ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION IN THIS PROCEEDING

Day	Event/Activity
0	Publication of **Federal Register** notice of hearing and opportunity to petition for leave to intervene, including order with instructions for access requests.
10	Deadline for submitting requests for access to Sensitive Unclassified Non-Safeguards Information (SUNSI) with information: Supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding.
60	Deadline for submitting petition for intervention containing: (i) Demonstration of standing; and (ii) all contentions whose formulation does not require access to SUNSI (+25 Answers to petition for intervention; +7 petitioner/requestor reply).
20	U.S. Nuclear Regulatory Commission (NRC) staff informs the requestor of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows need for SUNSI. (NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information). If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents).
25	If NRC staff finds no ''need'' or no likelihood of standing, the deadline for petitioner/requestor to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds ''need'' for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
40	(Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI.
A	If access granted: issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3	Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI consistent with decision issuing the protective order.
A + 28	Deadline for submission of contentions whose development depends upon access to SUNSI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.
A + 53	(Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI.
A + 60	(Answer receipt +7) Petitioner/Intervenor reply to answers.
>A + 60	Decision on contention admission.

[FR Doc. 2016–28507 Filed 11–25–16; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76361; File No. SR–FINRA–2016–043]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Provide a Process for an Expedited Proceeding and Adopt a Rule To Prohibit Disruptive Quoting and Trading Activity

November 21, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that, on November 15, 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. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

FINRA is proposing to (i) adopt new Supplementary Material to Rule 5210 to address two specific types of disruptive quoting and trading activity, as further described below and (ii) amend the FINRA Rule 9800 Series to permit FINRA to initiate an expedited proceeding to take prompt action for violations of the new Supplementary Material.

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

FINRA is proposing two rule changes [3] regarding disruptive trading and quoting activity. The first proposed rule change would adopt new Supplementary Material .03 to Rule 5210 to define and prohibit specific conduct that is deemed disruptive trading and quoting activity. The second proposed rule change would amend the Rule 9800 Series to provide FINRA with the authority to issue, on an expedited basis, a permanent cease and desist order against a respondent that engages

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission notes that this filing constitutes a single ''proposed rule change,'' under Section 19(b) of the Act.

in a frequent pattern or practice of the disruptive trading and quoting activity in Supplementary Material .03 to Rule 5210. The proposed rule change mirrors the framework that Bats BZX Exchange, Inc., formerly known as BATS Exchange, Inc. (''BATS''), and The Nasdaq Stock Market LLC (''Nasdaq'') have recently adopted, but builds off of FINRA's existing process for temporary cease and desist orders (''TCDOs'').[4] FINRA believes that having the authority to issue a cease and desist order on an expedited basis to stop certain well-defined disruptive and manipulative quoting and trading activity when the activity is persistent would significantly enhance FINRA's ability to protect investors and market integrity.

Proposed Disruptive Trading and Quoting Rule

As a national securities association registered pursuant to Section 15A of the Act, FINRA is required to be organized and to have the capacity to enforce compliance by its members and persons associated with its members with, among other things, the Act, the rules and regulations thereunder, and FINRA Rules.[5] Further, FINRA's rules are required to 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.''[6] In fulfilling these requirements, FINRA has developed a comprehensive regulatory program that includes automated surveillance of a substantial portion of trading activity.[7] When potentially disruptive, manipulative, or otherwise improper quoting and trading activity is identified, FINRA staff conducts an investigation into the activity, which often includes requesting additional information from the member or members involved.[8] To the extent violations of the Act, the rules and regulations thereunder, or FINRA Rules (or the rules of an exchange with which FINRA has an RSA) have been identified and confirmed, FINRA will commence the enforcement process (either on its own behalf or on behalf of a client exchange), which might result in, among other things, a censure, a requirement to take certain remedial actions, one or more restrictions on future business activities, a monetary fine, or a temporary or permanent ban from the securities industry.[9]

The process described above, from the initial identification of potentially disruptive, manipulative, or improper quoting and trading activity to a final resolution of the matter, can often take up to several years.[10] FINRA believes that this time period is generally necessary and appropriate to ensure that the subject member has a fair procedure before a sanction is imposed, particularly in complex cases. However, as described below, FINRA believes that there are certain clear cases of disruptive and manipulative behavior, or cases where the potential harm to investors is so large, that FINRA should have the authority to initiate an expedited proceeding to stop the behavior from continuing, similar to that which currently exists under the Rule 9800 Series for issuing TCDOs.

