

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-80193; File No. SR-FINRA-2017-006)

March 9, 2017

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change to Amend Rule 6191 to Implement an Anonymous, Grouped Masking Methodology for Over-the-Counter Activity in Connection with Website Data Publication of Appendix B Data Pursuant 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”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 3, 2017, 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 amend Rule 6191 to implement an anonymous, grouped masking methodology for over-the-counter (“OTC”) activity in connection with website data publication of Appendix B data pursuant to 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.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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

Rule 6191(b) (Compliance with Data Collection Requirements)<sup>3</sup> implements the data collection and website publication requirements of the Plan.<sup>4</sup> Rule 6191(b)(2)(B) provides, among other things, that FINRA will publish data pursuant to Appendix B.I. and B.II. of the Plan on its website within 120 calendar days following month end at no charge,<sup>5</sup> and that such publication will not identify the Trading Center that generated the data. Rule 6191(b)(3)(C) provides, among other things, that FINRA will publish data pursuant to

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<sup>3</sup> 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”).

<sup>4</sup> The Participants filed the Plan to comply with an order issued by the Commission on June 24, 2014. See Letter from Brendon J. Weiss, Vice President, Intercontinental Exchange, Inc., to Secretary, Commission, dated August 25, 2014 (“SRO Tick Size Plan Proposal”). See Securities Exchange Act Release No. 72460 (June 24, 2014), 79 FR 36840 (June 30, 2014). See also Securities Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27513 (May 13, 2015) (“Approval Order”).

<sup>5</sup> On November 30, 2016, the SEC granted exemptive relief to the Participants, and FINRA filed proposed rule changes, to, among other things, delay the publication of website data pursuant to Appendices B and C to the Plan until February 28, 2017, and to delay the

Appendix B.IV. to the Plan on its website within 120 calendar days following month end at no charge, and that such publication will not identify the OTC Trading Center that generated the data.

In consultation with SEC staff, FINRA is proposing new supplementary material to Rule 6191 to implement the aggregation methodology described further below. Specifically, FINRA is proposing to provide for an anonymous, grouped masking methodology for Appendix B.I., B.II. and B.IV. data in furtherance of the Plan’s requirement that the data made publicly available will not identify the Trading Center that generated the data.<sup>6</sup> The proposed methodology also is intended to mitigate confidentiality concerns previously raised by commenters<sup>7</sup> regarding the publication of data related to OTC activity. Chicago Stock Exchange, Inc. (“CHX”) is the designated examining authority (“DEA”) for a relatively small number of OTC Trading Centers; thus, FINRA also will incorporate the firms for which CHX is the DEA into the anonymous, grouped masking methodology and publish OTC-wide statistics for Appendix B.I., B.II. and B.IV. data on the FINRA website.<sup>8</sup>

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ongoing website publication by ninety days such that it would be published within 120 calendar days following the end of the month. See, e.g., Letter from David S. Shillman, Associate Director, Division of Trading and Markets, Commission, to Marcia E. Asquith, Senior Vice President and Corporate Secretary, FINRA dated November 30, 2016; see also Securities Exchange Act Release No. 79424 (November 29, 2016), 81 FR 87603 (December 5, 2016) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2016-042). FINRA recently filed a proposed rule change to revert to the 30-day delay with regard to Appendix C data website publication. See File No. SR-FINRA-2017-005 (Proposed Rule Change to Amend FINRA Rule 6191 to Modify the Date of Appendix B Website Data Publication Pursuant to the Regulation NMS Plan to Implement a Tick Size Pilot Program).

<sup>6</sup> See Section VII.(A) of the Plan (Collection of Trading Center Pilot Data).

<sup>7</sup> See *infra* note 20.

<sup>8</sup> In connection with the instant filing, FINRA and CHX requested exemptive relief from the Plan to permit the publication on the FINRA website of data relating to OTC activity pursuant to Appendix B.I., B.II. and B.IV. on an aggregated basis using an anonymous,

## Grouping Methodology

For purposes of the data to be made available on the FINRA website pursuant to the Plan, FINRA proposes to aggregate individual OTC Trading Center Appendix B data within groupings of Trading Centers by ATS and non-ATS categories, using an undisclosed methodology for assigning each Trading Center to a group. FINRA believes that an anonymous, grouped masking methodology for purposes of publishing the required data related to OTC activity will support the Plan's requirement that the data to be made publicly available will not identify the Trading Center that generated the data.<sup>9</sup> In furtherance of this objective, the details of the methodology used to formulate the anonymous groupings will not be disclosed. FINRA believes that the proposed approach strikes an appropriate balance between mitigating confidentiality concerns while supporting the public availability of useful Plan data.

Trading Center group assignments will not be published and generally will remain unchanged for the duration of the data publication period, with the exception of the entrance of a new Trading Center (new FINRA member). The anonymized identifier used for each group will remain unchanged for the duration of the data publication period and the same groups and group identifiers will be used for all Appendix B data sets. The number of Trading Centers assigned to each group will not specifically be disclosed; however, each group will contain between five and 25 market participant identifiers (MPIDs). In addition, for each day's statistics, the number of MPIDs in each group with activity in any Pilot Security for that day will be disclosed.

