

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-79424; File No. SR-FINRA-2016-042)

November 29, 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 Website Data Publication Requirements Relating to 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 15, 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 to modify the website data publication requirements relating to the Regulation NMS Plan to Implement a Tick Size Pilot Program (“Plan”).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

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 Statutory Basis for, the Proposed Rule Change

1. Purpose

On August 25, 2014, FINRA, and several other self-regulatory organizations (the "Participants") filed with the Commission, pursuant to Section 11A of the Act⁴ and Rule 608 of Regulation NMS thereunder,⁵ the Plan to Implement a Tick Size Pilot Program.⁶ The Participants filed the Plan to comply with an order issued by the Commission on June 24, 2014.⁷ The Plan was published for comment in the Federal Register on November 7, 2014, and approved by the Commission, as modified, on May 6, 2015.⁸ The Commission approved the

⁴ 15 U.S.C. 78k-1.

⁵ 17 CFR 242.608.

⁶ See Letter from Brendon J. Weiss, Vice President, Intercontinental Exchange, Inc., to Secretary, Commission, dated August 25, 2014.

⁷ See Securities Exchange Act Release No 72460 (June 24, 2014), 79 FR 36840 (June 30, 2014).

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

Pilot on a two-year basis, with implementation to begin no later than May 6, 2016.⁹ On November 6, 2015, the SEC exempted the Participants from implementing the Pilot until October 3, 2016.¹⁰ Under the revised Pilot implementation date, the Pre-Pilot data collection period commenced on April 4, 2016. On September 13, 2016, the SEC exempted the Participants from the requirement to fully implement the Pilot on October 3, 2016, to permit the Participants to implement the pilot on a phased-in basis, as described in the Participants' exemptive request.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.

FINRA adopted rule amendments to implement the requirements of the Plan, including relating to the Plan's data collection requirements and requirements relating to website data publication.¹² Specifically, with respect to the website data publication requirements pursuant to

2015) ("Approval Order").

⁹ See Approval Order at 27533 and 27545.

¹⁰ See Securities Exchange Act Release No. 76382 (November 6, 2015), 80 FR 70284 (November 13, 2015).

¹¹ See Letter from David S. Shillman, Associate Director, Division of Trading and Markets, Commission, to Eric Swanson, EVP, General Counsel and Secretary, Bats Global Markets, Inc., dated September 13, 2016; see also Letter from Eric Swanson, EVP, General Counsel and Secretary, Bats Global Markets, Inc., to Brent J. Fields, Secretary, Commission, dated September 9, 2016.

¹² See, e.g., Securities Exchange Act Release No. 76484 (November 19, 2015), 80 FR 73858 (November 25, 2015) (Notice of Filing of File No. SR-FINRA-2015-048); see also Securities Exchange Act Release No. 77164 (February 17, 2016), 81 FR 9043 (February 23, 2016) (Notice of Filing of Partial Amendment No. 1 and Order Granting Accelerated Approval of File No. SR-FINRA-2015-048) ("Accelerated Approval Order"); see also Letter from David S. Shillman, Associate Director, Division of Trading and Markets,

Section VII and Appendices B and C to the Plan, FINRA Rule 6191(b)(2)(B) provides, among other things, that FINRA shall make the data required by Items I and II of Appendix B to the Plan, and collected pursuant to paragraph (b)(2)(A) of Rule 6191, publicly available on the FINRA website on a monthly basis at no charge and shall not identify the Trading Center that generated the data. FINRA Rule 6191(b)(3)(C), provides, among other things, that FINRA shall make the data required by Item IV of Appendix B to the Plan, and collected pursuant to paragraph (b)(3)(A) of Rule 6191, publicly available on the FINRA website on a monthly basis at no charge and shall not identify the Trading Center that generated the data. FINRA Rule 6191(b)(4)(B) provides, among other things, that FINRA shall make aggregated data required by Appendix C to the Plan, and collected pursuant to paragraph (b)(4)(A) of Rule 6191, publicly available on the FINRA website on a monthly basis at no charge and shall not identify the Market Makers that generated the data or the individual securities. FINRA Rule 6191.12 provides, among other things, that the requirement that FINRA make certain data publicly available on the FINRA website pursuant to Appendix B and C to the Plan shall commence at the beginning of the Pilot Period.