In recent years, several cases have been brought and resolved by FINRA and other self-regulatory organizations (''SROs'') that involved allegations of wide-spread market manipulation, much of which was ultimately being conducted by foreign persons and entities over which neither FINRA nor other SROs had direct jurisdiction. In each case, the conduct involved a pattern of disruptive quoting and trading activity indicative of manipulative layering[11] or spoofing.[12] The exchanges and FINRA were able to identify the disruptive quoting and trading activity in real-time or near real-time; however, due to the procedural requirements in existing SRO rules, the members responsible for the conduct or responsible for their customers' conduct were able to continue the disruptive quoting and trading activity during the entirety of the subsequent lengthy investigation and enforcement process.[13] FINRA believes that it should have the authority to initiate an expedited proceeding to stop the behavior from continuing if a member is engaging in or facilitating certain clear types of disruptive quoting and trading activity and the member has received sufficient notice with an opportunity to respond, but such activity has not ceased.

The proposed rule change therefore adds Supplementary Material .03 to FINRA Rule 5210 (Publication of Transactions and Quotations) to explicitly prohibit members from engaging in or facilitating the disruptive quoting and trading activities set forth in the rule.[14] The Supplementary Material would prohibit members from engaging in or facilitating disruptive quoting and trading activity as defined in the rule, including acting in concert with other persons to effect such activity. FINRA believes it is necessary to extend the prohibition to situations

[4] On February 18, 2016, the SEC approved a proposed rule change filed by BATS to adopt new BATS Rule 12.15, which prohibits certain types of disruptive quoting and trading activities, and BATS Rule 8.17, which permits BATS to conduct a new expedited suspension proceeding when it believes BATS Rule 12.15 has been violated. *See* Securities Exchange Act Release No. 77171 (February 18, 2016), 81 FR 9017 (February 23, 2016) (''BATS Approval Order''); *see also* Securities Exchange Act Release No. 77606 (April 13, 2016), 81 FR 23026 (April 19, 2016) (adopting identical rules for Bats EDGA Exchange, Inc.); Securities Exchange Act Release No. 77602 (April 13, 2016), 81 FR 23046 (April 19, 2016) (adopting identical rules for Bats BYX Exchange, Inc.); Securities Exchange Act Release No. 77589 (April 12, 2016), 81 FR 22691 (April 18, 2016) (adopting identical rules for Bats EDGX Exchange, Inc.). On May 19, 2016, Nasdaq filed a substantially similar proposed rule change with the SEC for immediate effectiveness. *See* Securities Exchange Act Release No. 77913 (May 25, 2016), 81 FR 35081 (June 1, 2016). Nasdaq has similarly extended the rule to other exchanges. *See, e.g.,* Securities Exchange Act Release No. 78208 (June 30, 2016), 81 FR 44366 (July 7, 2016).

[5] *See* 15 U.S.C. 78*o*–3(b)(2).

[6] 15 U.S.C. 78*o*–3(b)(6).

[7] FINRA conducts, on its own behalf, surveillance of its members' trading activity, as well as surveillance for numerous national securities exchanges pursuant to Regulatory Services Agreements (''RSAs''). FINRA currently has RSAs with 18 different exchanges to perform some degree of surveillance. FINRA also combines its own data with data received from those exchanges with which it has RSAs to conduct cross-market surveillance.

[8] *See, e.g.,* Rule 8210.

[9] 15 U.S.C. 78*o*–3(b)(7). *See generally* Rule 9200 Series.

[10] *See* BATS Approval Order, *supra* note 4, at 9017.

[11] ''Layering'' is a form of market manipulation in which multiple, non-bona fide limit orders are entered on one side of the market at various price levels in order to create the appearance of a change in the levels of supply and demand, thereby artificially moving the price of the security. An order is then executed on the opposite side of the market at the artificially created price, and the non-bona fide orders are cancelled.

[12] ''Spoofing'' is a form of market manipulation that involves the market manipulator placing non-bona fide orders that are intended to trigger some type of market movement or response from other market participants, which the market manipulator is able to take advantage of by placing orders on the opposite side of the market.

[13] For descriptions of two specific examples, *see* SR–BATS–2015–101. *See also* Securities Exchange Act Release No. 75693 (August 13, 2015), 80 FR 50370, 50371–72 (August 19, 2015).

