

securities exchange.<sup>23</sup> In particular, the Commission finds that the proposed rule changes by the Exchanges are consistent with the requirements of Section 6(b)(5) of the Act, which requires, among other things, that an exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.<sup>24</sup>

The proposed amendment to Section 4.3 of the By-Laws would allow, but no longer require, that the Board include an Issuer Director. The Exchanges state that the Company's Directors are sufficiently experienced and capable to handle issues relating to listed companies without requiring the explicit participation of an Issuer Director.<sup>25</sup> Further, the Exchanges state that issues relating to listed companies are generally the province of NASDAQ, as NASDAQ is the Company subsidiary that provides listing services.<sup>26</sup> The Exchanges represent that NASDAQ's board includes issuer representation, as mandated by NASDAQ's by-laws.<sup>27</sup> Under the proposals, the Company would still retain the option to include one or more Issuer Director on the Board.

The proposed amendment to Section 4.7 of the By-Laws would allow the Board to elect to defer determinations under Section 4.7 regarding Director disqualification until the next annual meeting of stockholders, and to do so without being in violation of the By-Laws. The By-Laws currently are silent regarding the required timeframe within which the Board must make Director disqualification determinations under Section 4.7. The Exchanges represent that the proposal would aid the Board to act in the best interests of the Company and its stockholders as it would allow the Board to continue to make informed, deliberate decisions regarding Director nominees and prevent the significant disruption that the SROs believe would occur if the

Board were forced to replace a Director between annual meetings.<sup>28</sup>

Based on the foregoing, the Commission finds that the proposed rule changes filed by BX, NASDAQ, and Phlx are consistent with the Act.

The Commission also finds that the proposed rule changes by BSECC and SCCP are consistent with the requirements of the Act and the rules and regulations thereunder applicable to clearing agencies. Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of a clearing agency be designed to protect investors and the public interest.<sup>29</sup> In addition, Rule 17Ad-22(d)(8) under the Act requires registered clearing agencies to establish, implement, maintain, and enforce written policies and procedures reasonably designed to have governance arrangements that are clear and transparent.<sup>30</sup> Here, BSECC and SCCP filed proposed rule changes to highlight changes being made to the By-Laws of the Company,<sup>31</sup> which indirectly owns BSECC and SCCP. Therefore, the proposed rule changes by BSECC and SCCP help make clear and transparent the governance arrangements of the Company and, thus, BSECC and SCCP, which helps ensure investor protection and the public interest.

The Commission notes that the Company, as an issuer listed on NASDAQ, will continue to be required to comply with NASDAQ's Listing Rules, including the provisions in the Listing Rules relating to Corporate Governance Requirements, which requirements may differ from the By-Laws. The SROs have represented that the Company will continue to comply with the Listing Rules following the effectiveness of the proposed By-Law amendments.<sup>32</sup> The Commission further notes that the Listing Rules provide generally that a majority of the directors of a listed issuer must be "independent" as defined in those rules and that a listed issuer's audit, compensation, and nominations committees must be composed solely of directors who are "independent."<sup>33</sup> Because the Company's securities are listed on NASDAQ, the Commission notes that,

<sup>28</sup> *Id.*

<sup>29</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>30</sup> 17 CFR 240.17Ad-22(d)(8).

<sup>31</sup> Certain provisions of the Company's By-Laws are considered rules of BSECC and SCCP if they are stated policies, practices, or interpretations, as defined in Rule 19b-4 under the Act, of BX, NASDAQ, and Phlx, and must be filed with the Commission pursuant to Section 19(b) of the Act and Rule 19b-4 thereunder. 15 U.S.C. 78s(b); 17 CFR 240.19b-4.

<sup>24</sup> 15 U.S.C. 78f(b)(5).

<sup>25</sup> See Notices, *supra* note 6.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>32</sup> See Notices, *supra* note 6.

<sup>33</sup> See NASDAQ Rules 5605(b)(1), (c)(2), (d)(2), and (e).

when deferring determinations regarding Director disqualification pursuant to revised Section 4.7 of the By-Laws, the Company also must take into account the Listing Rules, including the "cure periods" contained therein, if the Director is serving in the capacity of an "independent director" within the meaning of the Listing Rules.

#### IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule changes, as modified by the amendments thereto, are consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, in the case of BX, NASDAQ, and Phlx, and to a registered clearing agency, in the case of BSECC and SCCP.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>34</sup> that the proposed rule changes (SR-BSECC-2015-002; SR-SCCP-2015-02; SR-BX-2015-085; SR-NASDAQ-2015-160; SR-Phlx-2015-113), as modified by the amendments thereto, be, and hereby are, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>35</sup>

**Robert W. Errett,**  
*Deputy Secretary.*

[FR Doc. 2016-03669 Filed 2-22-16; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-77164; File No. SR-FINRA-2015-048]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Partial Amendment No. 1 and Order Granting Accelerated Approval to a Proposed Rule Change, as Modified by Partial Amendment No. 1, To Adopt FINRA Rule 6191(b) and Amend FINRA Rule 7440 To Implement the Data Collection Requirements of the Regulation NMS Plan To Implement a Tick Size Pilot Program

February 17, 2016.

#### I. Introduction

On November 13, 2015, the Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

<sup>34</sup> 15 U.S.C. 78s(b)(2).

<sup>35</sup> 17 CFR 200.30-3(a)(12).

(“Act”)<sup>1</sup> and Rule 19b–4 thereunder,<sup>2</sup> a proposed rule change to adopt FINRA Rule 6191(b) and amend FINRA Rule 7440 to implement the Regulation NMS Plan to Implement a Tick Size Pilot Program (“Tick Size Pilot”).<sup>3</sup> The proposed rule change was published in the **Federal Register** on November 25, 2015.<sup>4</sup> On February 12, 2016, FINRA filed Partial Amendment No. 1 to the proposal.<sup>5</sup> The Commission received three comments on the proposal.<sup>6</sup> On January 7, 2016, the Commission designated a longer period for Commission action on the proposal.<sup>7</sup> This order approves the proposed rule change, as modified by Partial Amendment No. 1.

## II. Background

On August 25, 2014, NYSE Group, Inc., on behalf of BATS Exchange, Inc., BATS Y-Exchange, Inc., Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., FINRA, NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, the Nasdaq Stock Market LLC, New York Stock Exchange LLC, NYSE MKT LLC, and NYSE Arca, Inc. (collectively “Participants”), filed with the Commission, pursuant to Section 11A of the Act<sup>8</sup> and Rule 608 of Regulation NMS thereunder,<sup>9</sup> the Plan to Implement the Tick Size Pilot Program (“Plan”).<sup>10</sup> The Participants filed the Plan to comply with an order

issued by the Commission on June 24, 2014.<sup>11</sup> The Plan was published for comment in the **Federal Register** on November 7, 2014,<sup>12</sup> and approved by the Commission, as modified, on May 6, 2015.<sup>13</sup> On November 6, 2015, the Commission issued an exemption to the Participants from implementing the Plan until October 3, 2016.<sup>14</sup>

The Tick Size Pilot 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 stocks of certain small-capitalization companies. Each Participant is required to comply, and to enforce compliance by its members, as applicable, with the provisions of the Plan.<sup>15</sup> In addition to developing quoting and trading requirements for the Tick Size Pilot, the Plan requires Participants to collect and submit to the Commission a variety of data, including market quality statistics and market maker participation statistics and profitability data.<sup>16</sup> FINRA has filed the proposed rule change, as modified by Partial Amendment No. 1, to require its members to comply with the applicable data collection requirements of the Plan. In addition, FINRA proposes to clarify certain of the data collection provisions.<sup>17</sup>

## III. Description of the Proposed Rule Change, as Modified by Partial Amendment No. 1

FINRA proposes to adopt Rule 6191(b), which sets forth the data collection requirements under the Plan. Proposed Rule 6191(b)(1) would require that a member that operates a Trading

Center<sup>18</sup> shall establish, maintain and enforce written policies and procedures that are reasonably designed to comply with the data collection and transmission requirements of Items I and II to Appendix B of the Plan, and a member that is a Market Maker shall establish, maintain and enforce written policies and procedures that are reasonably designed to comply with the data collection and transmission requirements of Item IV of Appendix B to the Plan and Item I of Appendix C of the Plan.