FINRA is proposing amendments to Rule 6191(b)(2)(B) (regarding Appendix B.I and B.II data), Rule 6191(b)(3)(C) (regarding Appendix B.IV data), and Rule 6191(b)(4)(B) (regarding Appendix C data), to provide that data required to be made available on FINRA's website be published within 120 calendar days following month end. In addition, the proposed amendments to Rule 6191.12 would provide that, notwithstanding the provisions of paragraphs (b)(2)(B), (b)(3)(C) and (b)(4)(B), FINRA shall make data for the Pre-Pilot period publicly

Commission, to Marcia E. Asquith, Senior Vice President and Corporate Secretary, FINRA, dated February 17, 2016.

available on the FINRA website pursuant to Appendix B and C to the Plan by February 28, 2017.¹³

The proposed rule change also will provide that, with respect to Appendix C data, FINRA will aggregate and publish, categorized by Control Group and each Test Group: (1) Market Maker profitability statistics for Market Makers for which FINRA is the designated examining authority (“DEA”), (2) Market Maker profitability statistics collected from other Participants that are DEAs, and (3) Market Maker profitability statistics for Market Makers whose DEA is not a Participant.¹⁴ FINRA will make this data publicly available on the FINRA website at no charge and will not identify the Market Makers that generated the data or the individual securities.

The purpose of delaying the publication of the website data is to address confidentiality concerns by providing for the passage of additional time between the market information reflected in the data and the public availability of such information.¹⁵ Likewise, the publication by FINRA of Market Maker profitability data on the FINRA website, including Market Makers for which FINRA is not the DEA, is intended to address confidentiality concerns with respect to the Appendix C data required to be made publicly available by the Participants. Although the Participants that are DEAs also would not have identified the Market Makers when publishing

¹³ With respect to data for the Pilot Period, the requirement that FINRA make data publicly available on the FINRA website pursuant to Appendix B and C to the Plan shall continue to commence at the beginning of the Pilot Period. Thus, the first website publication date for Pilot Period data (covering October 2016) would be published on the FINRA website by February 28, 2017, which is 120 days following the end of October 2016.

¹⁴ FINRA understands that some Market Makers may utilize a DEA that is not a Participant to the Plan and that their DEA would not be subject to the Plan’s data collection requirements. Prior to this proposal, the Participants implemented rules that required members that were Market Makers whose DEA is not a Participant to the Plan to transmit transaction data for Market Maker profitability calculations to FINRA. See, e.g., Securities Exchange Act Release No. 77456 (March 28, 2016), 81 FR 18925 (April 1, 2016) (Notice of Filing of File No. SR-NASDAQ-2016-043).

¹⁵ See, e.g., Accelerated Approval Order at 9049.

required Appendix C data, some of the Participants are DEAs for a very small number of Market Makers, and the published data from these DEAs raised concerns regarding the potential for identifying the Market Makers that correspond to those statistics.¹⁶

FINRA has filed the proposed rule change for immediate effectiveness and has requested that the Commission waive the 30-day operative delay. If the Commission waives the 30-day operative delay, the operative date of the proposed rule change will be the date of filing.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,¹⁷ 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,¹⁸ 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 is designed to assist the Participants in meeting their regulatory obligations pursuant to the Plan and is in furtherance of the objectives of the Plan, as identified by the SEC. FINRA believes that the instant proposal is consistent with the Act in that it is designed to address confidentiality concerns by permitting FINRA to delay website publication to provide for passage of additional

¹⁶ FINRA notes that FINRA is the DEA for the vast majority of Market Makers, and, therefore, FINRA already would have been responsible for publishing aggregated data covering the profitability of the vast majority of Market Makers. In fact, FINRA is the DEA for all but fifteen of 115 Market Makers; thus, the majority of the publicly available Appendix C data would already have been aggregated and provided on the FINRA website.

