

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-80551; File No. SR-FINRA-2017-006)

April 28, 2017

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Granting Approval 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

I. Introduction

On March 3, 2017, Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“Commission”), 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> a proposed rule change to amend FINRA Rule 6191 to implement an anonymous, grouped masking methodology for over-the-counter (“OTC”) activity in connection with website publication of Appendix B data pursuant to the Regulation NMS Plan to Implement a Tick Size Pilot Program (“Plan” or “Pilot”).<sup>3</sup> The proposed rule change was published for comment in the Federal Register on March 15, 2017.<sup>4</sup> The Commission received three comment letters on the proposed rule change.<sup>5</sup> This order approves the proposed rule change.

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

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

<sup>3</sup> See Securities Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27513 (May 13, 2015) (“Approval Order”). Unless otherwise specified, capitalized terms used in this order are defined as set forth in the Plan.

<sup>4</sup> See Securities Exchange Act Release No. 80193 (Mar. 9, 2017), 82 FR 13901 (“Notice”).

<sup>5</sup> See Letters to Brent J. Fields, Secretary, Commission from Alisa McCoy, dated March 13, 2017 (“McCoy Letter”); Christopher W. Bok, Financial Information Forum, dated April 5, 2017 (“FIF Letter”); and Stephen John Berger, Managing Director, Government & Regulatory Policy, Citadel, dated April 7, 2017 (“Citadel Letter”).

## II. Description of the Proposal

FINRA Rule 6191(b) (Compliance with Data Collection Requirements) implements the data collection and website publication requirements of the Plan. FINRA Rule 6191(b)(2)(A) describes the data collection and submission requirements for data that is required under Appendix B.I. and B.II. of the Plan. FINRA Rule 6191(b)(2)(B) provides, among other things, that FINRA will publish data collected pursuant to FINRA Rule 6191(b)(2)(A) on its website within 120 calendar days following month end at no charge,<sup>6</sup> and that such publication will not identify the Trading Center that generated the data.

FINRA Rule 6191(b)(3)(A) describes the data collection and submission requirements for data specified under Appendix B.IV. of the Plan. FINRA Rule 6191(b)(3)(C) provides, among other things, that FINRA will publish data collected pursuant to FINRA Rule 6191(b)(3)(A) on its website within 120 calendar days following month end at no charge,<sup>7</sup> and that such publication will not identify the Trading Center that generated the data.

FINRA proposes new Supplementary Material .15 to FINRA Rule 6191 to implement an anonymous, grouped masking methodology for Appendix B.I., B.II. and B.IV. data (“Appendix B data”). FINRA also proposes to incorporate the OTC Trading Centers for which Chicago Stock Exchange, Inc. (“CHX”) is the designated examining authority (“DEA”) into the anonymous, grouped masking methodology and publish OTC-wide statistics for Appendix B data on the FINRA website.<sup>8</sup>

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<sup>6</sup> FINRA Rule 6191.12 provides that the website publication of Appendix B data shall commence on April 28, 2017.

<sup>7</sup> Id.

<sup>8</sup> In connection with the instant filing, FINRA and CHX requested exemptive relief from

A. Grouping Methodology

FINRA proposes to establish ATS and non-ATS categories. Thereafter, FINRA would assign OTC Trading Centers into groups of five to twenty-five, using an undisclosed methodology to assign each Trading Center to a group.

The 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 (i.e., new FINRA member). FINRA will assign an anonymized identifier for each group that will remain unchanged for the duration of the data publication period. The anonymized identifier will be used for all Appendix B data sets. The number of Trading Centers assigned to each group will not specifically be disclosed; however, as noted above, each group will contain between five and twenty-five 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 published.

B. Appendix B.I. Data Aggregation Methodology

FINRA proposes to aggregate the Appendix B.I. data 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

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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. using an anonymous, 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. The Commission, pursuant to its authority under Rule 608(e) of Regulation NMS, has granted FINRA and CHX a limited exemption from the requirement to comply with certain provisions of the Plan as specified in the letters and noted herein. See letter from David Shillman, Associate Director, Division of Trading and Markets, Commission to Marcia E. Asquith, Executive Vice President, Board and External Relations, FINRA, dated April 28, 2017 (“SEC Exemption Letter”).

