required by Item IV of Appendix B to the Plan, and collected pursuant to paragraph (b)(3)(A), to the SEC in a pipe delimited format, on a disaggregated basis by Trading Center, within 30 calendar days following month end. FINRA shall also make such data publicly available on the FINRA website on a monthly basis at no charge and will not identify the Trading Center that generated the data.²⁴

Appendix C.I (Market Maker Profitability) requires a Participant to collect data related to Market Maker profitability from each Market Maker for which it is the DEA. Specifically, the Participant is required to collect the total number of shares of orders executed by the Market Maker, the raw Market Maker realized trading profits, and the raw Market Maker unrealized trading profits. Data shall be collected for dates starting six months prior to the Pilot Period through six months after the end of the Pilot Period. This data shall be collected on a monthly basis, to be provided in a pipe delimited format to the Participant, as DEA, within 30 calendar days following month end. Appendix C.II (Aggregated Market Maker Profitability) requires the Participant, as DEA, to aggregate the Appendix C.I data, and to categorize this data by security as well as by the control group and each Test Group. That aggregated data shall contain information relating to total raw Market Maker realized trading profits, volume-weighted

²⁴ FINRA notes that Appendix B.III, which requires a Participant that is a national securities exchange to collect daily Market Maker registration statistics, does not apply to FINRA. Accordingly, FINRA is not proposing a rule to implement this aspect of the Plan.

average of raw Market Maker realized trading profits, the total raw Market Maker unrealized trading profits, and the volume-weighted average of Market Maker unrealized trading profits.

FINRA is therefore proposing Rule 6191(b)(4) to set forth the requirements for the collection and transmission of data pursuant to Appendix C.I and of the Plan. Proposed Rule 6191(b)(4)(A) requires that a member that is a Market Maker, and for which FINRA is the DEA, shall collect and transmit to FINRA the data described in Item I of Appendix C to the Plan, as modified by Paragraph (b)(5) with respect to executions in Pilot Securities that have settled or reached settlement date that were executed on any Trading Center. The proposed rule also requires members to provide such data in a pipe delimited format by 12 p.m. EST on T+4 for (1) for executions during and outside of Regular Trading Hours in each Pre-Pilot Data Collection Security for the period beginning six months prior to the Pilot Period through the trading day immediately preceding the Pilot Period; and (2) for executions during and outside of Regular Trading Hours in each Pilot Security for the period beginning on the first day of the Pilot Period through six months after the end of the Pilot Period.

Proposed Rule 6191(b)(4)(B) provides that FINRA shall collect this data and, on a monthly basis, transmit such data, categorized by the control group and each Test Group, to the SEC in a pipe delimited format; provided, however, that the data transmitted to the SEC shall include the profitability statistics categorized by Market Maker and by security. In calculating unrealized trading profits, FINRA shall also report the number of excess (deficit) shares held by the Market Maker, the volume weighted average price of that excess (deficit) and the closing price of the security as reported by the primary listing exchange used in reporting unrealized profit. The proposed rule also provides that FINRA shall make this aggregated data, categorized by the control group and each Test Group, publicly available on the FINRA website on a

monthly basis at no charge and will not identify the Market Makers that generated the data or the individual securities.

FINRA also is proposing a rule setting forth the manner in which Market Maker participation and profitability will be calculated. Proposed Rule 6191(b)(5) provides that a member that is a Market Maker subject to the requirements of proposed Rule 6191(b)(3)(A) and (b)(4)(A) in a Pre-Pilot Data Collection Security or a Pilot Security, and for which FINRA is the DEA, shall be deemed to have satisfied the requirements of proposed Rule 6191(b)(3)(A) and (b)(4)(A), in addition to the requirements of Appendix B.IV and Item I of Appendix C, if such Market Maker submits to FINRA the specified data for any principal trade, not including riskless principal, in a Pre-Pilot Data Collection Security or a Pilot Security executed in furtherance of its status as a Market Maker on any Trading Center. The proposed rule requires Market Makers to submit (1) Ticker Symbol; (2) Trading Center where the trade was executed, or if not known, the destination where the order originally was routed for further handling and execution; (3) Time of execution; (4) Price; (5) Size; (6) Buy / sell; (7) for trades executed away from the Market Maker, a unique identifier, as specified by the Market Maker's DEA, that will allow the trade to be associated with the Trading Center where the trade was executed; and (8) for trades cancelled or corrected beyond T+3, whether the trade represents a cancellation or correction.