¹⁷ 15 U.S.C. 78o-3(b)(6).

¹⁸ 15 U.S.C. 78o-3(b)(9).

time between the market information reflected in the data and the public availability of such information.

In addition, in approving the Plan, the Commission recognized that requiring the publication of Market Maker data may raise confidentiality concerns, especially for Pilot Securities that may have a relatively small number of designated Market Makers.¹⁹ For this reason, the Commission modified the Plan so that the data that would be made publicly available would not contain profitability measures for each security, but would be aggregated by the Control Group and each Test Group. Thus, FINRA believes that the instant proposal is consistent with the Act in that it is designed to further address confidentiality concerns by permitting FINRA to aggregate and publish Market Maker profitability data for all Participant DEAs, including Market Makers for which FINRA is not the DEA.

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 the Participants in meeting their regulatory obligations pursuant to the Plan.

The proposal is intended to address confidentiality concerns that may adversely impact competition, especially for Pilot Securities that may have a relatively small number of designated Market Makers, by permitting FINRA to (1) delay website publication to provide for passage of additional time between the market information reflected in the data and the public availability of such information; and (2) aggregate and publish Market Maker profitability data for all Participant DEAs, including Market Makers for which FINRA is not the DEA. FINRA notes

¹⁹ See Approval Order at 27543 - 27544.

that the proposed change will not affect the data reporting requirements for members for which FINRA is the DEA.²⁰ The proposal also does not alter the information required to be submitted to the SEC.

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.²¹

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)²² of the Act and Rule 19b-4(f)(6) thereunder.²³

A proposed rule change filed under Rule 19b-4(f)(6)²⁴ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),²⁵ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. FINRA has filed the proposed rule change for

²⁰ See supra note 16.

²¹ Financial Information Forum (FIF) submitted a letter to the staff of the Commission, copying FINRA, raising concerns regarding the publication of certain Appendix B statistics on a disaggregated basis using a unique masked market participant identifier. See Letter from Mary Lou Von Kaenel, Managing Director, FIF, to David S. Shillman, Associate Director, Division of Trading and Markets, Commission, dated August 16, 2016, available at <https://www.fif.com/comment-letters>.

²² 15 U.S.C. 78s(b)(3)(A).

²³ 17 CFR 240.19b-4(f)(6).

²⁴ 17 CFR 240.19b-4(f)(6).

²⁵ 17 CFR 240.19b-4(f)(6)(iii).

immediate effectiveness and has requested that the Commission waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing so that it may become operative immediately.

FINRA notes that the proposed rule change implements the provisions of the Plan, and is designed to assist the Participants in meeting their regulatory obligations pursuant to the Plan. The proposal is intended to address confidentiality concerns by permitting FINRA to (1) delay website publication to provide for passage of additional time between the market information reflected in the data and the public availability of such information; and (2) aggregate and publish Market Maker profitability data for all Participant DEAs, including Market Makers for which FINRA is not the DEA. FINRA notes that the proposed change will not affect the data reporting requirements for members for which FINRA is the DEA.²⁶ The proposal also does not alter the information required to be submitted to the SEC.

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 these proposed changes that are intended to address confidentiality concerns. The Commission notes that the Pre-Pilot data is currently required to be published on November 30, 2016. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposed rule change to be operative as of the date of this notice.²⁷

²⁶ See supra note 14.

²⁷ 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).

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.²⁸ If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR- FINRA-2016-042 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-2016-042. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the

²⁸ 15 U.S.C. 78s(b)(3)(C).

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 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-2016-042, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁹

Robert W. Errett
Deputy Secretary

²⁹ 17 CFR 200.30-3(a)(12).