Proposed Rule 6191(b)(2) sets forth the Trading Center data requirements. Under proposed Rule 6191(b)(2)(A)(i), a member that operates a Trading Center subject to the Plan and for which FINRA is the Designated Examining Authority (“DEA”) shall collect and transmit to FINRA the data described in Items I and II of Appendix B of the Plan with respect to each Pre-Pilot Data Collection Security<sup>19</sup> for the period beginning six months prior to the Pilot Period through the trading day immediately preceding the Pilot Period (“Pre-Pilot Period”); and each Pilot Security for the period beginning on the first day of the Pilot Period through six months after the end of the Pilot Period.

Proposed Rule 6191(b)(2)(A)(ii) provides that members that operate Trading Centers that are subject to the Plan, and for which FINRA is the DEA, shall meet the data collection and reporting requirements in Items I and II of Appendix B by reporting the required order information in Pilot Securities and Pre-Pilot Data Collection Securities to OATS. The proposed rule change adds four new fields to OATS to enable OATS to capture the necessary Tick Size Pilot data.<sup>20</sup> Specifically, FINRA proposes that OATS Reporting Members<sup>21</sup> that operate a Trading Center will collect and transmit to FINRA the following information for orders received or originated involving

<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”).

<sup>4</sup> See Securities Exchange Act Release No. 76484 (November 19, 2015), 80 FR 73858.

<sup>5</sup> In Partial Amendment No. 1, FINRA proposes to: (1) Require members to provide the Retail Investor Order flag in OATS execution-related reports; (2) delete the requirement that FINRA members report data for execution on venues that do not report to FINRA; and (3) change the reference in Supplementary Material .03 for securities that trade in both the U.S. and in a foreign market from “dually-listed” to “securities that may trade in a foreign market.”

<sup>6</sup> See letters from Mary Lou Von Kaenel, Managing Director, Financial Information Forum, dated December 16, 2015 (“FIF Letter I”) and January 25, 2016 (“FIF Letter II”); and Manisha Kimmel, Chief Regulatory Officer, Wealth Management, Thomson Reuters, dated December 16, 2015 (“Thomson Reuters Letter”) to Robert W. Errett, Deputy Secretary, Commission. On February 12, 2016, FINRA submitted a response to the comments. See letter from Andrew Madar, Associate General Counsel, Regulatory Policy and Oversight, FINRA to Brent J. Fields, Secretary, Commission dated February 12, 2016 (“FINRA Response”).

<sup>7</sup> See Securities Exchange Act Release No. 76854, 81 FR 1670 (January 13, 2016).

<sup>8</sup> 15 U.S.C. 78k–1.

<sup>9</sup> 17 CFR 242.608.

<sup>10</sup> See Letter from Brendon J. Weiss, Vice President, Intercontinental Exchange, Inc., to Secretary, Commission, dated August 25, 2014.

<sup>11</sup> See Securities Exchange Act Release No. 72460, 79 FR 36840 (June 30, 2014).

<sup>12</sup> See Securities Exchange Act Release No. 73511 (November 3, 2014), 79 FR 66423.

<sup>13</sup> See Approval Order, *supra* note 3.

<sup>14</sup> See Securities Exchange Act Release No. 76382, 80 FR 70284 (November 13, 2015).

<sup>15</sup> Rule 608(c) of Regulation NMS. 17 CFR 242.608(c). See also Plan Sections II.B. and IV.

<sup>16</sup> See Appendices B and C to the Plan.

<sup>17</sup> FINRA, on behalf of the Plan Participants, submitted a letter to Commission requesting exemption from certain provisions of the Plan related to data collection. See letter from Marcia E. Asquith, Senior Vice President and Corporate Secretary, FINRA dated December 9, 2015 to Robert W. Errett, Deputy Secretary, Commission (“Exemption Request”). The Commission, pursuant to its authority under Rule 608(e) of Regulation NMS, has granted FINRA a limited exemption from the requirement to comply with certain provisions of the Plan as specified in the letter and noted herein. See letter from David Shillman, Associate Director, Division of Trading and Markets, Commission, to Marcia E. Asquith, Senior Vice President and Corporate Secretary, FINRA, dated February 17, 2016 (“SEC Exemption Letter”).

<sup>18</sup> Capitalized terms used in this Order are defined in the Plan, unless otherwise specified herein.

<sup>19</sup> As discussed herein, FINRA proposes to establish data collection requirements for securities designated as Pre-Pilot Data Collection Securities for the period that begins six months prior to the Pilot Period.

<sup>20</sup> In its filing, FINRA noted that it would add additional values to existing OATS fields necessary to implement requirements of the Tick Size Pilot. The new values are described in the *OATS Reporting Technical Specifications*. FINRA will also provide additional guidance in the *OATS Reporting Technical Specifications* regarding the use of existing values that may be affected by members participating in the Tick Size Pilot.

<sup>21</sup> FINRA Rule 7410(o) generally defines “Reporting Member” as a member that receives or originates an order and has an obligation to record and report information under FINRA Rules 7440 and 7450.

Pilot Securities and Pre-Pilot Data Collection Securities:

(a) Whether the member is a Trading Center in either a Pilot Security or a Pre-Pilot Data Collection Security;

(b) If the member is an Alternative Display Facility (“ADF”) Market Participant under FINRA Rule 6220, the display size of the order; and

(c) Whether the order is routable.

In Partial Amendment No. 1, FINRA proposes that members shall identify whether the member is relying on the Retail Investor Order exception with respect to the execution of order.<sup>22</sup>

For purposes of subparagraph (a), FINRA notes that only those OATS Reporting Members that operate a Trading Center and for which FINRA is the DEA are required to make changes to their OATS reporting. OATS Reporting Members that do not operate Trading Centers or that have another self-regulatory organization as DEA will be permitted to leave the new fields blank (*i.e.*, they are not required to populate the new Trading Center field to affirmatively indicate that they are not a Trading Center). OATS Reporting Members that operate Trading Centers will be required to indicate their status as a Trading Center on all OATS reports for new orders involving Pre-Pilot Data Collection Securities and Pilot Securities, including New Order Reports, Combined Order/Route Reports, Combined Order Execution Reports, and Cancel/Replace Reports.

For purposes of subparagraph (b), FINRA notes that OATS Reporting Members that operate Trading Centers and also are ADF Market Participants<sup>23</sup> will be required to indicate their status as an ADF Market Participant and must indicate the display size of the order so that OATS can capture the information required by Appendix B regarding hidden and displayed size.<sup>24</sup>

FINRA proposes to add a new OATS field under subparagraphs (c) to capture the information required by Item II(o) of Appendix B to the Plan. This information will be required on all OATS reports for new orders, including New Order Reports, Combined Order/Route Reports, Combined Order/Execution Reports, and Cancel/Replace Reports.

<sup>22</sup> FINRA has requested an exemption from the Plan related to this provision. *See* Exemption Request, *supra* note 17.