FINRA is also proposing, through Supplementary Material, to clarify other aspects of the data collection requirements.²⁵ Proposed Supplementary Material .02 relates to the use of the retail investor order flag for purposes of Appendix B.II(n) reporting. The Plan currently states that market and marketable limit orders shall include a "yes/no" field relating to the Retail

²⁵ FINRA is also proposing Supplementary Material .01 to Rule 6191 to clarify that certain enumerated terms used throughout Rule 6191 shall have the same meaning as set forth in the Plan.

Investor Order flag. FINRA is proposing Supplementary Material .02 to clarify that, for purposes of the reporting requirement in Appendix B.II(n), a Trading Center shall report “y” where it is relying upon the Retail Investor Order exception to Test Groups Two and Three, and “n” for all other instances. FINRA believes that requiring the identification of a Retail Investor Orders only where the exception may apply (i.e., Pilot Securities in Test Groups Two and Three) is consistent with Appendix B.II(n).

Supplementary Material .03 requires that members populate a field to identify whether an order is affected by the bands in place pursuant to the National Market System Plan to Address Extraordinary Market Volatility.²⁶ Pursuant to the Limit-Up Limit-Down Plan, between 9:30 a.m. and 4:00 p.m., the Securities Information Processor (“SIP”) calculates a lower price band and an upper price band for each NMS stock. These price bands represent a specified percentage above or below the stock’s reference price, which generally is calculated based on reported transactions in that stock over the preceding five minutes. When one side of the market for an individual security is outside the applicable price band, the SIP identifies that quotation as non-executable. When the other side of the market reaches the applicable price band (e.g., the offer reaches the lower price band), the security enters a Limit State. The stock would exit a Limit State if, within 15 seconds of entering the Limit State, all Limit State Quotations were executed or canceled in their entirety. If the security does not exit a Limit State within 15 seconds, then the primary listing exchange declares a five-minute trading pause, which would be applicable to all markets trading the security.

²⁶ See National Market System Plan to Address Extraordinary Market Volatility, Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (File No. 4-631) (“Limit-Up Limit-Down Plan”).

FINRA and the other Participants have determined that it is appropriate to create a new flag for reporting orders that are affected by the Limit-Up Limit-Down bands. Accordingly, a Trading Center shall report a value of “Y” when the ability of an order to execute has been affected by the Limit-Up Limit-Down bands in effect at the time of order receipt. A Trading Center shall report a value of “N” when the ability of an order to execute has not been affected by the Limit-Up Limit-Down bands in effect at the time of order receipt.

Supplementary Material .03 also requires, for dually-listed securities, that the Participant indicate whether the order was handled domestically, or routed to a foreign venue. Accordingly, the Participant will indicate, for purposes of Appendix B.I, whether the order was: (1) fully executed domestically, or (2) fully or partially executed on a foreign market. For purposes of Appendix B.II, the Participant will classify all orders in dually-listed Pilot and Pre-Pilot Securities as: (1) directed to a domestic venue for execution; (2) may only be directed to a foreign venue for execution; or (3) was fully or partially directed to a foreign venue at the discretion of the member. FINRA believes that this proposed flag will better identify orders in dually-listed securities, as such orders that were executed in foreign venues would not be subject to the Plan’s quoting and trading requirements, and could otherwise compromise the integrity of the data.

