

potential registrants and affect the hiring decisions of firms, as the commenters suggest?

The Commission also seeks comment on whether all exchanges and FINRA should pursue an initiative to harmonize their respective requirements and, if so, what is the appropriate timeframe? Would a 10-day standard unduly burden firms and potentially compromise the quality or integrity of the information reported on Form U5? <sup>27</sup> The Commission is interested in any additional burdens or benefits a requirement to file Form U5 within 10 days might impose on the public or the participants in the securities industry.

The Commission believes the proposals raise questions as to whether they are consistent with the requirements of Section 6(b)(5) of the Act, <sup>28</sup> including whether the proposals are 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.

#### V. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data and arguments with respect to the concerns identified above, as well as any other concerns they may have with the proposed rule changes. In particular, the Commission invites the written views of interested persons concerning whether the proposals are consistent with Sections 6(b)(5) <sup>29</sup> or any other provision of the Act, or the rules and regulations thereunder. Although there does not appear to be any issue relevant to approval or disapproval which would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4 under the Act, <sup>30</sup> any request

<sup>27</sup> See FINRA Regulatory Notice 10-39, which states that when providing explanations for reasons for terminations, firms must answer all disclosure questions accurately and provide enough information so the reader can understand the conduct that led to the termination and that the failure to do so may result in sanctions; see also In the matter of Wedbush Securities Inc., Securities Exchange Act Release No. 78568 (August 12, 2016) (noting that Form U5 serves as a warning mechanism to member firms of the potential risks and accompanying supervisory responsibilities they must assume if they decide to employ an individual with a suspect history and provides FINRA with information useful in deciding whether to initiate an investigation, and that failure to file these forms accurately and on time frustrates these objectives).

<sup>28</sup> 15 U.S.C. 78f(b)(5).

<sup>29</sup> *Id.*

<sup>30</sup> 17 CFR 240.19b-4.

for an opportunity to make an oral presentation. <sup>31</sup> Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by November 2, 2016. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by November 16, 2016. In light of the concerns raised by the proposed rule changes, as discussed above, the Commission invites additional comment on the proposed rule changes as the Commission continues its analysis of the proposed rule changes' consistency with Sections 6(b)(5) and 6(b)(8), <sup>32</sup> or any other provision of the Act, or the rules and regulations thereunder. The Commission asks that commenters address the sufficiency and merit of NYSE MKT's and/or NYSE Arca's statements in support of the proposed rule changes, in addition to any other comments they may wish to submit about the proposed rule changes.

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 No. SR-NYSEMKT-2016-52 and File No. SR-NYSEArca-2016-103 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 No. SR-NYSEMKT-2016-52 and SR-NYSEArca-2016-103. The file numbers 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 Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule

<sup>31</sup> Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Public Law 94-29 (June 4, 1975), grants to the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

<sup>32</sup> 15 U.S.C. 78f(b)(5), (b)(8).

changes that are filed with the Commission, and all written communications relating to the proposed rule changes 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 the filings also will be available for inspection and copying at the principal office of each respective 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 No. SR-NYSEMKT-2016-52 and File No. SR-NYSEArca-2016-103, and should be submitted by November 2, 2016. Rebuttal comments should be submitted by November 16, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority. <sup>33</sup>

**Brent J. Fields,**  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-79050; File No. SR-FINRA-2016-037]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Modify Fees and Transaction Credits for the FINRA/NYSE Trade Reporting Facility

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") <sup>1</sup> and Rule 19b-4 thereunder, <sup>2</sup> notice is hereby given that on September 28, 2016, Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as "establishing or changing a due, fee or other charge" under Section

<sup>33</sup> 17 CFR 200.30-3(a)(57).

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

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

19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### **I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change**

FINRA is proposing to amend the FINRA Rule 7600B Series to modify fees and transaction credits applicable to members that use the FINRA/NYSE Trade Reporting Facility (the "FINRA/NYSE TRF").

The text of the proposed rule change is available on FINRA's Web site at <http://www.finra.org>, at the principal office of FINRA and at the Commission's Public Reference Room.