Disclosing the number of active MPIDs each day is intended to inform evaluators of the data of

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grouped masking methodology. See Letter from Marcia E. Asquith, Executive Vice President, Board and External Relations, FINRA, to Robert W. Errett, Deputy Secretary, Commission, dated March 2, 2017.

<sup>9</sup> See Section VII.(A) of the Plan.

whether the number of Trading Centers reflected in the statistics each day has changed — for example, because a Trading Center in the group didn't register activity on a given day.<sup>10</sup>

#### Appendix B.I. Data Aggregation Methodology

FINRA proposes to aggregate the Appendix B.I. data to be made publicly available on the FINRA website by aggregating statistics within each group by Pilot Security for each trading day. The methodology used for computing the statistics at the group level will be the same methodology used to compute these statistics at the Trading Center level in the non-public version of the data (and in the public version of the exchange data).<sup>11</sup> Specifically, FINRA would calculate group-level sums for statistics that are quantity counts<sup>12</sup> and use all underlying data within a group to calculate statistics requiring averages or weighted averages.<sup>13</sup> Data will be aggregated separately for each order type and subcategory, and will not be aggregated across order types or subcategories.

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<sup>10</sup> FINRA will disclose the number of MPIDs in each group with activity in any Pilot Security for that day either within each Appendix B data set or in an associated file.

<sup>11</sup> See Tick Size Appendix B and C Statistics FAQs (available at <http://www.finra.org/sites/default/files/Tick-Size-Pilot-Appendix-B-and-C-FAQ.pdf>).

<sup>12</sup> See, e.g., Appendix B.I.a(7) (cumulative number of orders).

<sup>13</sup> See, e.g., Appendix B.I.a(28) (the share weighted average realized spread for executions of orders); and Appendix B.I.a(29) (the received share-weighted average percentage for shares not displayable as of order receipt). FINRA will calculate averages for all price variables and percentages.

Table 1 – Illustrative Sample B.I. data aggregation<sup>14</sup>

Date	Trading Center	Ticker Symbol	# of Active MPIDs in Masked Group Across All Pilot Stocks	Order Type	Cumulative Number of Orders	Cumulative Number of Shares of Orders	Cumulative Number of Shares of Orders Executed at an Away Trading Center	Share Weighted Average Realized Spread for Execution of Orders on Trading Center only
<b>Unmasked Data</b>								
20160926	ABCD	ZZZZ	n/a	18	2	100000	75000	-0.01
20160926	EFGH	ZZZZ	n/a	18	2	100000	100000	0.01
20160926	IJKL	ZZZZ	n/a	18	4	750000	35000	0.011
<b>Masked Data</b>								
20160926	G1	ZZZZ	5	18	8	950000	210000	0.0090

Appendix B.II. Data Aggregation Methodology

Appendix B.II. data includes order-level statistics; thus, FINRA proposes that all individual orders be displayed for all Trading Centers within a group, with each order attributed to the group rather than the underlying Trading Center. In addition, Appendix B.II. order information would be displayed in pure chronological order based on time of order receipt to help minimize confidentiality concerns that may occur if other ordering methods were used, such as showing the original chronological order per Trading Center.

<sup>14</sup> For purposes of illustration, this table reflects only a sample of the data — specifically, the fields described in Appendix B.I.a.(1), (2), (3), (7), (8), (13) and (28). The published data would reflect all fields described in Appendix B.I. to the Plan and as further specified in FINRA Rule 6191 and related rule filings, the Tick Size Appendix B and C Statistics FAQs (available at <http://www.finra.org/sites/default/files/Tick-Size-Pilot-Appendix-B-and-C-FAQ.pdf>), and in FINRA’s Appendix B and C Requirements and Finra.org File Specifications document (available at <http://www.finra.org/sites/default/files/Appendix-B-and-C-Reporting-Specifications.pdf>).

Table 2 - Illustrative Sample B.II. data aggregation<sup>15</sup>

Date	Trading Center	Issue	# of Active MPIDs in Masked Group Across All Pilot Stocks	Order Received Time	Order Type	Order Shares Quantity	B/S Code	Limit Price
<b>Unmasked Data</b>								
20160906	ABCD	ZZZZ	n/a	93605.41	10	500	B	(null)
20160906	ABCD	ZZZZ	n/a	94114.99	11	100	S	52.45
20160906	ABCD	ZZZZ	n/a	101140.05	11	900	S	52.31
20160906	EFGH	ZZZZ	n/a	93605.42	10	600	B	(null)
20160906	EFGH	ZZZZ	n/a	94114.99	11	100	S	52.45
20160906	EFGH	ZZZZ	n/a	101140.07	11	700	S	52.37
<b>Masked Data</b>								
20160906	G1	ZZZZ	5	93605.41	10	500	B	(null)
20160906	G1	ZZZZ	5	93605.42	10	600	B	(null)
20160906	G1	ZZZZ	5	94114.99	11	100	S	52.45
20160906	G1	ZZZZ	5	94114.99	11	100	S	52.45
20160906	G1	ZZZZ	5	101140.05	11	900	S	52.31
20160906	G1	ZZZZ	5	101140.07	11	700	S	52.37

Appendix B.IV. Data Aggregation Methodology

FINRA proposes to aggregate Appendix B.IV. data by aggregating statistics within each group by trading day by summing the statistics of all market maker activity represented within the group. The number of market makers would be displayed as the unique number of market makers<sup>16</sup> across all Trading Centers within the group.