Trading Center level in the non-public version of the data (and in the public version of the exchange data).<sup>9</sup> Specifically, FINRA would calculate group-level sums for statistics that are quantity counts<sup>10</sup> and use all underlying data within a group to calculate statistics requiring averages or weighted averages.<sup>11</sup> Data will be aggregated separately for each order type and subcategory, and will not be aggregated across order types or subcategories.

C. 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 chronological order based on time of order receipt.

D. 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>12</sup> across all Trading Centers within the group.

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<sup>9</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>10</sup> See e.g., Appendix B.I.a(7) (cumulative number of orders).

<sup>11</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.

<sup>12</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.

### III. Summary of Comment Letters

The Commission received three comment letters expressing general support for the proposed rule change.<sup>13</sup> One commenter praised “the significant steps taken to improve the masking methodology” for the Pilot data.<sup>14</sup> Another commenter commended FINRA for “taking into account the feedback received from market participants and working to devise an approach that seeks to address identified confidentiality concerns while still maintaining the usefulness of the publicly available data.”<sup>15</sup>

One commenter, however, expressed a continued concern related to FINRA’s proposed grouping methodology.<sup>16</sup> Specifically, this commenter believed that the proposal to break ATS and non-ATS OTC Trading Centers into groupings of five to twenty-five MPIDs may allow interested parties the opportunity to discern the identity of the Trading Center, perhaps by comparing the published data to Rule 605 reports of OTC volume data published by FINRA. This commenter also expressed concern that the disclosure of the number of active MPIDs in each group could potentially lead to the identification of broker-dealer Trading Centers. As an alternative, the commenter suggested that all OTC Trading Centers be aggregated into either a single ATS or non-ATS category.

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<sup>13</sup> One letter reads in its entirety “That is great idea since all of the compromise.” See McCoy Letter.

<sup>14</sup> See FIF Letter.

<sup>15</sup> See Citadel Letter.

<sup>16</sup> See FIF Letter.

Another commenter recommended eliminating the proposed daily publication of the number of MPIDs with activity in each group of Trading Centers.<sup>17</sup> This commenter suggested that FINRA reconsider whether this additional information is necessary to provide a useful data set to the public because, “in practice, FINRA will thus be disclosing information regarding the number of trading centers assigned to each group.” In this commenter’s view, FINRA must ensure that the additional data cannot be used to “undermine the confidentiality of FINRA’s methodology for assigning trading centers to particular groups or the actual group assignments.”

#### IV. Discussion and Commission’s Findings

After careful review of the proposed rule change and the comment letters, the Commission finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities association.<sup>18</sup> Specifically, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act,<sup>19</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>20</sup> which requires that FINRA rules not impose any burden on competition that is not necessary or appropriate.

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<sup>17</sup> See Citadel Letter.

<sup>18</sup> In approving this rule change, the Commission has considered the rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>19</sup> 15 U.S.C. 78o-3(b)(6).

<sup>20</sup> 15 U.S.C. 78o-3(b)(9).

In the Approval Order, the Commission noted that the Pilot is, by design, an objective, data-driven test that should “provide measurable data that should facilitate the ability of the Commission, the public and market participants to review and analyze the effect of tick size on the trading, liquidity and market quality of securities of smaller capitalization companies.”<sup>21</sup> The Commission further stated that the Plan should provide “a data-driven approach to evaluate whether certain changes to the market structure for Pilot Securities would be consistent with the Commission’s mission to protect investors, maintain fair, orderly and efficient markets and facilitate capital formation.”<sup>22</sup> To that end, the Plan provides for the collection, submission and publication of data specified in Appendix B of the Plan. The Plan further provides that the data to be made publicly available not identify the Trading Center that generated the data. As discussed below, the Commission believes that FINRA’s proposal is consistent with the requirements of the Act and would further the purpose of the Plan to provide measurable data.

FINRA, as a Participant in the Plan, has an obligation to comply, and enforce compliance by its members, with the terms of the Plan. Rule 608(c) of Regulation NMS provides that “[e]ach self-regulatory organization shall comply with the terms of any effective national market system plan of which it is a sponsor or participant.”<sup>23</sup> Proposed FINRA Rule 6191, Supplementary Material .15 would establish a means to anonymize the identities of OTC Trading Centers when publishing the data set forth in Appendix B to the Plan. The Commission also believes that the proposal is consistent with the Act because it is designed to assist FINRA in meeting its regulatory obligations pursuant to Rule 608 of Regulation NMS and the Plan.

