

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-79026; File No. SR-FINRA-2016-038)

October 3, 2016

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend FINRA Rule 6191 to Modify the Quoting and Trading Requirements Relating to the Block Size Exception and the Use of Intermarket Sweep Orders and Trade-at Intermarket Sweep Orders

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 September 30, 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. 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 amend FINRA Rule 6191 (Compliance with Regulation NMS Plan to Implement a Tick Size Pilot Program) to modify the quoting and trading requirements relating to the block size exception and the use of Intermarket Sweep Orders (“ISOs”) and Trade-at Intermarket Sweep Orders (“TAISOs”).⁴

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

⁴ Unless otherwise specified, capitalized terms used in this rule filing are defined as set forth in the 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 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

On August 25, 2014, FINRA and several other self-regulatory organizations ("Participants") filed with the Commission, pursuant to Section 11A of the Act⁵ and Rule 608 of SEC Regulation NMS⁶ thereunder, the Regulation NMS Plan to Implement a Tick Size Pilot Program ("Plan").⁷ The Participants filed the Plan to comply with an order issued by the Commission on June 24, 2014.⁸ The Plan was published for comment in the Federal Register on November 7, 2014, and approved by the Commission, as modified, on May 6, 2015.⁹ The

⁵ 15 U.S.C. 78k-1.

⁶ 17 CFR 242.608.

⁷ See Letter from Brendon J. Weiss, Vice President, Intercontinental Exchange, Inc., to Secretary, Commission, dated August 25, 2014.

⁸ See Securities Exchange Act Release No. 72460 (June 24, 2014), 79 FR 36840 (June 30, 2014).

⁹ See Securities Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27514 (May 13,

Commission approved the Plan on a two-year pilot basis.¹⁰ On November 6, 2015, the SEC exempted the Participants from implementing the pilot until October 3, 2016.¹¹

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 stock 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. The Plan provides for the creation of a group of Pilot Securities, which shall be placed in a control group and three separate test groups, with each subject to varying quoting and trading increments. 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 will be quoted in \$0.05 minimum increments but will continue to trade at any price increment that is currently permitted.¹²

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, a negotiated trade exception, and an exception for certain executions to comply with FINRA Rule 5320.¹³ 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 the price of a Trading Center’s “Best Protected Bid”

2015) (“Approval Order”).

¹⁰ See Approval Order.

¹¹ See Securities Exchange Act Release No. 76382 (November 6, 2015), 80 FR 70284 (November 13, 2015).

¹² See Section VI(B) of the Plan.

¹³ See Section VI(C) of the Plan; See also FINRA Rule 6191(a)(5)(C).

or “Best Protected Offer,” unless an enumerated exception applies.¹⁴ On November 13, 2015, FINRA filed with the Commission a proposed rule change to adopt Rule 6191(a) to implement the quoting and trading requirements of the Plan,¹⁵ which was approved, as amended, on February 23, 2016.¹⁶

FINRA is now proposing to amend Rule 6191(a) to make refinements to the operation of the Block Size and TAISO exceptions to the Trade-at requirement. With respect to the Block Size exception, FINRA is filing the proposed rule change to eliminate the condition that, to be eligible for the Block Size exception, the order may not be executed on multiple Trading Centers.¹⁷ FINRA also is amending provisions relating to the TAISO exceptions of Rule 6191(a)(6)(D) by amending the definition of “Trade-at Intermarket Sweep Order” in Rule 6191(a)(7)(C) to clarify that a Trading Center can simultaneously route TAISOs or ISOs to execute against the full “displayed” size of the Protected Quotation that was traded at and to amend Rule 6191(a)(6)(D)(i) to provide that additional limit orders routed simultaneously with a TAISO can be routed as either TAISOs or ISOs, as further discussed below.¹⁸

¹⁴ See Section VI(D) of the Plan.

¹⁵ See Securities Exchange Act Release No. 76483 (November 19, 2015), 80 FR 73853 (November 25, 2015) (Notice of Filing of File No. SR-FINRA-2015-047).

¹⁶ See Securities Exchange Act Release No. 77218 (February 23, 2016), 81 FR 10290 (February 29, 2016) (Order Approving File No. SR-FINRA-2015-047).

¹⁷ 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).

¹⁸ FINRA understands that other Participants have filed (or intend to file) amendments to their rules regarding the operation of the TAISO and Block Size exceptions consistent to the changes being proposed by FINRA in the instant filing. See e.g., Securities Exchange Act Release No. 78802 (September 9, 2016), 81 FR 63515 (September 15, 2016) (Notice

Block Size Exception

FINRA is proposing to amend Rule 6191(a)(6)(D)(ii)b. to clarify the operation of the Block Size exception to the Trade-at requirement. Specifically, FINRA is deleting current prong three of the Block Size exception, which provides that orders executed on multiple Trading Centers do not qualify for the Block Size exception. By deleting this requirement, the Block Size exception to the Trade-at requirement would apply to an order, irrespective of whether the member routes out a portion of the Block Size order to another Trading Center to comply with Rule 611.¹⁹

As stated in FAQ # 170 in the Tick Size Pilot Program Trading and Quoting FAQs,²⁰ an over-the-counter (“OTC”) Trading Center may rely on the Block Size exception irrespective of whether it routes an ISO, as required by Rule 611, to execute against the full displayed size of any Protected Quotation with a price superior to the price at which the Block Size order was executed.²¹ The instant amendment to the Block Size exception provision of Rule 6191(a) aligns the rule text with the guidance provided by FINRA and the other Participants in the Tick Size Pilot Program Trading and Quoting FAQs. The proposed amendment is designed to accommodate activity resulting from member compliance obligations under Rule 611 while remaining consistent with the Plan. FINRA notes that the multiple trading center condition to

of Filing of File No. SR-NYSE-2016-62).