Supplementary Material .04 relates to the time ranges specified in Appendix B.I.a(14), B.I.a(15), B.I.a(21) and B.I.a(22).²⁷ FINRA and the other Participants have determined that it is

²⁷ Specifically, Appendix B.I.a(14) requires reporting of the cumulative number of shares of orders executed from 0 to less than 100 microseconds after the time of order receipt; Appendix B.I.a(15) requires reporting of the cumulative number of shares of orders executed from 100 microseconds to less than 100 milliseconds after the time of order receipt; Appendix B.I.a(21) requires reporting of the cumulative number of shares of orders cancelled from 0 to less than 100 microseconds after the time of order receipt; and Appendix B.I.a(22) requires reporting of the cumulative number of shares of orders

appropriate to change the reporting times in these provisions to require more granular reporting for these categories. Accordingly, FINRA proposes to add Appendix B.I.a(14A), which will require Trading Centers to report the cumulative number of shares of orders executed from 100 microseconds to less than 1 millisecond after the time of order receipt. Appendix B.I.a(15) will be changed to require the cumulative number of shares of orders executed from 1 millisecond to less than 100 milliseconds after the time of order receipt. FINRA also proposes to add Appendix B.I.a(21A), which will require Trading Centers to report the cumulative number of shares of orders canceled from 100 microseconds to less than 1 millisecond after the time of order receipt. Appendix B.I.a(22) will be changed to require the cumulative number of shares of orders canceled from 1 millisecond to less than 100 milliseconds after the time of order receipt. FINRA believes that these new reporting requirements will contribute to a meaningful analysis of the Pilot by producing more granular data on these points.²⁸

Supplementary Material .05 relates to the requirement in Appendix B.I.a(33) requiring the share-weighted average BBO Spread of the reporting exchange as part of the market quality statistics to be reported. FINRA and the other Participants have determined that this requirement should apply to both the reporting exchange and to a Trading Center that displays such quote on the ADF, and is proposing to make this clarification through Supplementary Material .05.

Supplementary Material .06 relates to the relevant measurement for purposes of Appendix B.I.a(31)-(33) reporting. Currently, the Plan states that this data shall be reported as of the time of order execution. FINRA and the other Participants believe that this information

cancelled from 100 microseconds to less than 100 milliseconds after the time of order receipt.

²⁸ FINRA notes that it intends to file an exemptive request seeking relief from certain of the Plan's data collection requirements, including the requirements that Trading Centers report information in either microseconds or milliseconds, as not all Trading Centers currently capture and report orders in either microseconds or milliseconds.

should more properly be captured at the time of order receipt, as evaluating share-weighted average prices at the time of order receipt is more consistent with the goal of observing the effect of the Pilot on the liquidity of Pilot Securities. FINRA is therefore proposing to make this change through Supplementary Material .06.²⁹ This change will make these provisions consistent with the remainder of the statistics in Appendix B.I.a, which are all based on order receipt.

Supplementary Material .07 clarifies that, for purposes of Appendix B.I.a(33), only a Trading Center that is displaying in its own name as a Trading Center when executing an order shall enter a value in this field. FINRA believes that the Appendix B.I.a(33) reporting requirement is only relevant for a Trading Center that is a display venue and not Trading Centers that may display through other Trading Centers (such as a market maker displaying a quote on a national securities exchange).

Supplementary Material .08 addresses the status of not-held and auction orders for purposes of Appendix B.I reporting. Currently, Appendix B.I sets forth eight categories of orders, including market orders, marketable limit orders, and inside-the-quote resting limit orders, for which daily market quality statistics must be reported. Currently, Appendix B.I does not provide a category for not held orders, clean cross orders, auction orders, or orders received when the NBBO is crossed. FINRA and the other Participants have determined that it is appropriate to include separate categories both not held orders and auction orders for purposes of Appendix B reporting. FINRA is therefore proposing Supplementary Material .07 to provide that not held orders shall be included as an order type for purposes of Appendix B reporting, and shall be assigned the number (18). Clean cross orders shall be included as an order type for

²⁹ This proposed change is also part of an exemptive request that FINRA and the other Participants will be submitting to the SEC pursuant to Rule 608(e) of Regulation NMS.

purposes of Appendix B reporting, and shall be assigned the number (19); auction orders shall be included as an order type for purposes of Appendix B reporting, and shall be assigned the number (20); and orders that cannot be otherwise be classified, including, for example, orders received when the NBBO is crossed shall be included as an order type for purposes of Appendix B reporting, and shall be assigned the number (21). All of these orders already are included in the scope of Appendix B; however, without this proposed change, these order types would be categorized with other orders, such as regular held orders, that should be able to be fully executed upon receipt, which would compromise the value of this data.