[14] FINRA currently has authority to prohibit and take action against manipulative trading activity, including disruptive quoting and trading activity, pursuant to its general market manipulation rules, including Rules 2010 and 2020. The proposed Supplementary Material would define more specifically and prohibit certain types of disruptive quoting and trading activity. Violations of the Supplementary Material would also provide the basis to apply the proposed cease and desist proceeding described below. Combined, proposed Supplementary Material .03 to Rule 5210 and the proposed amendments to the Rule 9800 Series would provide FINRA with the authority to act promptly to prevent the defined types disruptive quoting and trading activity from continuing to occur.

when persons are acting in concert to avoid a potential loophole where disruptive quoting and trading activity is simply split between several firms or customers.

The proposed rule change defines two types of prohibited activities and states that, for purposes of the rule, disruptive quoting and trading activity would include a ''frequent pattern or practice'' of these activities. As is the case with BATS Rule 12.15, the prohibited activities do not include an express intent element.[15]

- *Trading Scenario One:* A frequent pattern in which the following facts are present: (1) A party enters multiple limit orders on one side of the market at various price levels; (2) following the entry of the limit orders, the level of supply and demand for the security changes; (3) the party enters one or more orders on the opposite side of the market that are subsequently executed; and (4) following the execution, the party cancels the original limit orders.
- *Trading Scenario Two:* A frequent pattern in which the following facts are present: (1) A party narrows the spread for a security by placing an order inside the national best bid and offer and (2) the party then submits an order on the opposite side of the market that executes against another market participant that joined the new inside market established by the party.

Similar to Interpretation and Policy .02 to BATS Rule 12.15, Supplementary Material .03 also makes clear that the order of the events indicating the pattern does not change the applicability of the rule and that these types of disruptive quoting and trading activity can occur regardless of the venue(s) on which the activity is conducted.

Proposed Cease and Desist Proceeding

In addition to the new Supplementary Material describing the prohibited trading and quoting activity, the proposed rule change provides FINRA with authority to issue, on an expedited basis, a permanent cease and desist order (''PCDO'') under FINRA's existing TCDO rules for violations of Supplementary Material .03 to FINRA Rule 5210.[16]

Under the current TCDO rules, FINRA can initiate a TCDO proceeding under the Rule 9800 Series when respondents are alleged to have violated certain specific rules,[17] and although BATS modeled its expedited suspension proceeding rule on FINRA's TCDO rules, there are some differences.[18] Under the proposed rule change, FINRA can issue a PCDO under which a respondent to the proceeding would be (1) Ordered to cease and desist from the violative activity under Supplementary Material .03 to Rule 5210 or (2) ordered to cease and desist from providing market access to a client engaged in the violative trading activity.[19]

The proposed process for issuing a PCDO for violations of Supplementary Material .03 to Rule 5210 closely follows the existing TCDO procedures in the Rule 9800 Series. Specifically, like a TCDO, under the proposed amendments to FINRA's procedural rules, the following provisions would apply to a PCDO proceeding for alleged violations of the new Supplementary Material .03 to Rule 5210:

- Only FINRA's Chief Executive Officer (or such other senior officer as the CEO may designate) may initiate a PCDO proceeding under the rule;[20]
- The PCDO proceeding is initiated by service of a notice, effective upon service, stating whether FINRA is requesting that the respondent take action or refrain from certain action, and the notice must be accompanied by a declaration of facts, a memorandum of points and authorities, and a proposed order containing the required elements of an order;[21]
- A hearing is conducted by a Hearing Panel,[22] and the rules include provisions regarding the conduct of the hearing and generally require that the hearing be held within 15 days of service of the notice initiating the proceeding;[23]
- The Hearing Panel must issue a written decision no later than ten days after receipt of the hearing transcript;[24]
- The PCDO must set forth the alleged violation and the significant market disruption or investor harm that is likely to result without the issuance of an order and describe in reasonable detail the act or acts the respondent is to take or refrain from taking;[25]
- The PCDO is effective upon service and remains effective and enforceable unless modified, set aside, limited, or revoked pursuant to the rule;[26]
- Any time after the respondent is served with a PCDO, a party to the proceeding may apply to the Hearing Panel to have the order modified, set aside, limited, or suspended, and the Hearing Panel must generally respond to any such request in writing within ten days after receipt of the request;[27]
- FINRA can initiate an expedited proceeding pursuant to FINRA Rules 9556 and 9559 for violations of a PCDO;[28]
- Sanctions issued under the rule constitute final and immediately effective disciplinary sanctions thus allowing the respondent to appeal the PCDO to the SEC; however, filing an application for review with the SEC does not stay the effectiveness of the PCDO unless the SEC otherwise orders;[29] and
- The issuance of the PCDO does not alter FINRA's ability to further investigate the matter or later sanction the member pursuant to its standard disciplinary process for violations of