<sup>15</sup> For purposes of illustration, this table reflects only a sample of the data — specifically, the fields required by items a. through h. of Appendix B.II. The published data would reflect all fields described in Appendix B.II. to the Plan and as further specified in FINRA Rule 6191 and related rule filings, the Tick Size Appendix B and C Statistics FAQs (available at <http://www.finra.org/sites/default/files/Tick-Size-Pilot-Appendix-B-and-C-FAQ.pdf>), and in FINRA’s Appendix B and C Requirements and Finra.org File Specifications document (available at <http://www.finra.org/sites/default/files/Appendix-B-and-C-Reporting-Specifications.pdf>).

<sup>16</sup> As provided in FINRA Rule 6191.11, FINRA will provide a count of the number of Market Makers used in the participation calculations. Thus, if a single unique Market Maker traded on multiple Trading Centers within the same masking group, for the Appendix B.IV. count of unique Market Makers on a given trading day, FINRA will count this activity as attributed to one unique Market Maker.

Table 3 - Illustrative Sample B.IV. data aggregation<sup>17</sup>

Date	Trading Center	# of Active MPIDs in Masked Group Across All Pilot Stocks	# Unique MMs Buy Side	# Unique MMs Sell Side	Share Participation (Buy)	Share Participation (Sell)
<b>Unmasked Data</b>						
20160906	ABCD	n/a	2	1	700000	225000
20160906	EFGH	n/a	1	1	200	5000
20160906	IJKL	n/a	4	1	35000	500000
<b>Masked Data</b>						
20160906	G1	5	5	2	735200	730000

If the Commission approves the proposed rule change, the effective date of the proposed rule change will be 120 days following Commission approval.

## 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>18</sup> 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,<sup>19</sup> which requires that FINRA rules not impose any burden on competition that is not necessary or appropriate.

<sup>17</sup> For purposes of illustration, this table reflects only a sample of the data — specifically, the fields required by items a. and b. of Appendix B.IV and FINRA Rule 6191.11. The published data would reflect all fields described in Appendix B.IV. to the Plan and as further specified in FINRA Rule 6191 and related rule filings, the Tick Size Appendix B and C Statistics FAQs (available at <http://www.finra.org/sites/default/files/Tick-Size-Pilot-Appendix-B-and-C-FAQ.pdf>), and in FINRA’s Appendix B and C Requirements and Finra.org File Specifications document (available at <http://www.finra.org/sites/default/files/Appendix-B-and-C-Reporting-Specifications.pdf>).

<sup>18</sup> 15 U.S.C. 78o-3(b)(6).

<sup>19</sup> 15 U.S.C. 78o-3(b)(9).



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. FINRA consulted extensively with SEC staff in connection with the instant proposal to design a grouped masking methodology that is consistent with the objectives of Section VII(A) of the Plan to make Appendix B data publicly available while not identifying the Trading Center that generated the data.

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.

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

The Commission previously received comment letters from FIF and Citadel Securities expressing concern over FINRA's intent to publish Appendix B data on a Trading Center-by-Trading Center basis.<sup>20</sup> FIF stated that publishing Appendix B.I. and B.II. statistics on FINRA's website in a disaggregated format does not satisfy the requirements of the Plan or Rule 6191 that the publicly available data will not identify the trading center that generated the data.<sup>21</sup> Similarly, Citadel Securities stated that market participants would be able to determine the

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<sup>20</sup> See Letters from William Hebert, Managing Director, Financial Information Forum ("FIF"), to Robert W. Errett, Deputy Secretary, Commission, dated December 21, 2016 ("FIF letter"); and Adam C. Cooper, Senior Managing Director and Chief Legal Officer, Citadel Securities, to Brent J. Fields, Secretary, Commission, dated December 21, 2016 ("Citadel letter"). See also Securities Exchange Act Release No. 79424 (November 29, 2016), 81 FR 87603 (December 5, 2016) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2016-042).

<sup>21</sup> See FIF letter.

identity of Trading Centers in violation of the Plan if the Appendix B data were to be published in a disaggregated format.<sup>22</sup>

In consultation with SEC staff, FINRA is filing the instant proposed rule change to mitigate the confidentiality concerns raised by commenters by providing for an anonymized, grouped masking methodology for Appendix B data for all OTC activity in furtherance of the objectives of the Plan.

### 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](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2017-006 on the subject line.

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<sup>22</sup> See Citadel letter.

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-2017-006. 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 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-2017-006, 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.<sup>23</sup>

Eduardo A. Aleman  
Assistant Secretary

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<sup>23</sup> 17 CFR 200.30-3(a)(12).