FINRA is proposing Supplementary Material .09 to clarify the scope of the Plan as it relates to members that only execute orders for limited purposes. Specifically, FINRA and the other Participants believe that a member that only executes orders otherwise than on a national securities exchange for the purpose of (1) correcting a bona fide error related to the execution of a customer order; (2) purchasing a security from a customer at a nominal price solely for purposes of liquidating the customer's position; or (3) completing the fractional share portion of an order³⁰ shall not be deemed a Trading Center for purposes of Appendix B to the Plan. FINRA is therefore proposing Supplementary Material .09 to make this clarification.

FINRA is proposing Supplementary Material .10 to clarify that, for purposes of the Plan, Trading Centers must begin the data collection required pursuant to Appendix B.I.a(1) through B.II.(y) to the Plan and Item I of Appendix C to the Plan on April 4, 2016. While FINRA will provide the information required by Appendix B and C to the Plan to the SEC during the Pre-Pilot period, the requirement that FINRA, as DEA, provide information to the SEC within 30

³⁰ FINRA notes that where a member purchases a fractional share from a customer, the Trading Center that executes the remaining whole shares of that customer order would be subject to Appendix B of the Plan.

calendar days following month end and make such data publicly available on its website pursuant to Appendix B and C to the Plan shall commence as of the beginning of the Pilot Period.³¹

FINRA is proposing Supplementary Material .11 to address the requirement in Appendix C.I(b) to the Plan that the calculation of raw Market Maker realized trading profits utilize a last in, first out (“LIFO”)-like method to determine which share prices shall be used in that calculation. FINRA and the other Participants believe that is more appropriate to utilize a methodology that yields LIFO-like results, rather than utilizing a LIFO-like method, and FINRA is therefore proposing Supplementary Material .11 to make this change.³² FINRA is proposing that, for purposes of Item I of Appendix C, the Participants shall calculate daily Market Maker realized profitability statistics for each trading day on a daily LIFO basis using reported trade price and shall include only trades executed on the subject trading day. The daily LIFO calculation shall not include any positions carried over from previous trading days. For purposes of Item I.c of Appendix C, the Participants shall calculate daily Market Maker unrealized profitability statistics for each trading day on an average price basis. Specifically, the

³¹ In its order approving the Plan, the SEC noted that the Pilot shall be implemented within one year of the date of publication of its order, *e.g.*, by May 6, 2016. *See* Approval Order, 80 FR at 27545. However, on November 6, 2015, the SEC extended the implementation date approximately five months to October 3, 2016. *See* Securities Exchange Act Release No. 76382 (November 6, 2015), 80 FR 70284 (November 13, 2015).

³² Appendix C.I currently requires Market Maker profitability statistics to include (1) the total number of shares of orders executed by the Market Maker; (2) raw Market Maker realized trading profits, which is the difference between the market value of Market Maker shares and the market value of Market Maker purchases, using a LIFO-like method; and (3) raw Market Maker unrealized trading profits, which is the difference between the purchase or sale price of the end-of-day inventory position of the Market Maker and the Closing Price. In the case of a short position, the Closing Price from the sale will be subtracted; in the case of a long position, the purchase price will be subtracted from the Closing Price.

Participants must calculate the volume weighted average price of the excess (deficit) of buy volume over sell volume for the current trading day using reported trade price. The gain (loss) of the excess (deficit) of buy volume over sell volume shall be determined by using the volume weighted average price compared to the closing price of the security as reported by the primary listing exchange. In reporting unrealized trading profits, the Participant shall also report the number of excess (deficit) shares held by the Market Maker, the volume weighted average price of that excess (deficit) and the closing price of the security as reported by the primary listing exchange used in reporting unrealized profit.