[15] BATS Rule 12.15 refers to these activities as ''Disruptive Quoting and Trading Activity Type 1'' and ''Disruptive Quoting and Trading Activity Type 2.''

[16] FINRA has existing authority to issue PCDOs. *See* Rule 9291.

[17] FINRA has the authority to initiate a TCDO for alleged violations of Section 10(b) of the Act and Rule 10b-5 thereunder; SEA Rules 15g–1 through 15g–9 concerning penny stocks; FINRA Rule 2010 (Standards of Commercial Honor and Principles of Trade) if the alleged violation is unauthorized trading, or misuse or conversion of customer assets, or based on violations of Section 17(a) of the Securities Act of 1933; FINRA Rule 2020 (Use of Manipulative, Deceptive or Other Fraudulent Devices); or FINRA Rule 4330 (Customer Protection—Permissible Use of Customers' Securities) if the alleged violation is misuse or conversion of customer assets. *See* FINRA Rule 9810(a).

[18] *See* Rule 9800 Series. BATS noted in its filing that its proposed rule was based in part on FINRA Rules 9810 through 9870. *See* SR–BATS–2015–101. In those instances where the BATS procedural rule differs from FINRA's current TCDO process, FINRA believes that continuing to follow its existing TCDO process will be more efficient and effective than conforming to the BATS rule.

[19] Under the current TCDO rules, FINRA must file an underlying complaint at the same time it issues a TCDO notice if a complaint has not already been filed. *See* Rule 9810(d). A TCDO remains in effect only until the conclusion of the underlying disciplinary proceeding. *See* Rule 9840(c). Under the proposed rule change, as in the BATS rule, the PCDO would be permanent, and there would be no required underlying disciplinary proceeding. However, the proposed rule change would in no way preclude FINRA from pursuing a separate disciplinary action for the underlying conduct.

[20] *See* Rule 9810(a). A PCDO proceeding would be initiated only after attempts to resolve the conduct with the firm were unsuccessful. In approving the BATS rules, the SEC noted that BATS represented that it ''will only seek an expedited suspension when—after multiple requests to a Member for an explanation of [a pattern of potentially disruptive quoting and trading] activity—it continues to see the same pattern of manipulation from the same Member and the source of the activity is the same or has been previously identified as a frequent source of disruptive quoting and trading activity.'' *See* BATS Approval Order, *supra* note 4. FINRA anticipates using the proposed PCDO authority in the proposed rule change under the same circumstances.

[21] *See* Rule 9810(a), (b).

[22] *See* Rule 9820.

[23] *See* Rule 9830(a).

[24] *See* Rule 9840(a).

[25] *See* Rule 9840(a).

[26] *See* Rule 9840, 9850.

[27] *See* Rule 9850.

[28] *See* Rule 9860, 9556, 9559.

[29] *See* Rule 9870.

supervisory obligations or other violations of FINRA rules or the Act.

The proposed rule change does include two notable differences between the proposed process for a PCDO for violation of Supplementary Material .03 to Rule 5210 and FINRA's existing TCDO process. First, under the proposed rule change, a PCDO would be imposed if the Hearing Panel finds: (1) By a preponderance of the evidence that the alleged violation specified in the notice occurred and (2) that the conduct or continuation thereof is likely to result in significant market disruption or significant harm to investors. The standard of proof for TCDOs is a likelihood of success on the merits, which is a lower standard than the preponderance standard.[30] Second, the permitted terms of the order would differ to reflect the nature of Supplementary Material .03 to Rule 5210 and, as discussed above, the common circumstance where the member is not engaged directly in the activity but is facilitating the disruptive quoting or trading activity by providing market access to one of its clients. Thus, under the proposed rule change a PCDO would be limited to: (1) ordering a respondent to cease and desist from violating Supplementary Material .03 to FINRA Rule 5210, and/or (2) ordering a respondent to cease and desist from providing access to a client of the respondent that is causing violations of Supplementary Material .03 to FINRA Rule 5210.