<sup>23</sup> FINRA Rule 6220(a)(3) defines “ADF Market Participant” or “Market Participant” as a Registered Reporting ADF Market Maker, as defined in FINRA Rule 6220(a)(13), or a Registered Reporting ADF ECN, as defined in FINRA Rule 6220(a)(12).

<sup>24</sup> Items I(a)(5), (29), and (30) of Appendix B to the Plan each require that hidden (*i.e.*, non-displayed) order information be collected.

Finally, FINRA proposes to add a new OATS field under proposed Rule 6191(b)(A)(iii) to capture information required under Item II(n) of Appendix B to the Plan. As described in Partial Amendment No. 1, FINRA will require members to add a flag to OATS execution reports for those orders that rely on the Retail Investor Order exceptions provided under Test Groups Two and Three.<sup>25</sup>

Proposed Rule 6191(b)(2)(B) provides that FINRA shall transmit the data required by Items I and II of Appendix B to the Plan, and collected pursuant to FINRA Rule 6191(b)(2)(A), to the SEC in a pipe-delimited format on a disaggregated basis by Trading Center within 30 calendar days following month end. FINRA also shall make such data publicly available on the FINRA Web site on a monthly basis at no charge and will not identify the Trading Center that generated the data.<sup>26</sup>

Proposed Rule 6191(b)(3)(A) provides that a member that is a Market Maker<sup>27</sup> for which FINRA is the DEA shall collect and transmit to FINRA data relating to Item IV of Appendix B to the Plan with respect to activity conducted on any Trading Center in furtherance of its status as a Market Maker, including a Trading Center that executes trades otherwise than on a national securities exchange, for transactions that have settled or reached settlement date. The proposed rule requires Market Makers to transmit such data in a pipe-delimited format, by 12 p.m. EST on T+4 for (1) transactions in each Pre-Pilot Data Collection Security for the Pre-Pilot Period; and (2) for transactions in each Pilot Security for the period beginning on the first day of the Pilot Period through six months after the end of the Pilot Period.

Proposed Rule 6191(b)(3)(B) provides that FINRA shall transmit the data relating to Market Maker activity

<sup>25</sup> In Partial Amendment No. 1, FINRA deleted the proposed requirement in proposed Rule 6191(b)(2)(A)(iv) to require information on foreign executions and executions on domestic venues which do not provide execution information to FINRA. In Partial Amendment No. 1, FINRA stated that it has agreements with all equity exchanges to receive data for executions in Pre-Pilot Data Collection Securities and Pilot Securities that occur on those venues. For foreign markets, FINRA stated that it could obtain the necessary information through existing OATS data that would be sufficient to analyze the impact of the Tick Size Pilot on the number of orders routed to foreign markets.

<sup>26</sup> FINRA has requested an exemption from the Plan related to this provision. *See* Exemption Request, *supra* note 17.

<sup>27</sup> The Plan defines a “Market Maker” as “a dealer registered with any self-regulatory organization, in accordance with the rules thereof, as (i) a market maker or (ii) a liquidity provider with an obligation to maintain continuous, two-sided trading interest.”

required by Item IV of Appendix B to the Plan, and collected pursuant to paragraph (b)(3)(A), to the Participant operating the Trading Center on which such activity occurred in a pipe-delimited format on a disaggregated basis by Market Maker during the Pre-Pilot Period and within 15 calendar days following month end during the Pilot Period.

Proposed Rule 6191(b)(3)(C) provides that FINRA shall transmit the data relating to Market Maker activity conducted otherwise than on a national securities exchange required by Item IV of Appendix B to the Plan, and collected pursuant to paragraph (b)(3)(A), to the SEC in a pipe-delimited format, on a disaggregated basis by Trading Center, within 30 calendar days following month end. FINRA shall also make such data publicly available on the FINRA Web site on a monthly basis at no charge and will not identify the Trading Center that generated the data.<sup>28</sup>

Proposed Rule 6191(b)(4) sets forth the requirements for the collection and transmission of data pursuant to Appendix C.I of the Plan. Proposed Rule 6191(b)(4)(A) requires that a member that is a Market Maker, and for which FINRA is the DEA, shall collect and transmit to FINRA the data described in Item I of Appendix C to the Plan, as modified by Rule 6191(b)(5) with respect to executions that have settled or reached settlement date that were executed on any Trading Center. Market Makers will provide such data in a pipe-delimited format by 12 p.m. EST on T+4: (1) For executions during and outside of Regular Trading Hours in each Pre-Pilot Data Collection Security for the Pre-Pilot Period; and (2) for executions during and outside of Regular Trading Hours in each Pilot Security for the period beginning on the first day of the Pilot Period through six months after the end of the Pilot Period.

Proposed Rule 6191(b)(4)(B) provides that FINRA shall collect the data required by Item I of Appendix C to the Plan on a monthly basis, transmit such data, categorized by the Control Group and each Test Group, to the SEC in a pipe-delimited format; the data transmitted to the SEC shall include the profitability statistics categorized by Market Maker and by security. FINRA shall also make aggregated data required by Item I of Appendix C to the Plan, and collected pursuant to (b)(4)(A) categorized by the Control Group and each Test Group, publically available on the FINRA Web site on a monthly basis

<sup>28</sup> FINRA has requested an exemption from the Plan related to this provision. *See* Exemption Request, *supra* note 17.

at no charge and shall not identify the Market Makers that generated the data or the individual securities.

Proposed Rule 6191(b)(5) sets forth the manner in which Market Maker participation statistics and profitability will be calculated. Proposed Rule 6191(b)(5) provides that a member that is a Market Maker subject to the requirements of proposed Rule 6191(b)(3)(A) and (b)(4)(A) in a Pre-Pilot Data Collection Security or a Pilot Security, and for which FINRA is the DEA, shall be deemed to have satisfied the requirements of proposed Rule 6191(b)(3)(A) and (b)(4)(A), in addition to the requirements of Item IV of Appendix B and Item I of Appendix C, if such Market Maker submits to FINRA the following specified data for any principal trade, not including a riskless principal trade, in a Pre-Pilot Data Collection Security or a Pilot Security executed in furtherance of its status as a Market Maker on any Trading Center: (1) Ticker Symbol; (2) Trading Center where the trade was executed, or if not known, the destination where the order originally was routed for further handling and execution; (3) Time of execution; (4) Price; (5) Size; (6) Buy/sell; (7) for trades executed away from the Market Maker, a unique identifier, as specified by the Market Maker's DEA, that will allow the trade to be associated with the Trading Center where the trade was executed; and (8) for trades cancelled or corrected beyond T+3, whether the trade represents a cancellation or correction.

FINRA proposes to adopt certain Supplementary Material to Rule 6191(b) to clarify other aspects of the data collection requirements. First, FINRA proposes to clarify in Supplementary Material .01 that the terms used in Rule 6191(b) shall have the same meaning as provided in the Plan, unless otherwise specified. In proposed Supplementary Material .02, FINRA proposes to clarify a reporting requirement for Retail Investor Orders for purposes of Appendix B.II(n). Specifically, FINRA proposes that a Trading Center shall report "Y" when it is relying upon the Retail Investor Order exception to Test Groups Two and Three with respect to the execution of the order, and "N" in all other instances.<sup>29</sup>

In proposed Supplementary Material .03, FINRA proposes to require that for purposes of Appendix B.I, a field identified as "Affected by Limit-Up

Limit-Down bands"<sup>30</sup> be included. Under this proposal, a Trading Center shall report a value of "Y" when the ability of an order to execute has been affected by the Limit-Up Limit-Down bands in effect at the time of order receipt. A Trading Center shall report a value of "N" when the ability of an order to execute has not been affected by the Limit-Up Limit-Down bands in effect at the time of order receipt.