FINRA is proposing Supplementary Material .12 to address the securities that will be used for data collection purposes prior to the commencement of the Pilot. FINRA and the other Participants have determined that it is appropriate to collect data for a group of securities that is larger, and using different quantitative thresholds, than the group of securities that will Pilot Securities. FINRA is therefore proposing Supplementary Material .12 to define “Pre-Pilot Data Collection Securities” as the securities designated by the Participants for purposes of the data collection requirements described in Items I, II and IV of Appendix B and Item I of Appendix C to the Plan for the period beginning six months prior to the Pilot Period and ending on the trading day immediately preceding the Pilot Period. The Participants shall compile the list of Pre-Pilot Data Collection Securities by selecting all NMS stocks with a market capitalization of \$5 billion or less, a Consolidated Average Daily Volume (CADV) of 2 million shares or less and a closing price of \$1 per share or more. The market capitalization and the closing price thresholds shall be applied to the last day of the Pre-Pilot measurement period, and the CADV threshold shall be applied to the duration of the Pre-Pilot measurement period. The Pre-Pilot measurement period shall be the three calendar months ending on the day when the Pre-Pilot Data Collection

Securities are selected. The Pre-Pilot Data Collection Securities shall be selected thirty days prior to the commencement of the six-month Pre-Pilot Period. On the trading day that is the first trading day of the Pilot Period through six months after the end of the Pilot Period, the data collection requirements will become applicable to the Pilot Securities only. A Pilot Security will only be eligible to be included in a Test Group if it was a Pre-Pilot Security.

Finally, FINRA is proposing Supplementary Material .13, which states that the Rule shall be in effect during a pilot period to coincide with the pilot period for the Plan (including any extensions to the pilot period for the Plan).

If the Commission approves the proposed rule change, the proposed rule change will be effective upon Commission approval. The implementation date will be April 4, 2016.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,³³ 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 15A(b)(9) of the Act,³⁴ which requires that FINRA rules not impose any burden on competition that is not necessary or appropriate.

FINRA believes that this proposal is consistent with the Act because it implements and clarifies the provisions of the Plan, and is designed to assist FINRA in meeting its regulatory obligations pursuant to the Plan. In approving the Plan, the SEC noted that the Pilot was an appropriate, data-driven test that was designed to evaluate the impact of a wider tick size on trading, liquidity, and the market quality of securities of smaller capitalization companies, and

³³ 15 U.S.C. 78o-3(b)(6).

³⁴ 15 U.S.C. 78o-3(b)(9).

was therefore in furtherance of the purposes of the Act. FINRA believes that this proposal is in furtherance of the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Act because the proposal implements and clarifies the requirements of the Plan and applies specific obligations to members in furtherance of compliance with the Plan.

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 notes that the proposed rule change implements the provisions of the Plan, and is designed to assist FINRA in meeting its regulatory obligations pursuant to the Plan. FINRA notes that the data collection requirements for members that operate Trading Centers will apply equally to all such members, as will the data collection requirements for Market Makers.

FINRA estimates that there are approximately 250 members that operate Trading Centers, and for which FINRA is the DEA, that would be required to submit data pursuant to Appendix B.I and B.II. While the Plan imposes comprehensive data collection requirements on members that operate Trading Centers, FINRA notes that some of the data requirements are modeled upon Rule 605 data, and that it is leveraging existing OATS data and systems to assist firms in complying with their Appendix B.I and B.II reporting obligations. FINRA also estimates that there are approximately 100 members that qualify as Market Makers for which FINRA is the DEA. While the Plan imposes new reporting obligations on Market Makers, FINRA notes that some of the requested Market Maker profitability data may already be captured by members for internal purposes.

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

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-2015-048 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Robert W. Errett, Deputy Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2015-048. 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 a.m. and 3 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-2015-048 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.³⁵

Brent J. Fields
Secretary

³⁵ 17 CFR 200.30-3(a)(12).