### **II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

#### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

##### **1. Purpose**

##### **Background**

The FINRA/NYSE TRF, which is operated by NYSE Market (DE), Inc., is one of three FINRA facilities that FINRA members can use to report over-the-counter ("OTC") trades in NMS stocks.<sup>5</sup> In connection with the establishment of the FINRA/NYSE TRF, FINRA and NYSE Market (DE), Inc. entered into a limited liability company agreement (the "LLC Agreement"). Under the LLC Agreement, FINRA, the "SRO Member," has sole regulatory responsibility for the FINRA/NYSE TRF. NYSE Market (DE), Inc., the "Business Member," is primarily responsible for the management of the FINRA/NYSE TRF's

business affairs to the extent those affairs are not inconsistent with the regulatory and oversight functions of FINRA. As such, the Business Member establishes pricing for use of the FINRA/NYSE TRF, and such pricing is implemented pursuant to FINRA rules that must be filed with the SEC and be consistent with the Act.<sup>6</sup> In addition, the Business Member is obligated to pay the cost of regulation and is entitled to the profits and losses, if any, derived from the operation of the FINRA/NYSE TRF.<sup>7</sup>

The FINRA/NYSE TRF commenced operation in April 2007 and since that time, the NYSE Market (DE), Inc., as the Business Member, has funded all costs associated with operating the FINRA/NYSE TRF, including all regulatory costs, from NYSE Market (DE), Inc. general revenues. According to NYSE Market (DE), Inc., the cost of operating the FINRA/NYSE TRF has increased since 2007, in part because regulatory costs have increased with FINRA/NYSE TRF's higher market share, as well as additional functionality and development costs. Accordingly, NYSE Market (DE), Inc., as the Business Member, has determined to adjust the FINRA/NYSE TRF fees and transaction credits to provide revenue to help offset these increased operating costs, while allowing the FINRA/NYSE TRF to remain competitive. NYSE Market (DE), Inc. will continue to fund any costs, including applicable regulatory costs and requisite infrastructure costs, associated with the operations of the FINRA/NYSE TRF that are not covered by fees and market data revenue from NYSE Market (DE), Inc.'s general revenues.

Pursuant to the FINRA Rule 7600B Series, FINRA members that are FINRA/NYSE TRF participants are charged fees (Rule 7620B) and may qualify for transaction credits (Rule 7610B) for use of the FINRA/NYSE TRF. In addition, affiliated members can aggregate their activity for purposes of fees and credits that are dependent upon the volume of their activity (Rule 7630B). These rules are administered by NYSE Market (DE),

Inc., in its capacity as the Business Member and operator of the FINRA/NYSE TRF on behalf of FINRA,<sup>8</sup> and NYSE Market (DE), Inc. collects all fees on behalf of the FINRA/NYSE TRF.

##### **Proposed Amendments to Rule 7610B**

Pursuant to Rule 7610B (Securities Transaction Credit), FINRA members that execute OTC trades in securities listed on the New York Stock Exchange ("Tape A"), NYSE MKT and regional exchanges ("Tape B"), or Nasdaq ("Tape C") and report to the FINRA/NYSE TRF may receive from the FINRA/NYSE TRF transaction credits based on the transactions attributed to them. A transaction is attributed to a member if the member is identified as the executing party in a trade report submitted to the FINRA/NYSE TRF that the FINRA/NYSE TRF submits to the Consolidated Tape Association ("CTA") or the Nasdaq Securities Information Processor ("UTP SIP"). A FINRA member may earn credits from any of the three pools maintained by the FINRA/NYSE TRF, each of which represents the market data revenue paid by the CTA or the UTP SIP with respect to the FINRA/NYSE TRF for each of Tape A, Tape B, and Tape C transactions ("Market Data Revenue"). A FINRA member may earn credits from the pools according to the pro rata share of revenue attributable to OTC transactions reported to the FINRA/NYSE TRF by the member in Tape A, Tape B, and Tape C for each calendar quarter.<sup>9</sup>

NYSE Market (DE), Inc., as the Business Member, has determined to modify the current tiered schedule for Market Data Revenue sharing for the FINRA/NYSE TRF, and FINRA is proposing to amend Rule 7610B accordingly. Specifically, the proposed rule change would increase the percentage of Market Data Revenue shared with a FINRA member reporting trades to the FINRA/NYSE TRF based on the member's "Market Share."<sup>10</sup>

<sup>8</sup> FINRA's oversight of this function performed by the Business Member is conducted through a recurring assessment and review of TRF operations by an outside independent audit firm.