In addition, proposed Supplementary Material .03 requires that, for Appendix B.I purposes, Participants shall classify all orders in Pilot and Pre-Pilot Data Collection Securities that may trade in a foreign market as fully executed domestically or fully or partially executed on a foreign market. For purposes of Appendix B.II, Participants shall classify all orders in Pilot and Pre-Pilot Data Collection Securities that may trade in a foreign market as: Directed to a domestic venue for execution; may only be directed to a foreign venue for execution; or fully or partially directed to a foreign venue at the discretion of a member.<sup>31</sup>

In proposed Supplementary Material .04, FINRA proposes to modify the reporting requirements under Appendix B.I.a(14), B.I.a(15), B.I.a(21) and B.I.a(22).<sup>32</sup> Specifically, FINRA proposes the following: Appendix B.I.a(14A): The cumulative number of shares of orders executed from 100 microseconds to less than 1 millisecond after the time of order receipt; Appendix B.I.a(15): The cumulative number of shares of orders executed from 1 millisecond to less than 100 milliseconds after the time of order receipt; Appendix B.I.a(21A): The cumulative number of shares of orders canceled from 100 microseconds to less than 1 millisecond after the time of order receipt; and Appendix B.I.a(22): The cumulative number of shares of

<sup>30</sup> See National Market System Plan to Address Extraordinary Market Volatility, Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (File No. 4-631) ("Limit Up Limit Down Plan").

<sup>31</sup> See Partial Amendment No. 1.

<sup>32</sup> FINRA has requested an exemption from the Plan related to this provision. See Exemption Request, *supra* note 17. Appendix B.I.a(14) requires reporting of the cumulative number of shares of orders executed from 0 to less than 100 microseconds after the time of order receipt; Appendix B.I.a(15) requires reporting of the cumulative number of shares of orders executed from 100 microseconds to less than 100 milliseconds after the time of order receipt; Appendix B.I.a(21) requires reporting of the cumulative number of shares of orders cancelled from 0 to less than 100 microseconds after the time of order receipt; and Appendix B.I.a(22) requires reporting of the cumulative number of shares of orders cancelled from 100 microseconds to less than 100 milliseconds after the time of order receipt.

orders canceled from 1 millisecond to less than 100 milliseconds after the time of order receipt.

In proposed Supplementary Material .05, FINRA proposes to add the requirement in Appendix B.I.a(33) relating to the share-weighted average BBO Spread to a Trading Center that displays on the ADF. In proposed Supplementary Material .06, FINRA proposes to calculate data based upon the time of order receipt for purposes of Appendix B.I.a(31)–(33).<sup>33</sup> In proposed Supplementary Material .07, FINRA proposes to clarify that, for purposes of Appendix B.I.a(33), only a Trading Center that is displaying in its own name as a Trading Center when executing an order shall enter a value in this field.<sup>34</sup>

In proposed Supplementary Material .08, FINRA proposes to specifically identify certain orders types for purposes of Appendix B reporting. In particular, not held orders, assigned the number (18); clean cross orders, assigned the number (19); auction orders, assigned the number (20); and orders that cannot be otherwise be classified, including, for example, orders received when the NBBO is crossed, assigned the number (21), shall be specifically identified in the data reports.

In proposed Supplementary Material .09, FINRA proposes to clarify the scope of the Plan as it relates to members that only execute orders for limited purposes. Specifically, proposed Supplementary Material .09 clarifies that a member shall not be deemed a Trading Center for purposes of Appendix B of the Plan where that member only executes orders otherwise than on a national securities exchange for the purpose of: (1) Correcting a bona fide error related to the execution of a customer order; (2) purchasing a security from a customer at a nominal price solely for purposes of liquidating the customer's position; or (3) completing the fractional share portion of an order.<sup>35</sup>

In proposed Supplementary Material .10, FINRA clarifies that Trading Centers must begin the data collection

<sup>33</sup> FINRA has requested an exemption from the Plan related to this provision. See Exemption Request, *supra* note 17.

<sup>34</sup> FINRA believes that the Appendix B.I.a(33) reporting requirement is only relevant for a Trading Center that is a display venue and not Trading Centers that may display through other Trading Centers (such as a market maker displaying a quote on a national securities exchange).

<sup>35</sup> FINRA notes that when a member purchases a fractional share from a customer, the Trading Center that executes the remaining whole shares of that customer order would be subject to Appendix B of the Plan.

<sup>29</sup> See Partial Amendment No. 1. FINRA has requested an exemption from the Plan related to this provision. See Exemption Request, *supra* note 17.

required pursuant to Appendix B.I.a(1) through B.II.(y) to the Plan and Item I of Appendix C to the Plan on April 4, 2016. In addition, FINRA proposes that it will provide information to the SEC within 30 calendar days following month end and make such data publicly available on its Web site pursuant to Appendix B and C to the Plan at the beginning of the Pilot Period.<sup>36</sup>

In proposed Supplementary Material .11, FINRA proposes for purposes of Item I of Appendix C that the Participants shall calculate daily Market Maker realized profitability statistics for each trading day on a last-in, first out (LIFO) basis using reported trade price and shall include only trades executed on the subject trading day.<sup>37</sup> The daily LIFO calculation shall not include any positions carried over from previous trading days. The proposal also provides that for purposes of Item I.c of Appendix C, the Participants shall calculate daily Market Maker unrealized profitability statistics for each trading day on an average price basis. Specifically, the Participants must calculate the volume weighted average price of the excess (deficit) of buy volume over sell volume for the current trading day using reported trade price. The gain (loss) of the excess (deficit) of buy volume over sell volume shall be determined by using the volume weighted average price compared to the closing price of the security as reported by the primary listing exchange. In calculating unrealized trading profits, the Participant shall also report the number of excess (deficit) shares held by the Market Maker, the volume weighted average price of that excess (deficit) and the closing price of the security as reported by the primary listing exchange used in reporting unrealized profit.

In proposed Supplementary Material .12, FINRA proposes to identify the securities that will be subject to the data collection requirements prior to the commencement of the Pilot Period. Proposed Supplementary Material .12 defines "Pre-Pilot Data Collection Securities" as the securities designated by the Participants for purposes of the data collection requirements described in Items I, II and IV of Appendix B and Item I of Appendix C to the Plan for the Pre-Pilot Period. The Participants shall compile the list of Pre-Pilot Data Collection Securities by selecting all NMS stocks with a market capitalization

of \$5 billion or less, a Consolidated Average Daily Volume ("CADV") of 2 million shares or less and a closing price of \$1 per share or more. The market capitalization and the closing price thresholds shall be applied to the last day of the Pre-Pilot measurement period, and the CADV threshold shall be applied to the duration of the Pre-Pilot measurement period. The Pre-Pilot measurement period shall be the three calendar months ending on the day when the Pre-Pilot Data Collection Securities are selected. The Pre-Pilot Data Collection Securities shall be selected thirty days prior to the commencement of the six-month Pre-Pilot Period. FINRA notes that beginning with the first trading day of the Pilot Period through six months after the end of the Pilot Period, the data collection requirements will become applicable to the Pilot Securities only.

Finally, proposed Supplementary Material .13 provides that the Rule shall be in effect during a pilot period to coincide with the Pilot Period for the Plan (including any extensions to the Pilot Period for the Plan).

#### IV. Discussion and Findings

After careful review of the proposal and the comment letters, the Commission finds that the proposed rule change, as modified by Partial Amendment No. 1, is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities association.<sup>38</sup> Specifically, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act,<sup>39</sup> which requires, among other things, that FINRA's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and are not designed to permit unfair discrimination between customers, issuers, brokers or dealers. In addition, the Commission finds that the proposed rule change is consistent with Section 15A(b)(9) of the Act,<sup>40</sup> which requires that FINRA rules not impose any burden on competition that is not necessary or appropriate.

