

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-79570; File No. SR-FINRA-2016-045)

December 15, 2016

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Rule 4554 Reporting Requirements for Alternative Trading Systems

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 December 8, 2016, Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a “non-controversial” rule change under paragraph (f)(6) of Rule 19b-4 under the Act,³ which renders the proposal effective upon receipt of this filing by the Commission.

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

FINRA is proposing to amend 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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

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

FINRA proposes to amend Rule 4554 (Alternative Trading Systems—Recording and Reporting Requirements of Order and Execution Information for NMS Stocks) to require ATSS to provide additional order sequence information on reports submitted to the Order Audit Trail System (“OATS”). In May 2016, the SEC approved Rule 4554 to further enhance FINRA’s ability to reconstruct an ATS’s order book and better perform its order-based surveillance, which includes surveillance for layering, quote spoofing and mid-point pricing manipulation. To accomplish this, Rule 4554 requires ATSS to report order information for each order they receive in an NMS stock beyond that set forth in the OATS rules, such as order re-pricing events (e.g., changes to an order that is pegged to the National Best Bid or Offer (“NBBO”)) and order display and reserve size information.⁴ Rule 4554 sets forth four categories of reporting

⁴ See Securities Exchange Act Release No. 77798 (May 10, 2016), 81 FR 30395 (May 16, 2016) (SR-FINRA-2016-010). With the exception of the requirement for ATSS to report sequence numbers, Rule 4554 was implemented on November 7, 2016. See Regulatory Notice 16-28 (August 2016). FINRA delayed the implementation for the requirement to report sequence numbers until the requirement could be extended to apply to all OATS reports. See Securities Exchange Act Release No. 79289 (November 10, 2016), 81 FR

requirements: (1) data to be reported by all ATSS at the time of order receipt; (2) data to be reported by all ATSS at the time of order execution; (3) data to be reported by ATSS that display subscriber orders; and (4) data specific to ATSS that are registered as ADF Trading Centers.

Rule 4554(b) requires that all ATSS report eight categories of information at the time of order receipt, including the sequence number assigned to the order event by the ATSS's matching engine.⁵ After further evaluation of the need for the sequence number in other order events, FINRA proposes to amend this requirement to require ATSS to report a sequence number for all OATS event types, not just for order receipt, including reports for the execution of an order or the routing of an order away from the ATSS.⁶ FINRA is proposing to extend the requirement to report a sequence number beyond order receipt because, without a sequence number on all order events, FINRA is unable to properly sequence events when a single ATSS MPID reports order events in the same symbol with identical timestamps.⁷ Requiring ATSS to report a sequence number for all OATS order events, rather than just order receipt, will further enable FINRA to

81202 (November 17, 2016) (Notice of Filing and Immediate Effectiveness of SR-FINRA-2016-041).

⁵ Rule 4554(b)(8). Rule 4554(b) also requires all ATSS, at the time of order receipt, to report: (1) whether the ATSS displays subscriber orders outside of the ATSS and, if the ATSS displays subscriber orders outside of the ATSS, whether subscriber orders are displayed to subscribers only, or are distributed for publication in the consolidated quotation data; (2) whether the ATSS is an ADF Trading Center as defined in FINRA Rule 6220; (3) whether the order can be routed away from the ATSS for execution; (4) whether there are any counter-party restrictions on the order; (5) a unique identifier representing the specific order type other than market and limit orders that have no other special handling instructions; (6) the NBBO (or relevant reference price) in effect at the time of order receipt and the timestamp of when the ATSS captured the effective NBBO (or relevant reference price); and (7) the market data feed the ATSS used to obtain the NBBO (or relevant reference price).

⁶ FINRA is proposing to move the provision into a separate paragraph to reflect this change.

⁷ The occurrence of identical timestamps in these circumstances is not infrequent. For example, on a recent reporting day, over 13% of ATSS order events within a single ATSS MPID and symbol contained an identical timestamp.

properly sequence order events within an ATS, which will allow FINRA to more fully reconstruct an ATS's order book and better perform order-based surveillance, including surveillance for layering, quote spoofing and mid-point pricing manipulation.

FINRA notes that the expansion of the requirement to report a sequence number with all order events mirrors the proposed requirement from Regulatory Notice 14-51. As discussed in the filing for SR-FINRA-2016-010, FINRA initially solicited comment on the proposal for ATSS to report order information to OATS in Regulatory Notice 14-51.⁸ As part of the proposal set forth in the Regulatory Notice, ATSS exceeding the proposed volume threshold would have been required to report certain order information and “would provide, for every order, the ATS book sequence identifier and the associated OATS identifier, which would link information about that order to the related information and full lifecycle reported to OATS.”⁹ None of the commenters on that proposal specifically addressed the provision of sequence numbers on order reports.

In response to a comment on the proposed rule change filed with the Commission, FINRA clarified that it was not mandating a particular or uniform format by which ATSS must report sequence numbers and that reporting sequence numbers as they currently exist in an ATS will satisfy the requirement.¹⁰ The same clarification is true with the expansion of the requirement beyond reporting order receipt (i.e., an ATS may report all sequence numbers as they currently exist in the ATS rather than in a particular or uniform format).

⁸ See Securities Exchange Act Release No. 77269 (March 1, 2016), 81 FR 11851, 11854-55 (March 7, 2016).

⁹ Regulatory Notice 14-51. The volume threshold proposed in the Regulatory Notice was removed as part of the proposed rule change approved by the Commission. See Securities Exchange Act Release No. 77269 (March 1, 2016), 81 FR 11851, 11854-55 (March 7, 2016).

¹⁰ See Securities Exchange Act Release No. 77798 (May 10, 2016), 81 FR 30395, 30397 (May 16, 2016).

FINRA has filed the proposed rule change for immediate effectiveness. FINRA will announce the implementation date of the proposed rule change no later than 30 days following Commission notice of the filing of the proposed rule change for immediate effectiveness. The implementation date will be no later than 145 days after the date of the filing.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,¹¹ 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,¹² 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 requiring sequence numbers on all OATS reports will further enhance FINRA's ability to surveil activity occurring within an ATS by providing FINRA with additional information that can be integrated into FINRA's surveillance patterns to support alert generation and analysis.

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. FINRA believes that, because ATSS are already required to include sequence numbers on new

¹¹ 15 U.S.C. 78o-3(b)(6).

¹² 15 U.S.C. 78o-3(b)(9).

order reports pursuant to Rule 4554 as approved by the Commission, including sequence numbers on additional order events will not be overly burdensome.

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 Act¹³ and Rule 19b-4(f)(6) thereunder.¹⁴

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.

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:

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f)(6).

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-2016-045 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-2016-045. 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-2016-045, 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.¹⁵

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¹⁵ 17 CFR 200.30-3(a)(12).