<sup>9</sup> To the extent that the Market Data Revenue is subject to any adjustment, credits provided may be adjusted accordingly.

<sup>10</sup> "Market Share" is defined in Rule 7610B as the percentage calculated by dividing the total number of trades reported by a member to the FINRA/NYSE TRF during a given calendar quarter by the total number of all trades reported to the CTA or the UTP SIP, as applicable, during that quarter. Market Share is calculated separately for each tape. The calculation of Market Share is based only on a member's trades that are reported to the CTA or the UTP SIP ("tape reports") and does not include trades that are only reported for regulatory and/or

Continued

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

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

<sup>5</sup> In addition to the FINRA/NYSE TRF, members have the option of reporting OTC trades in NMS stocks to the FINRA Alternative Display Facility (the "ADF") or the FINRA/Nasdaq Trade Reporting Facility (the "FINRA/Nasdaq TRF").

<sup>6</sup> Because there are two FINRA Trade Reporting Facilities operated by different exchange Business Members competing for market share (the FINRA/NYSE TRF and the FINRA/Nasdaq TRF), FINRA does not take a position on whether the pricing for one TRF is more favorable or competitive than the pricing for the other TRF.

<sup>7</sup> FINRA notes that the same contractual arrangement is in place for the FINRA/Nasdaq TRF, with FINRA as the SRO Member and Nasdaq, Inc. as the Business Member. The LLC agreements for the FINRA/NYSE TRF and the FINRA/Nasdaq TRF were submitted as part of the rule filings to establish the respective TRFs and can be found in the FINRA Manual.

Under the current tiered schedule, a member with a Market Share of 0.9% or more in Tape A or Tape C, or 0.7% or more in Tape B, receives 90% of the attributable Market Data Revenue; a member with less than 0.9% but at least 0.5% in Tape A or Tape C, or less than 0.7% but at least 0.5% in Tape B, receives 75%; a member with less than 0.5% but at least 0.4% in Tape A, Tape B or Tape C receives 70%; a member with less than 0.4% but at least 0.075% in Tape A, Tape B or Tape C receives 25%; and a member with less than 0.075% in Tape A, Tape B or Tape C is not eligible for the Market Data Revenue sharing program.

Under the proposed rule change, a member with a Market Share of 2.0% or more in Tape A, Tape B or Tape C, would receive 100% of the attributable Market Data Revenue; a member with less than 2.0% but at least 0.5% in Tape A, Tape B or Tape C, would receive 95%; a member with less than 0.5% but at least 0.1% in Tape A, Tape B or Tape C would receive 85%; and a member with less than 0.1% in Tape A, Tape B or Tape C would not be eligible for the Market Data Revenue sharing program. For example, a member that has a Market Share of 2.5% in Tape A, 1.5% in Tape B, and 0.05% in Tape C would be eligible to receive 100% of the attributable Market Data Revenue in Tape A, 95% in Tape B, and no Market Data Revenue in Tape C. The below chart sets forth the proposed tiers.

Market share	Percentage of market data revenue shared
Greater than or equal to 2.0% .....	100
Greater than or equal to 0.5% but less than 2.0% ...	95
Greater than or equal to 0.1% but less than 0.5% ...	85
Less than 0.1% .....	0

Thus, as a general matter, market participants that make the most use of the FINRA/NYSE TRF will be eligible for the highest level of revenue sharing with others receiving progressively lower percentages. FINRA notes that although the Market Share and Market Data Revenue percentages for each tape are identical under the proposed rule change, they are independent of each other and, as such, may subsequently be adjusted individually.<sup>11</sup>

clearing—and not dissemination—purposes (“non-tape reports”). The proposed rule change would not amend this definition.

<sup>11</sup> Any change to one or more of these percentages would be subject to a proposed rule change by FINRA.