The Commission has previously stated that the Tick Size Pilot set forth

in 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>41</sup> 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. Each self-regulatory organization also shall, absent reasonable justification or excuse, enforce compliance with any such plan by its members and persons associated with its members."<sup>42</sup> FINRA's proposed Rule 6191(b) would impose compliance obligations on its members with the data collection requirements set forth in Appendices B and C to the Plan. The Commission also believes 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.<sup>43</sup>

FINRA proposes to use OATS to collect the Trading Center data specified in Appendix B.I and II under the Plan from its members. FINRA proposes changes to OATS to require new data elements that are necessary to accommodate the data requirements under the Plan. The new OATS requirements will only apply to those members that operate a Trading Center subject to the Tick Size Pilot and for which FINRA is the DEA. In its letter, FIF recognized that by using OATS, "FINRA has taken much of the burden from industry members in terms of categorization of orders and calculation of execution quality and market makers' profitability statistics."<sup>44</sup> The Commission believes that the use of OATS to collect Tick Size Pilot data from FINRA members should facilitate

<sup>41</sup> See Approval Order, *supra* note 3.

<sup>42</sup> 17 CFR 242.608(c).

<sup>43</sup> Sections II.B and IV of the Plan each require Participants to comply with, and enforce compliance by its members, with the Plan. See Approval Order, 80 FR at 27548, *supra* note 3.

<sup>44</sup> See FIF Letter I. In its letter, Thomson Reuters stated their understanding of several OATS reports, including the Tick Size Participation Flag, the Display Flag and the Routable Flag. See Thomson Reuters Letter.

<sup>36</sup> FINRA has requested an exemption from the Plan related to this provision. See Exemption Request, *supra* note 17.

<sup>37</sup> FINRA has requested an exemption from the Plan related to this provision. See Exemption Request, *supra* note 17.

<sup>38</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>39</sup> 15 U.S.C. 78o-3(b)(6).

<sup>40</sup> 15 U.S.C. 78o-3(b)(9).

the efficient implementation of the data collection requirements under the Plan because FINRA members will be able to utilize an existing system. Further, the use of OATS should enhance the usefulness of the data because the data will be collected and submitted to the Commission and the public in a consistent format.

FINRA proposes several new data elements for OATS to accommodate the Tick Size Pilot data requirements, including whether the member is a Trading Center in either a Pilot Security or Pre-Pilot Data Collection Security, if the member is an ADF Market Participant and whether the order is routable. The Commission finds that these new data elements support the data collection requirements under the Tick Size Pilot.

In addition, FINRA originally proposed that members identify in OATS those orders that rely on the Retail Investor Order exception in Test Groups Two and Three. As discussed below, this provision was further clarified in proposed Supplemental Material .02 by noting that for purposes of reporting, a Trading Center shall report a "Y" when it is relying upon the Retail Investor Order exceptions in Test Groups Two and Three and "N" in all other instances.<sup>45</sup> The two commenters to the proposal noted that identifying orders that rely on the Retail Investor Order exceptions prior to execution would be difficult.<sup>46</sup> One commenter stated that it would be operationally complex to determine the eligibility of a Retail Investor Order flag on a new order and that Trading Centers may choose not to avail themselves of the exceptions even if the new order met the definition of a Retail Investor Order.<sup>47</sup> The commenters suggested that FINRA require the identification of orders that rely on the Retail Investor Order exceptions on execution reports rather than New Order Reports, Combined Order/Route or Cancel/Replace reports.

In Partial Amendment No. 1, FINRA proposes to amend its proposed rule to require the identification of Retail Investor Orders that rely on the exceptions in Test Groups Two and Three on OATS execution reports. FINRA noted that it understood that firms may not make the ultimate decision of whether an exception will be relied upon until the time of execution and therefore, it may be

operationally more efficient to reflect the Retail Investor Order flag on execution reports.

The Commission finds that the amended FINRA rule requiring the identification of Retail Investor Orders on OATS execution reports to be consistent with the Act. The FINRA rule should implement the requirement under Appendix B.II.(n) in a manner that should be more efficient for Trading Centers.

In addition, FINRA originally proposed to require its members to record information in OATS related to an order or part of an order that is executed on a venue that does not provide execution information to FINRA. One commenter stated that it would be difficult and costly to link orders to the OATS execution report process.<sup>48</sup> The commenter noted that it believed that the largest majority of "away trades" on a U.S. venue that is not a FINRA member may be those executed on the Chicago Stock Exchange ("CHX") and recommended that FINRA work with CHX so that an OATS-like execution report could be tied to OATS route reports to collect the necessary data. In its response, FINRA noted that it had reached an agreement with CHX to obtain data for executions that occur on CHX and therefore, FINRA amended its proposed rule so that members would not need to submit data related to executions that occur on CHX.<sup>49</sup> The Commission finds that FINRA's proposal is consistent with the Act because it will provide FINRA with the data it is required to collect under the Plan in a cost effective and efficient manner.

FINRA's proposed rule contains several provisions related to the Market Maker data required under the Plan.<sup>50</sup> Specifically, FINRA proposes under FINRA Rule 6191(b)(3) to collect from its members that are Market Makers and

for which FINRA is the DEA, the Daily Market Maker Participation Statistics, required under Appendix B.IV to the Plan.<sup>51</sup> FINRA proposes to collect data related to activity conducted on any Trading Center in furtherance of its status as a Market Maker. FINRA proposes to transmit the data it collects under this paragraph to the Participants that operate Trading Centers on which the Market Maker activity occurred. In addition, FINRA will transmit the data related to activity conducted otherwise than on a national securities exchange to the Commission.

The Commission notes that the FINRA proposal expands upon the data required under Appendix B.IV to the Plan. Appendix B.IV to the Plan only requires FINRA to collect data from Market Makers who register with its ADF. As provided, Appendix B.IV to the Plan would not allow a complete evaluation of Market Maker participation in Pilot Securities. The Commission believes that the FINRA proposal should enhance the ability of the Commission and the public to assess the impact of the Tick Size Pilot on Market Maker participation. The increased coverage of Market Maker

<sup>51</sup> In its second comment letter, one commenter noted that FINRA published new technical specifications for Market Maker Transaction Reporting on January 11, 2016 and raised comments on the technical specifications. See FIF Letter II. Specifically, the commenter stated its belief that the new technical specifications impact market makers' ability to meet the April 4, 2016 date for transaction reporting. The commenter noted that identifying the execution venue would add complexity that impacts market makers to meet the April 4, 2016 date, and suggests that the identification should not be required in certain situations. The commenter also noted that correcting mismatched records would be resource intensive and requested a grace period for compliance. Finally, the commenter raised concerns with respect to how riskless principal trades are reported, and offered suggestions on alternate reporting methods. With respect to the execution venue and mismatched trades, FINRA responded that the updated Market Maker Transaction Reporting specifications would allow FINRA to determine the ultimate execution venue for each trade, even if the Market Makers do not know such venue. FINRA would use identifiers to link Market Makers trades to the final destination where the trade was executed, using exchange data and OATS data reported to FINRA. Correcting mismatched records would allow the linkage process to result in complete and accurate Market Maker participation statistics. FINRA further stated that it would work with the Commission and the other Participants to evaluate the mismatched records issue and make any determination as to whether such correction continues to be necessary. With respect to riskless principal trades reporting, FINRA responded that such trades must be eliminated from the Market Maker participation statistics, in order to evaluate the Plan. FINRA noted that it has attempted to provide industry participants with as much advance notice as possible to comply with the proposed requirements and that it will continue to work with members to ensure that they have the information and clarity needed to implement the new reporting requirements.