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<sup>21</sup> See Approval Order, supra note 3.

<sup>22</sup> Id.

<sup>23</sup> 17 CFR 242.608(c).

FINRA's proposal seeks to address the provision in the Plan that individual OTC Trading Centers not be identified in the published data. FINRA proposes to create ATS and non-ATS categories and then assign OTC Trading Centers into groups of five to twenty-five. In addition, FINRA proposes to aggregate and publish data from those OTC Trading Centers for which CHX is DEA. Thereafter, FINRA would publish Appendix B data for OTC Trading Centers by group on its website using an anonymized identifier.

The Commission notes that commenters had previously raised concerns about the publication of OTC Trading Centers' Appendix B data on a disaggregated basis.<sup>24</sup> FINRA noted that it filed the proposed rule change to mitigate the confidentiality concerns of the commenters.

As noted above, while commenters were generally supportive of FINRA's proposal, some believe FINRA should do more to mitigate confidentiality concerns related to OTC Trading Centers' Appendix B data. These commenters suggested that FINRA eliminate the subgroupings of ATS and non-ATS OTC Trading Centers, or the daily identification of the number of active MPIDs in each group. While these commenters broadly suggested this information might be used to identify the group to which a particular OTC Trading Center was assigned, they did not articulate why the identification of that group, if possible, could reveal proprietary information or otherwise harm the interests of the OTC Trading Center. In this regard, the Commission notes that the activity of each OTC Trading Center would be combined with that of at least four other OTC Trading Centers, and would be at least four months old.

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<sup>24</sup> See Letters from William Hebert, Managing Director, Financial Information Forum, to Robert W. Errett, Deputy Secretary, Commission, dated December 21, 2016; and Adam C. Cooper, Senior Managing Director and Chief Legal Officer, Citadel Securities, to Brent J. Fields, Secretary, Commission, dated December 21, 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).



The Commission believes that FINRA’s proposal to develop an anonymous, grouped masking methodology is reasonably designed to address concerns that the activity of individual Trading Centers might be identified. The Commission notes that the identities of individual Trading Centers within each group would not be disclosed and the activity of each Trading Center would be aggregated with the activity of four to twenty-four other Trading Centers. At the same time, the Commission believes that the maintenance of these groups, and the daily identification of the number of active MPIDs in each group, should substantially enhance the usefulness of the Pilot data for academics and others seeking to analyze it. For example, establishing smaller groups of OTC Trading Centers should increase the ability of researchers to control for group fixed effects, and thereby help isolate the impact of the Pilot so that more precise and robust analysis can be performed. Similarly, identifying daily the number of active MPIDs should increase the ability of researchers to assess the impact of the Pilot by allowing them to control for changes in the number of OTC Trading Centers in each group that are active in Pilot Securities.<sup>25</sup>

The Commission also believes that FINRA’s proposal to aggregate and publish data from those OTC Trading Centers for which CHX is the DEA should help to mitigate confidentiality concerns. The Commission notes that CHX is DEA to a small number of OTC Trading Centers. Therefore, including these OTC Trading Centers in the broader anonymous data set should mitigate concerns about the disclosure of their identities.

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<sup>25</sup> The Commission also notes that FINRA will publish Appendix B data from OTC Trading Centers 120 days after the month end. This delay in publication should help support FINRA’s efforts to mitigate confidentiality concerns.

For the reasons noted above, the Commission finds that the proposal is consistent with the requirements of the Act. The proposal clarifies and implements certain data collection requirements set forth in the Plan.

IV. Conclusion

IT IS THEREFORE ORDERED THAT, pursuant to Section 19(b)(2) of the Act,<sup>26</sup> that the proposed rule change (SR-FINRA-2017-006), be and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>27</sup>

Eduardo A. Aleman  
Assistant Secretary

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<sup>26</sup> 15 U.S.C. 78s(b)(2).

<sup>27</sup> 17 CFR 200.30-3(a)(12).