NYSE Market (DE) Inc. has indicated that for competitive reasons and in light of the cost of operating the FINRA/NYSE TRF, it has determined to make the above adjustments to the Market Data Revenue sharing program for the FINRA/NYSE TRF. NYSE Market (DE) Inc. believes that, particularly at the adjusted market share levels, the percentage of revenue shared is more favorable to reporting firms as compared to other revenue share programs.<sup>12</sup>

Proposed Amendments to Rule 7620B

Pursuant to Rule 7620B (Trade Reporting Facility Reporting Fees), FINRA members that are FINRA/NYSE TRF subscribers are currently charged a monthly fee for use of the FINRA/NYSE TRF. Members are charged either \$500 or \$1,000 per month beginning in the month of the member’s first trade report. Specifically, members reporting an average of 100 trades or less per day during the calendar month are charged \$500, and members reporting an average of more than 100 trades per day during the calendar month are charged \$1,000. For purposes of meeting the 100 trade threshold, both tape and non-tape reports are included; however, reversals and other modifications to previously reported trades are not included. A member’s fee could vary from month to month, depending on the number of trade reports the member submits. In addition, once a member’s fee begins, the member is charged a fee each month unless and until the member cancels its access to the FINRA/NYSE TRF, even if the member reports no trades to the FINRA/NYSE TRF in a given month.<sup>13</sup> The fee is charged at the end of the calendar month; a member’s trades are counted and the appropriate fee is assessed on the member’s invoice after the month closes.

NYSE Market (DE), Inc., as the Business Member, has determined to replace the current fee structure with a tiered monthly fee structure based on a member’s OTC trading activity, and FINRA is proposing to amend Rule 7620B accordingly. Specifically, the proposed rule change would base the tiered fee calculation on a member’s “ATS & Non-ATS OTC Market Share,” which would be defined as the percentage calculated by dividing the total number of ATS and non-ATS shares<sup>14</sup> reported by the member to

<sup>12</sup> See, e.g., Rule 7610A.

<sup>13</sup> In that instance, the member is charged the lower fee of \$500.

<sup>14</sup> “ATS shares” are shares of NMS stocks executed within a member’s alternative trading system (“ATS”) and “non-ATS shares” are shares of NMS stocks executed OTC by a member outside of an ATS.

FINRA and published by FINRA pursuant to Rule 6110<sup>15</sup> during a given calendar quarter<sup>16</sup> by the total number of all shares reported to the CTA and the UTP SIP, as applicable, during that period. “ATS & Non-ATS OTC Market Share” will be calculated in aggregate across all tapes.

Non-ATS OTC data was first made available on FINRA’s Web site using data as of April 4, 2016. As such, the “ATS & Non-ATS OTC Market Share” calculation for the second quarter of 2016 would begin as of April 4, 2016 for non-ATS data. Once available over a longer period, the “ATS & Non-ATS OTC Market Share” calculation will be based on the data available for the prior full calendar quarter and will determine the monthly fees in subsequent periods. For example, if the third quarter ATS and non-ATS data is available by the first business day of the month (e.g., November 1), then the calculation will be applied to the prior billing month (e.g., October). If the data is available after the first business day (e.g., November 2 or later), then the calculation will be applied to the next billing month (e.g., November). To the extent the “ATS & Non-ATS OTC Market Share” calculation is subject to any adjustment, fees charged may be adjusted accordingly.

Under the proposed rule change, a member with an “ATS & Non-ATS OTC Market Share” of 2.0% or more in aggregate shares across all tapes would be charged a monthly fee of \$30,000; a member with less than 2.0% but at least 0.5% in aggregate across all tapes would be charged a monthly fee of \$15,000; a member with less than 0.5% but at least 0.1% in aggregate would be charged a monthly fee of \$5,000; and a member with less than 0.1% in aggregate across all tapes would be charged a monthly

<sup>15</sup> Pursuant to Rule 6110, FINRA publishes on its public Web site the number of shares and trades by security executed OTC (“Trading Information”) by each ATS and member firm with a trade reporting obligation under FINRA rules. Trading Information published on FINRA’s Web site is derived directly from OTC trades reported by the member firm to FINRA’s equity trade reporting facilities.