<sup>48</sup> See FIF Letter I.

<sup>49</sup> See Partial Amendment No. 1. In Partial Amendment No. 1, FINRA also proposes to remove the requirement that members provide information about foreign executions. FINRA will obtain information from OATS about orders routed to a foreign market. The Commission believes that this proposal is consistent with the Act because it would allow for analysis to be conducted on the impact of the Tick Size Pilot on routing to foreign markets.

<sup>50</sup> One commenter requested confirmation that a firm that is neither a Trading Center nor a Market Maker but becomes a Market Maker in a Pilot Security during either the Pre-Pilot or Pilot Period would not have to retroactively provide data. See FIF Letter I. FINRA, in response, clarified that there is no retroactive reporting requirement for Trading Centers that become Market Makers during the Pre-Pilot or Pilot Period, and that Market Makers only need to report data on those days in with they are trading as a Registered Market Maker. See FINRA Response.

<sup>45</sup> The Commission notes that it has granted FINRA an exemption from Rule 608(c) related to this provision. See SEC Exemption Letter, *supra* note 17.

<sup>46</sup> See FIF Letter I and Thomson Reuters Letter.

<sup>47</sup> See Thomson Reuters Letter.

data should provide greater insight on Market Maker participation under the Tick Size Pilot by including Market Maker participation in the over-the-counter market.

One commenter raised concerns about the data collected by FINRA under Rule 6191(b)(3)(B) and provided to each Participant where the Market Maker activity occurred.<sup>52</sup> The commenter requested that each Participant provide clear assurances that the data provided to them under the Tick Size Pilot would not be used for commercial or competitive purposes. In its response, FINRA stated that it does not intend to use the data collected under the Tick Size Pilot for commercial or competitive purposes.<sup>53</sup>

In its letter, FIF also raised concerns about Tick Size Pilot data being published and that because some Pilot Securities could trade infrequently that the data, even if unattributed may be reverse-engineered to identify counterparties.<sup>54</sup> In its response, FINRA noted that the Plan sets forth the publication requirements of Participants. However, FINRA noted that it appreciates members confidentiality concerns and intends to work to ensure that the Tick Size Pilot data is made available consistent with the requirements of the Plan.<sup>55</sup>

The Commission notes that the Plan provides for the public dissemination of Tick Size Pilot data but states that “[t]he data made publicly available shall not identify the trading center that generated the data.”<sup>56</sup> The Commission also notes that Participants are scheduled to start collecting data on April 4, 2016, but the Participants have requested not to make the data publicly available until August 30, 2016.<sup>57</sup> The Commission notes that this could give Participants the opportunity to evaluate the data to determine whether the FIF’s concerns related to the disclosure of the identity of Trading Centers exist, and if so, whether additional measures are necessary to prevent the disclosure of attributed Trading Center data. The Commission finds that proposed Rule 6191(b) is consistent with the Act because it implements provisions of the Plan.

FINRA’s proposed Rule 6191(b)(4) contains the provisions by which FINRA will collect, submit to the Commission, and make publically available Market Maker Profitability data required under Appendix C of the Plan. The Commission finds that these provisions are consistent with the Act because they implement provisions of the Plan.

FINRA also proposes Rule 6191(b)(5), which contains provisions whereby FINRA will collect data and calculate the Market Maker Participation Statistics and Market Maker Profitability Data. Under proposed Rule 6191(b)(5), FINRA members that are Market Makers and for which FINRA is the DEA shall submit certain data elements, which FINRA will use to calculate Market Maker Participation Statistics and Market Maker Profitability. The Commission finds that this proposal is consistent with the Act because it implements provisions of the Plan. Further, this provision should lessen costs for FINRA members as FINRA will conduct the necessary calculations. Finally, the proposal should also enhance the usefulness of the data by making the calculations consistent across FINRA members.

Further, in proposed Supplementary Material .11, FINRA proposes to specify how it will calculate raw Market Maker realized trading profits as required under Appendix C.I.(b) under the Plan. Under the Appendix C.I.(b), the share prices used to calculate raw Market Maker realized trading profits is determined using a LIFO-like method. FINRA proposes to use a methodology that yields LIFO-like results, rather than utilizing a LIFO-like method for purposes of the calculation.

In addition, FINRA proposes to calculate the unrealized trading profits of Market Makers as required under Appendix C.I.(c). Appendix C.I.(c) provides that “[r]aw Market Maker unrealized trading profits—the difference between the purchase or sale price of the end-of-day inventory position of the Market Maker and the Closing Price. In the case of a short position, the Closing Price for the sale will be subtracted. In the case of a long position, the purchase price will be subtracted from the Closing Price” which is to be provided as a separate data element. FINRA proposes to calculate daily Market Maker unrealized profitability statistics for each trading day on an average basis. Specifically, FINRA proposes to calculate the volume-weighted average price of the excess (deficit) of buy volume over sell volume for the current trading day using reported trade prices. Further, the gain

(loss) of the excess (deficit) of buy volume over sell volume shall be determined by using the volume weighted average price compared to the closing price of the security as reported by the primary listing exchange. FINRA shall report the number of excess (deficit) shares held by the Market Maker, the volume weighted average price of that excess (deficit) and the closing price of the security as reported by the primary listing exchange.

The Commission believes that proposed Supplementary Material .11 is consistent with the Act because the proposed calculations will provide measurable data that is consistent with what was originally sought to be captured under the Plan. Therefore, the proposal will continue to allow analysis of the impact of the Tick Size Pilot on Market Maker Profitability. The Commission also believes that the proposed calculation will also reduce implementation costs for market participants because FINRA will conduct the calculations for its members.<sup>58</sup>

FINRA proposes several provisions that would, among other things, specify to FINRA members how to report Plan data. Specifically, FINRA proposes in Supplementary Material .02 to clarify how a Trading Center will report Retail Investor Orders under Appendix B.II.(n). Specifically, FINRA proposes that only those orders that rely on the Retail Investor Order exceptions in Test Group Two or Three would be identified with “Y,” all other orders would be identified with a “N.” The Commission notes that commenters supported the FINRA clarification but, as discussed above, requested further clarification as to which OATS report the Retail Investor Order flag should be added. The Commission believes that this proposal, as modified by Partial Amendment No. 1, is consistent with the Act as it clarifies existing Plan language in a way that maintains the usefulness of the data while also reducing implementation costs.<sup>59</sup>

FINRA proposes to report certain data elements based upon modified time fields. Specifically, under Appendix B.Ia.(14) and B.Ia.(15), the number of cumulative shares of orders executed is required to be reported based upon a set time frame after the time of order receipt. Under Appendix B.Ia.(21) and

<sup>58</sup> The Commission notes that it has granted FINRA an exemption from Rule 608(c) related to this provision. See SEC Exemption Letter, *supra* note 17.

<sup>59</sup> The Commission notes that it has granted FINRA an exemption from Rule 608(c) related to this provision. See SEC Exemption Letter, *supra* note 17.

<sup>52</sup> See FIF Letter I.

<sup>53</sup> See FINRA Response.

<sup>54</sup> See FIF Letter I.

<sup>55</sup> See FINRA Response.

<sup>56</sup> This requirement is contained in Section VII.A of the Plan. See Approval Order, 80 FR at 27551, *supra* note 3.

<sup>57</sup> See Exemption Request, *supra* note 17. The Commission notes that it has granted FINRA an exemption from Rule 608(c) of Regulation NMS related to this provision. See SEC Exemption Letter, *supra* note 17.