¹⁹ 17 CFR 242.611.

²⁰ See Tick Size Pilot Program Trading and Quoting FAQs, available at: <http://www.finra.org/sites/default/files/TSP-Trading-and-Quoting-FAQs.pdf>.

²¹ The FAQ also provides, among other things that, in all cases, an OTC Trading Center may avail itself of the Block Size exception only where it has committed to execute the order in Block Size, irrespective of whether or not the outbound ISOs required pursuant to Regulation NMS Rule 611 were fully executed. See FAQ #170, Tick Size Pilot Program Trading and Quoting FAQs.

the use of the Block Size exception is not required by the Plan; thus, the proposed rule change remains consistent with the terms of the Plan.

Trade-at Intermarket Sweep Orders

The Plan defines a “Trade-At Intermarket Sweep Order” as a limit order for a Pilot Security that, when routed to a Trading Center, is identified as an ISO, and simultaneous with the routing of the limit order identified as an ISO, one or more additional limit orders, as necessary, are routed to execute against the full displayed size of any protected bid, in the case of a limit order to sell, or the full displayed size of any protected offer, in the case of a limit order to buy, for the Pilot Security with a price that is equal to the limit price of the limit order identified as an ISO.²² The Plan states that these additional routed orders also must be marked as ISOs.²³

FINRA clarified the use of ISOs in connection with the Trade-at requirement by adopting a definition of “Trade-at Intermarket Sweep Order.”²⁴ FINRA is proposing to further clarify that, when a TAISO is routed to a Trading Center, when simultaneously routing additional limit orders to execute against the full displayed size of any protected bid, in the case of a limit order to sell, or the full displayed size of any protected offer, in the case of a limit order to buy, such additional limit orders can be routed as either TAISOs or ISOs. Therefore, FINRA is proposing to distinguish TAISOs from ISOs by adding the phrase “or Intermarket Sweep Orders” to the end

²² See Section I(MM) of the Plan.

²³ Id.

²⁴ Rule 6191(a)(7)(C) (“Trade-at Requirement”) provides that “Trade-at Intermarket Sweep Order” means a limit order for a Pilot Security that meets the following requirements: (i) when routed to a Trading Center, the limit order is identified as a TAISO; and (ii) simultaneously with the routing of the limit order identified as a TAISO, one or more additional limit orders, as necessary, are routed to execute against the full size of any protected bid, in the case of a limit order to sell, or the full displayed size of any protected offer, in the case of a limit order to buy, for the Pilot Security with a price that is better than or equal to the limit price of the limit order identified as a TAISO. These additional routed orders also must be marked as TAISO.

of FINRA Rule 6191(a)(7)(C)(ii), so that any such additional routed orders sent to execute against the full displayed size of any protected bid, in the case of a limit order to sell, or the full displayed size of any protected offer, in the case of a limit order to buy, for the Pilot Security with a price that is better than or equal to the limit price of the limit order identified as a TAISO, may be marked as either TAISOs or ISOs.

Likewise, FINRA is proposing to amend Rule 6191(a)(6)(D)(i) to add the phrase “or Intermarket Sweep Orders” to the TAISO exception to the Trade-at requirement, to clarify that a Trading Center can simultaneously route TAISOs or ISOs to execute against the full displayed size of the Protected Quotation that was traded at. FINRA believes that this amendment is consistent with the Plan and preserves the intended operation of the exception, while providing members with additional flexibility when availing themselves of the TAISO exception to the Trade-at requirement.

FINRA has filed the proposed rule change for immediate effectiveness. FINRA has requested that the SEC waive the 30-day operative period so that the proposed rule change can become operative on October 3, 2016.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,²⁵ 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

²⁵ 15 U.S.C. 78q-3(b)(6).

15A(b)(9) of the Act,²⁶ which requires that FINRA rules not impose any burden on competition that is not necessary or appropriate.

The Plan requires FINRA to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with applicable quoting and trading requirements specified in the Plan. FINRA believes that this proposal is consistent with the Act because it is designed to assist FINRA in meeting its regulatory obligations pursuant to the Plan and is in furtherance of the objectives of the Plan.

FINRA believes that this proposal will clarify the permissible parameters around members' use of the Block Size exception by taking into account the possibility that a member may be required to route an ISO in compliance with Rule 611. Thus, FINRA believes that the proposed rule change better accommodates activity resulting from member compliance obligations under Rule 611, while remaining consistent with the Plan. FINRA also believes that the proposed changes to the operation of the TAISO exception to the Trade-at requirement is consistent with the Act in that it provides members with additional flexibility in using the TAISO exception while preserving the intended operation of the exception, consistent 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 also notes that the quoting and trading requirements of the proposal will apply equally to all members that trade Pilot Securities.

²⁶ 15 U.S.C. 78q-3(b)(9).

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

Written comments were neither solicited nor received.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act²⁷ and Rule 19b-4(f)(6) thereunder.²⁸

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

FINRA has filed the proposed rule change for immediate effectiveness. FINRA has requested that the SEC waive the 30-day operative period so that the proposed rule change can become operative on October 3, 2016.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow FINRA to implement the proposed rules immediately thereby preventing delays in the implementation of the Plan. The Commission notes that the Plan is scheduled to start on October 3, 2016. Therefore, the

²⁷ 15 U.S.C. 78s(b)(3)(A).

²⁸ 17 CFR 240.19b-4(f)(6).

Commission hereby waives the 30-day operative delay and designates the proposed rule change to be operative upon filing with the Commission.²⁹

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-2016-038 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-2016-038. 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

²⁹ For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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 the 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-2016-038, 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.³⁰

Robert W. Errett
Deputy Secretary

³⁰ 17 CFR 200.30-3(a)(12).