<sup>16</sup> FINRA notes that a firm’s ATS and non-ATS volume information, which is published on a delayed basis, is derived directly from tape reports of OTC trades submitted to FINRA’s equity trade reporting facilities. A firm’s published trading volume information does not include trades for which the firm is the reported contra party or trades that are reported solely for clearing or regulatory purposes (i.e., non-tape reports).

For firms executing fewer than on average 200 non-ATS transactions per day during the reporting period, FINRA combines and publishes such “de minimis” volume on an aggregated non-attributed basis. Such volume would be unavailable to include in the numerator of the “ATS & Non-ATS OTC Market Share” calculation.

fee of \$2,000. The below chart sets forth the proposed fee tiers.

ATS & non-ATS OTC market share	Monthly subscriber fee
Greater than or equal to 2.0% .....	\$30,000
Greater than or equal to 0.5% but less than 2.00% .....	15,000
Greater than or equal to 0.1% but less than 0.5% ...	5,000
Less than 0.1% .....	2,000

The monthly fee will be charged at the end of the calendar month and applies to any member that has submitted a participant application agreement to the FINRA/NYSE TRF pursuant to Rule 7220B. Where a new member submits the participant application agreement and reports no shares traded in a given month, the member will not be charged the monthly fee for the first two calendar months in order to provide time to connect to the FINRA/NYSE TRF.<sup>17</sup>

The monthly subscriber fee will continue to include full access to the FINRA/NYSE TRF and supporting functionality, *e.g.*, trade submission, reversal and cancellation, and unlimited use of the Client Management Tool. In addition to submitting, correcting, breaking, and reversing trades, the Client Management Tool currently allows users to View/Query/Export trade reports, potential trade throughs and rejected trade submissions. Additionally, members can use the FINRA/NYSE TRF as a backup system and reserve bandwidth if there is a failure at another FINRA facility that supports the reporting of OTC trades in NMS stocks.<sup>18</sup>

As noted above, members have the option of reporting OTC trades in NMS stocks to one of three FINRA facilities. NYSE Market (DE) Inc., as the Business Member, has determined that the FINRA/NYSE TRF would be more competitive with these other facilities if users are charged a flat fee for access to the complete range of functionality offered by the FINRA/NYSE TRF rather than a separate fee for each activity (*e.g.*, a per trade or per side fee for reporting a trade, a separate per trade fee for canceling a trade, a per terminal fee,

etc.).<sup>19</sup> Rather than charging the same fee to all FINRA/NYSE TRF participants irrespective of trading activity, the fees are designed such that more active firms in the overall market pay more for access to the FINRA/NYSE TRF, while less active firms in the overall market pay less.

#### Proposed Amendments to Rule 7630B

Rule 7630B (Aggregation of Activity of Affiliated Members) provides for the aggregation of affiliated member activity for purposes of the fee and credit schedule applicable to the FINRA/NYSE TRF. NYSE Market (DE), Inc., as the Business Member, has determined to replace the current approval process and automatically aggregate affiliated member activity for purposes of determining Market Share and Market Data Revenue shared under Rule 7610B, as well as for determining a member's "ATS & Non-ATS OTC Market Share" under Rule 7620B. FINRA is proposing to amend Rule 7630B accordingly. Under the proposed rule change, firms will be required to submit a form to the FINRA/NYSE TRF disclosing their affiliates and update the form if there are changes in affiliate status.<sup>20</sup>

NYSE Market (DE) Inc. believes that automatically aggregating affiliated member activity will guarantee that firms qualify for the highest securities transaction credit based on their overall use of the FINRA/NYSE TRF. Additionally, automatically aggregating affiliated member activity will guarantee that firms are charged the appropriate monthly subscription fee based on their overall OTC activity reported on the FINRA Web site, which will ensure more active firms pay more and less active firms pay less.

FINRA has filed the proposed rule change for immediate effectiveness and the operative date will be October 1, 2016.

#### 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,<sup>21</sup> which requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that FINRA operates or controls. All similarly situated

members are subject to the same fee structure and access to the FINRA/NYSE TRF is offered on fair and non-discriminatory terms.