B.I.a(22), the number of cumulative shares of orders canceled is required to be reported based upon a set time frame after the time of order receipt. The proposed rules would add finer increments to the Plan reporting requirements and isolate microsecond and millisecond reporting requirements into separate data elements. According to the Participants, not all Participants or non-Participant Trading Centers currently capture or report all orders and trades in either microseconds or milliseconds.<sup>60</sup> One commenter noted that OATS formats do not allow for reporting in microseconds.<sup>61</sup> FINRA responded that a member is not required to report in an increment of time that is not accepted or permitted by FINRA systems—if a member maintains its internal timestamps in microseconds, the member would not be required to report to OATS in microseconds because OATS currently does not support microseconds. The Commission notes that the proposal merely shifts the time reporting elements into separate reporting lines to accommodate different reporting capabilities. The data reported under FINRA's rules and the clarification from FINRA are consistent with the intent of the Plan. Accordingly, the Commission finds that the proposal is consistent with the Act.<sup>62</sup>

Under Appendix B.I.a(31)–(33), certain data elements are calculated based upon prices measured at the time of order execution. FINRA proposes to measure prices based upon the time of order receipt. According to the Participants, the time of order receipt is more consistent with the goal of observing the effect to the Tick Size Pilot on liquidity.<sup>63</sup> The Commission finds that the proposal is consistent with the Act because it should make the data more useful for measuring the impact of the Tick Size Pilot. Further, the Commission notes that the time of order receipt is used in other current rules, which should lessen implementation burdens for gathering these data elements.<sup>64</sup>

FINRA also proposes to require that Trading Centers that display on the ADF to report under Appendix B.I.a.(33) and that only those Trading Centers that display in their own name shall be

subject to this section. The Commission believes that these additional requirements are consistent with the Act. The provisions should make the Tick Size Pilot data more complete by including additional Trading Centers' data under this reporting requirement.

FINRA proposes several provisions that clarify current reporting obligations. For example, FINRA proposes that certain order types be separately reported in discrete data lines, such as not held orders, auction orders, and clean cross orders.<sup>65</sup> The Commission notes that these orders are currently included under Appendix B to the Plan. The FINRA proposal clarifies how these orders would be identified for reporting purposes, which should facilitate reporting and provide for better analysis.

Further, FINRA proposes that a field be attached to signify whether an order to be executed has been affected by LULD bands.<sup>66</sup> In addition, FINRA proposes, for purposes of Appendix B.I, to classify all orders in Pilot and Pre-Pilot Securities that may trade in a foreign market as fully executed domestically or fully or partially executed on a foreign market. Finally, FINRA proposes, for purposes of Appendix B.II, to classify all orders in Pilot and Pre-Pilot Securities that may trade in a foreign market as directed to a domestic venue for execution; may only be directed to a foreign venue for execution; or fully or partially directed to a foreign venue at the discretion of the member. The Commission finds that these additional discrete data reporting elements are consistent with the Act. They should further clarify the Tick Size Pilot data elements and provide guidance to reporting Trading Centers.

Under proposed Supplementary Material .09, FINRA proposes to clarify that for purposes of Appendix B to the Plan, certain members shall not be considered Trading Centers. Specifically, members that execute

orders over-the-counter for the purpose of correcting bona fide errors of customer orders, purchase securities from customers at a nominal price solely for the purposes of liquidating customers' positions or completing a fractional share portion of an order, would not be considered a Trading Center for purposes of Appendix B of the Plan. One commenter noted that this proposal provides a better understanding of the type of activity that would deem a firm to be a Trading Center and agreed with the criteria proposed.<sup>67</sup> The Commission finds that this proposal is consistent with the Act as it further clarifies what is required under the Plan. As noted in the Approval Order, the data requirements are reasonably designed to 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 Pilot Securities.<sup>68</sup> The Commission believes that it is appropriate to exclude such discrete trading activities identified in proposed Supplementary Material .09 without harming the usefulness of the data.

FINRA proposes to identify Pre-Pilot Data Collection Securities for purposes of the data collection requirements under the Plan that are required to begin six months before the Pilot Period.<sup>69</sup> The data collection requirements are scheduled to begin on April 4, 2016.<sup>70</sup> However, according to Section V of the Plan, the identification of Pilot Securities will occur during the six-

<sup>67</sup> See FIF Letter I.

<sup>68</sup> See Approval Order, *supra* note 3.

<sup>69</sup> One commenter requested information about how market participants will obtain the list of impacted securities and other details about Pre-Pilot Data Collection Securities and Pilot Securities. See FIF Letter I. FINRA responded that it had published detailed guidance on the format and content of the lists, including the daily change lists. According to the FINRA, this guidance includes information on how firms may retrieve the lists in an automated format. Further, FINRA noted that on February 10, 2016, FINRA and the primary listing markets published a Tick Size Sample List that may be used for testing until the actual Pre-Pilot Data Collection Securities list is determined on March 4, 2016.

<sup>70</sup> One commenter suggested that there is insufficient time to complete implementation of the data collection requirements. See FIF Letters I and II. The Commission notes that FINRA issued data collection specifications in October 2015 and January 2016 and published FAQs for Trading Centers and Market Makers in October 2015. FINRA also noted that it is engaged in continuing discussions with industry participants, including the commenter, on implementing the data collection requirements and that it would continue to work with members to ensure that they have the information and clarity needed to implement the new reporting requirements. See FINRA Response. Accordingly, the Commission believes that the current implementation schedule is appropriate.

<sup>60</sup> See Exemption Request, *supra* note 17.

<sup>61</sup> See FIF Letter I.

<sup>62</sup> The Commission notes that it has granted FINRA an exemption from Rule 608(c) related to this provision. See SEC Exemption Letter, *supra* note 17.

<sup>63</sup> See Exemption Request, *supra* note 17.

<sup>64</sup> See e.g., Rule 605 of Regulation NMS. The Commission notes that it has granted FINRA an exemption from Rule 608(c) related to this provision. See SEC Exemption Letter, *supra* note 17.

<sup>65</sup> One commenter requested confirmation that no additional input would be required for Trading Centers beyond what was specified in the OATS specifications published on October 12, 2015 and that FINRA would be responsible for determining the order types based on the trade details provided by Trading Centers in their OATS reports. See FIF Letter I. FINRA responded by clarifying that members that operate Trading Centers would not be required to provide additional data to complete these fields beyond what has already be required in the OATS Reporting Technical Specifications. See FINRA Response.

<sup>66</sup> In its letter, FIF requested clarification that FINRA would provide this data element. See FIF Letter I. FINRA responded that no additional reporting will be required by members that operate Trading Centers to populate this field beyond what has already been set forth in OATS Reporting and Technical Specifications. See FINRA Response.



month Pre-Pilot Period. FINRA has proposed to identify a wider universe of securities for which data will be collected during the Pre-Pilot Period so that once the Pilot Period begins, there should be a complete data set for Pilot Securities.

The Commission finds that the proposal to identify Pre-Pilot Data Collection Securities for which Tick Size Pilot data will be collected during the Pre-Pilot Period is consistent with the Act. The Commission understands that it could be costly for Trading Centers to backfill the data requirements to collect the Pre-Pilot Period data if Trading Centers were forced to wait until the list of Pilot Securities is developed as specified under the Plan. Therefore, FINRA's proposal to establish a slightly broader universe of securities that likely would be subject to the Tick Size Pilot is reasonable for purposes of collecting data during the Pre-Pilot Period. The Commission believes that the proposal should help to ensure that there is a complete data set for Pilot Securities when the Pilot Period commences and should help to reduce the cost and complexity of implementing the data collection requirements.