FINRA believes that the proposed transaction credit schedule under Rule 7610B provides for the equitable allocation of reasonable fees in that it bases the percentage of revenue shared on members' respective contributions to the revenues of the FINRA/NYSE TRF, *i.e.*, market participants that make the most use of the FINRA/NYSE TRF will be eligible for the highest level of revenue sharing with others receiving progressively lower percentages. In addition, FINRA believes that the proposed fee schedule under Rule 7620B provides for the equitable allocation of reasonable fees in that FINRA members that are potentially higher volume users will pay more for access to the FINRA/NYSE TRF, while potentially lower volume users will pay less. While firms with larger volume will pay higher fixed costs, they also will potentially benefit from higher revenue sharing percentages. NYSE Market (DE) Inc., as the Business Member, has indicated that the proposed fee and credit structure will help offset the increased cost of operating the FINRA/NYSE TRF, and as such, FINRA believes that the proposed rule change provides for the equitable allocation of reasonable fees.<sup>22</sup>

FINRA further believes that the proposed fee and credit structure provides for the equitable allocation of reasonable fees in that it will apply only to members that choose to subscribe to the FINRA/NYSE TRF. Access to the FINRA/NYSE TRF is offered on fair and non-discriminatory terms, and FINRA members will continue to have the option of using another FINRA facility for purposes of reporting OTC trades in NMS stocks if they determine that the fees and credits of another facility are more favorable.

Finally, FINRA believes that the proposed rule change to automatically aggregate affiliated firm activity would provide a more streamlined and efficient process for aggregating affiliate activity than the current process, which requires the FINRA/NYSE TRF to affirmatively approve a member's request for aggregation.

<sup>17</sup> After the first two calendar months, a member will be charged regardless of connectivity.

<sup>18</sup> As set forth in *Trade Reporting Notice 1/20/16* (OTC Equity Trading and Reporting in the Event of Systems Issues), a firm that routinely reports its OTC trades in NMS stocks to only one FINRA trade reporting facility must establish and maintain connectivity and report to a second FINRA trade reporting facility, if the firm intends to continue to support OTC trading as an executing broker while its primary facility is experiencing a widespread systems issue.

<sup>19</sup> See, *e.g.*, Rules 7510(a) and 7520 (trade reporting fees and connectivity charges for the ADF) and Rule 7620A (trade reporting fees for the FINRA/Nasdaq TRF).

<sup>20</sup> The affiliate disclosure form that firms will be required to submit under the proposed rule change is attached to this filing as Exhibit 3.

<sup>21</sup> 15 U.S.C. 78o-3(b)(5).

<sup>22</sup> NYSE Market (DE) Inc. has indicated that any costs, including regulatory and infrastructure costs, associated with the operation of the FINRA/NYSE TRF that are not covered by market data revenue and trade reporting fees will continue to be funded by NYSE Market (DE) Inc. general revenues.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

#### Economic Impact Assessment

NYSE Market (DE), Inc. has indicated that the cost of operating the FINRA/NYSE TRF has increased substantially since 2007, due to rising regulatory costs, the need for additional functionality and the attendant development costs. Therefore, NYSE Market (DE), Inc., as the Business Member, has determined to adjust the FINRA/NYSE TRF fees and market data revenue paid to reporting firms as transaction credits.

The proposed rule change to modify fees and transaction credits applicable to members that use the FINRA/NYSE TRF increases access fees to most reporters and provides for greater revenue sharing, depending on the factors described above. As a whole, the proposed rule change may provide net benefits or impose net costs for member firms to the extent that member firms maintain connectivity and report trades to the FINRA/NYSE TRF.

In the first quarter of 2016, there were 20 firms that subscribed to and/or reported trades to the FINRA/NYSE TRF, of which 12 were in the \$500 per month schedule and 8 were in the \$1,000 per month schedule. The average fee incurred during the period was estimated to be approximately \$1,950 per firm across the 20 firms. Under the current percentages of market data revenue shared, six firms received transaction credits, on average \$235,061 per firm in the first quarter of 2016.

Under the proposed fee structure, the average subscriber fee that would have been incurred during the quarter would increase to approximately \$24,900 per firm (and approximately \$6,000 for smaller firms), assuming that the same 20 firms maintain their subscription and report the same number of trades to the FINRA/NYSE TRF. In the case of the six firms that were eligible for transaction credits, market data revenue shared would also have been higher, due to the proposed increase in the percentage of revenue shared, with an average increase of approximately \$40,000 per firm in the first quarter of 2016. Had the proposed fee and revenue share structure been in place, two firms would see a net decrease in the cost of reporting to the TRF, with an average decrease of \$35,157. The remaining 18 firms would have experienced an

increase averaging \$12,353 per quarter.<sup>23</sup> However, NYSE Market (DE) Inc., as the Business Member, believes that at the adjusted market share levels, the percentage of revenue shared represents a more favorable program to reporting firms as compared to other revenue share programs, and thus anticipate an increase in reporting through the FINRA/NYSE TRF. By way of example, one firm, with 0.60% reported share in the first quarter, received 75% revenue share or \$281,434.45. Under the proposed structure, the revenue share would increase to 95% or \$356,483.64. Additionally, the firm could benefit from more cost savings by reporting additional volume that, in turn, would receive higher revenue sharing than other programs and/or push the firm into a higher revenue sharing tier.

Firms may potentially alter their trading activity in response to the proposed rule change. Specifically, those firms that would incur higher fees may refrain from reporting to the FINRA/NYSE TRF and may choose to report to the ADF and/or FINRA/Nasdaq TRF. Alternatively, such firms may continue reporting or new firms may start reporting to the FINRA/NYSE TRF if they find that the proposed net cost of reporting and other functionalities provided represent the best value to their business. The net effect on any individual member firm of the proposed increase in reporting fees and amount of revenue shared will depend on the firm's OTC market share and reporting to the FINRA/NYSE TRF.

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

Written comments were neither solicited nor received.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>24</sup> and paragraph (f)(2) of Rule 19b-4 thereunder.<sup>25</sup> At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if

<sup>23</sup> The reporting fee and transaction credit estimates are highly sensitive to the assumptions that the same firms would be reporting the same level of activity to the FINRA/NYSE TRF. In case there is a change in the composition of the reporting firms and/or the level of reporting activity in response to the proposed changes or other exogenous events, the estimates can vary significantly.

<sup>24</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>25</sup> 17 CFR 240.19b-4(f)(2).

it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

### **IV. Solicitation of Comments**

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

#### *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-2016-037 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2016-037. 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 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 FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions

should refer to File Number SR-FINRA-2016-037, and should be submitted on or before November 2, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>26</sup>

Dated: October 5, 2016.

**Brent J. Fields,**  
Secretary.

[FR Doc. 2016-24575 Filed 10-11-16; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 32306; File No. 812-14609]

### Harris Associates Investment Trust, et al.; Notice of Application

October 5, 2016.

**AGENCY:** Securities and Exchange Commission (“Commission”).

**ACTION:** Notice of an application for an order pursuant to: (a) Section 6(c) of the Investment Company Act of 1940 (“Act”) granting an exemption from sections 18(f) and 21(b) of the Act; (b) section 12(d)(1)(j) of the Act granting an exemption from section 12(d)(1) of the Act; (c) sections 6(c) and 17(b) of the Act granting an exemption from sections 17(a)(1), 17(a)(2) and 17(a)(3) of the Act; and (d) section 17(d) of the Act and rule 17d-1 under the Act to permit certain joint arrangements and transactions. Applicants request an order that would permit certain registered open-end management investment companies to participate in a joint lending and borrowing facility.

**APPLICANTS:** Harris Associates Investment Trust (the “Trust”), a Massachusetts business trust registered under the Act as an open-end management investment company with multiple series and Harris Associates L.P. (the “Adviser”), a Delaware limited partnership registered as an investment adviser under the Investment Advisers Act of 1940.

**FILING DATES:** The application was filed on February 8, 2016 and amended on June 21, 2016.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission’s Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on October 31, 2016 and

should be accompanied by proof of service on the applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Pursuant to Rule 0-5 under the Act, hearing requests should state the nature of the writer’s interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission’s Secretary.