In proposed Supplementary Material .10, FINRA proposes to submit data generated and collected under Appendices B and C of the Plan within 30 days following the month end and to make certain data publicly available on its Web site at the beginning of the Pilot Period.<sup>71</sup> In the Exemption Request, the Participants sought to provide Pre-Pilot Period data under a revised schedule.<sup>72</sup> Specifically, the Participants requested to provide the initial submission of pre-Pilot Period data on August 30, 2016, which would include data for the months of April, May, June and July. The Participants requested this modified schedule in order to conduct testing to ensure the accuracy of the data prior to the first transmission to the Commission and publication of the data on their respective Web sites.

The Commission finds that proposed Supplementary Material .10 is consistent with the Act because it will permit FINRA to conduct testing to ensure the accuracy of the data it collects before it is submitted to the Commission and published on its Web site. The data gathered during the Pre-Pilot Period is intended to provide a baseline for analysis against the data

collected during the Pilot Period. The analysis on the impact of the Tick Size Pilot can only begin once the Pilot Period begins. Therefore, the Commission believes that FINRA's proposal is reasonable as the delay in submitting and publishing Pre-Pilot Period data should not impact the assessment of the Tick Size Pilot.

Finally, in proposed Supplementary Material .13, FINRA specifies that the rule should be in effect during a pilot period to coincide with the Pilot Period.<sup>73</sup> Accordingly, the rule would become effective once the Pre-Pilot Period begins.<sup>74</sup> The Commission believes that this proposal is consistent with the Act because it reinforces and clarifies important dates and obligations under the Plan.

The Commission finds that FINRA's proposed rules to implement the Tick Size Pilot data collection requirements are consistent with the requirements of the Act. The proposal clarifies and implements the data collection requirements set forth in the Plan.

#### V. Solicitation of Comments of Partial Amendment No. 1

Interested persons are invited to submit written data, views, and arguments concerning Partial Amendment No. 1, including whether the proposed rule change, as modified by Partial Amendment No. 1, 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2015-048 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-2015-048. This file number should be included on the subject line if email 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

<sup>73</sup> One commenter submitted specific questions related to the implementation of the data collection rules. See FIF Letter I, Appendix. FINRA stated in its response that it is engaged in a continuing discussion with FIF and other industry participants with respect to the issues raised in the appendix of FIF's comment letter.

<sup>74</sup> See also proposed Supplementary Material .10.

Internet Web site (<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 Web site 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 the Exchange. 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-2015-048 and should be submitted on or before March 15, 2016.

#### VI. Accelerated Approval of Proposed Rule Change, as Modified by Partial Amendment No. 1

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act, to approve the proposed rule change, as modified by Partial Amendment No. 1, prior to the 30th day after the date of publication of Partial Amendment No. 1 in the **Federal Register**. Partial Amendment No. 1 requires FINRA members to provide the Retail Investor Order flag in OATS execution-related reports; deletes the requirement that FINRA members report data for execution on venues that do not report to FINRA; and changes the reference in proposed Supplementary Material .03 for securities that trade in both the U.S. and in a foreign market from "dualy-listed" to "securities that may trade in a foreign market." The Commission believes that these changes provide greater clarity on the application of the proposal. Accordingly, the Commission finds good cause for approving the proposed rule change, as modified by Partial Amendment No. 1, on an accelerated basis, pursuant to Section 19(b)(2) of the Act.

#### VII. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act<sup>75</sup> that the

<sup>75</sup> 15 U.S.C. 78s(b)(2).

<sup>71</sup> The Commission notes that it has granted FINRA an exemption from Rule 608(c) related to this provision. See SEC Exemption Letter *supra* note 17.

<sup>72</sup> See Exemption Request, *supra* note 17.

proposed rule change, as modified by Partial Amendment No.1 (SR-FINRA-2015-048) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>76</sup>

**Robert W. Errett,**

*Deputy Secretary.*

[FR Doc. 2016-03668 Filed 2-22-16; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

### Proposed Collection; Comment Request

*Upon Written Request, Copies Available*

*From:* Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549-2736.

*Extension:* Rule 20a-1,

SEC File No. 270-132, OMB Control No. 3235-0158.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the "Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 20a-1 (17 CFR 270.20a-1) was adopted under Section 20(a) of the Investment Company Act of 1940 ("1940 Act") (15 U.S.C. 80a-20(a)) and concerns the solicitation of proxies, consents, and authorizations with respect to securities issued by registered investment companies ("Funds"). More specifically, rule 20a-1 under the 1940 Act (15 U.S.C. 80a-1 *et seq.*) requires that the solicitation of a proxy, consent, or authorization with respect to a security issued by a Fund be in compliance with Regulation 14A (17 CFR 240.14a-1 *et seq.*), Schedule 14A (17 CFR 240.14a-101), and all other rules and regulations adopted pursuant to section 14(a) of the Securities Exchange Act of 1934 ("1934 Act") (15 U.S.C. 78n(a)). It also requires, in certain circumstances, a Fund's investment adviser or a prospective adviser, and certain affiliates of the adviser or prospective adviser, to transmit to the person making the solicitation the information necessary to enable that person to comply with the rules and regulations applicable to the solicitation. In addition, rule 20a-1

instructs Funds that have made a public offering of securities and that hold security holder votes for which proxies, consents, or authorizations are not being solicited, to refer to section 14(c) of the 1934 Act (15 U.S.C. 78n(c)) and the information statement requirements set forth in the rules thereunder.

The types of proposals voted upon by Fund shareholders include not only the typical matters considered in proxy solicitations made by operating companies, such as the election of directors, but also include issues that are unique to Funds, such as the approval of an investment advisory contract and the approval of changes in fundamental investment policies of the Fund. Through rule 20a-1, any person making a solicitation with respect to a security issued by a Fund must, similar to operating company solicitations, comply with the rules and regulations adopted pursuant to Section 14(a) of the 1934 Act. Some of those Section 14(a) rules and regulations, however, include provisions specifically related to Funds, including certain particularized disclosure requirements set forth in Item 22 of Schedule 14A under the 1934 Act.

Rule 20a-1 is intended to ensure that investors in Fund securities are provided with appropriate information upon which to base informed decisions regarding the actions for which Funds solicit proxies. Without rule 20a-1, Fund issuers would not be required to comply with the rules and regulations adopted under Section 14(a) of the 1934 Act, which are applicable to non-Fund issuers, including the provisions relating to the form of proxy and disclosure in proxy statements.

The staff currently estimates that approximately 1,196 proxy statements are filed by Funds annually. Based on staff estimates and information from the industry, the staff estimates that the average annual burden associated with the preparation and submission of proxy statements is 85 hours per response, for a total annual burden of 101,660 hours (1,196 responses × 85 hours per response = 101,660). In addition, the staff estimates the costs for purchased services, such as outside legal counsel, proxy statement mailing, and proxy tabulation services, to be approximately \$30,000 per proxy solicitation.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the

information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, C/O Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549; or send an email to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov).

Dated: February 17, 2016.

**Robert W. Errett,**

*Deputy Secretary.*

[FR Doc. 2016-03641 Filed 2-22-16; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-77156; File No. SR-BYX-2016-02]

### Self-Regulatory Organizations; BATS Y-Exchange, Inc.; Notice of Filing of a Proposed Rule Change To Amend the Certificate of Incorporation and Bylaws of the Exchange's Ultimate Parent Company, BATS Global Markets, Inc.

February 17, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 9, 2016, BATS Y-Exchange, Inc. (the "Exchange" or "BYX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. 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

The Exchange filed a proposal to amend the certificate of incorporation and bylaws of the Exchange's ultimate parent company, BATS Global Markets, Inc. (the "Corporation").

The text of the proposed rule change is available at the Exchange's Web site at [www.batstrading.com](http://www.batstrading.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

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

<sup>76</sup> 17 CFR 200.30-3(a)(12).