**ADDRESSES:** Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090; Applicants: 111 S. Wacker Drive, Suite 4600, Chicago, Illinois 60606-4319.

**FOR FURTHER INFORMATION CONTACT:** Emerson S. Davis, Senior Counsel, at (202) 551-6868 or Daniele Marchesani, Branch Chief, at (202) 551-6821 (Division of Investment Management, Chief Counsel’s Office).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained via the Commission’s Web site by searching for the file number, or an applicant using the Company name box, at <http://www.sec.gov/search/search.htm> or by calling (202) 551-8090.

#### Summary of the Application

1. Applicants request an order that would permit the applicants to participate in an interfund lending facility where each Fund could lend money directly to and borrow money directly from other Funds to cover unanticipated cash shortfalls, such as unanticipated redemptions or trade fails.<sup>1</sup> The Funds will not borrow under the facility for leverage purposes and the loans’ duration will be no more than 7 days.<sup>2</sup>

2. Applicants anticipate that the proposed facility would provide a borrowing Fund with a source of liquidity at a rate lower than the bank borrowing rate at times when the cash position of the Fund is insufficient to

<sup>1</sup> Applicants request that the order apply to the applicants and to any existing or future registered open-end management investment company or series thereof for which the Adviser or any successor thereto or an investment adviser controlling, controlled by, or under common control with the Adviser or any successor thereto serves as investment adviser (each a “Fund” and collectively the “Funds”) and each such investment adviser an “Adviser”). For purposes of the requested order, “successor” is limited to any entity that results from a reorganization into another jurisdiction or a change in the type of a business organization. Applicants are not requesting that the order also apply, and the order will not apply, to any fund or series that is a money market fund that complies with Rule 2a-7 under the Act.

<sup>2</sup> Any Fund, however, will be able to call a loan on one business day’s notice.

meet temporary cash requirements. In addition, Funds making short-term cash loans directly to other Funds would earn interest at a rate higher than they otherwise could obtain from investing their cash in repurchase agreements or certain other short term money market instruments. Thus, applicants assert that the facility would benefit both borrowing and lending Funds.

3. Applicants agree that any order granting the requested relief will be subject to the terms and conditions stated in the Application. Among others, the Adviser, through a designated committee, would administer the facility as a disinterested fiduciary as part of its duties under the investment management agreements with the Funds and would receive no additional fee as compensation for its services in connection with the administration of the facility. The facility would be subject to oversight and certain approvals by the Funds’ Board, including, among others, approval of the interest rate formula and of the method for allocating loans across Funds, as well as review of the process in place to evaluate the liquidity implications for the Funds. A Fund’s aggregate outstanding interfund loans will not exceed 15% of its net assets, and the Fund’s loans to any one Fund will not exceed 5% of the lending Fund’s net assets.<sup>3</sup>

4. Applicants assert that the facility does not raise the concerns underlying section 12(d)(1) of the Act given that the Funds are part of the same group of investment companies and there will be no duplicative costs or fees to the Funds.<sup>4</sup> Applicants also assert that the proposed transactions do not raise the concerns underlying sections 17(a)(1), 17(a)(3), 17(d) and 21(b) of the Act as the Funds would not engage in lending transactions that unfairly benefit insiders or are detrimental to the Funds. Applicants state that the facility will offer both reduced borrowing costs and enhanced returns on loaned funds to all participating Funds and each Fund would have an equal opportunity to borrow and lend on equal terms based on an interest rate formula that is objective and verifiable. With respect to the relief from section 17(a)(2) of the Act, applicants note that any collateral pledged to secure an interfund loan would be subject to the same conditions imposed by any other lender to a Fund

<sup>3</sup> Under certain circumstances, a borrowing Fund will be required to pledge collateral to secure the loan.

<sup>4</sup> Applicants state that the obligation to repay an interfund loan could be deemed to constitute a security for the purposes of sections 17(a)(1) and 12(d)(1) of the Act.

<sup>26</sup> 17 CFR 200.30-3(a)(12).