Unlike BATS Rule 12.15, under which the respondent is suspended unless and until it takes or refrains from taking the act or acts described in the suspension order, the proposed rule change, like FINRA's current TCDO process, would require a subsequent expedited proceeding for violation of the PCDO before a respondent could be suspended from FINRA membership. This approach is similar to FINRA's existing TCDO authority, and FINRA believes it is preferable given the broader impact a FINRA suspension would have on a firm's operations versus a suspension by an individual exchange.[31]

As noted above, FINRA is proposing to adopt rules substantially similar to the BATS rules recently approved by the SEC combined with FINRA's existing TCDO rules. Similar to the concerns expressed by BATS in its rule filing, FINRA is concerned that it has no expedited means by which it can prevent disruptive quoting and trading activity from continuing to occur after it has been identified without resorting to a formal disciplinary proceeding which can often take years to complete. Moreover, during the pendency of a disciplinary proceeding, the conduct often continues to take place. By contrast, an expedited proceeding like that recently approved for BATS, and similar to the FINRA TCDO provisions already in place to prevent ongoing fraud or conversion of customer funds, can preclude the activity in a significantly more expeditious manner while still ensuring that respondents have adequate procedural protections in place.

The proposed rule change would enhance investor protection and market integrity by allowing FINRA to issue PCDOs on an expedited basis to stop certain disruptive and manipulative activity and prevent ongoing fraud in an expeditious manner. FINRA anticipates that the issuance of PCDOs under the proposed rule change would be limited to those extreme circumstances where an expedited proceeding is the only means by which FINRA can stop ongoing violative conduct.

FINRA has filed the proposed rule change for immediate effectiveness. The implementation date will be 30 days after the date of the filing.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[32] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

Pursuant to the proposal, FINRA will have a mechanism to promptly initiate expedited proceedings in the event it believes that it has sufficient proof that a violation of Supplementary Material .03 to Rule 5210 has occurred and is ongoing. FINRA believes the proposed rule change would enhance investor protection and market integrity by allowing FINRA to issue PCDOs to stop the defined types of disruptive and manipulative activity and prevent ongoing fraud in an expeditious manner.

FINRA also believes that the proposal is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Act because the proposal helps to strengthen FINRA's ability to carry out its oversight and enforcement responsibilities as a self-regulatory organization in cases where awaiting the conclusion of a full disciplinary proceeding is unsuitable in view of the potential harm to other members and their customers if conduct is allowed to continue. As explained above, FINRA notes that, like BATS Rule 12.15, it has defined the prohibited disruptive quoting and trading activity by modifying the traditional definitions of layering and spoofing to eliminate an express intent element. FINRA believes this modification is necessary for the protection of investors so that ongoing disruptive quoting and trading activity does not occur while a more formal disciplinary proceeding is conducted, which can take several years to complete. Through this proposal, FINRA does not intend to modify the definitions of spoofing and layering that have generally been used by FINRA and other regulators in connection with actions like those cited above.

FINRA further believes that the proposal is consistent with Section 15A(b)(8) of the Act, which requires that the rules of a national securities association ''provide a fair procedure for the disciplining of members and persons associated with members.'' [33]

FINRA believes that following the existing procedures under its TCDO rules to issue a PCDO under the proposed rule change provides a fair procedure for disciplining members and persons associated with members. FINRA recognizes that the proposed rule change lowers the threshold necessary to stop activity consistent with the patterns described above and potentially suspend, or otherwise sanction, member firms engaging in such activity.[34] FINRA believes that, by following its existing TCDO procedures, these risks are mitigated by numerous controls in place to assure that cease and desist orders are sought and imposed only in appropriate cases. For example, FINRA could impose such an order only if the action has been authorized by FINRA's CEO or other

[30] *See* Rule 9840(a)(1). In 2015, FINRA amended its TCDO process to, among other things, change the evidentiary standard for TCDOs to a likelihood of success on the merits. *See* Securities Exchange Act Release No. 75629 (August 6, 2015), 80 FR 48379 (August 12, 2015).

[31] Rather than be limited to a full suspension, a separate expedited proceeding for violation of a PCDO would also allow for the imposition of a wider range of sanctions if the respondent requests a hearing. *See* FINRA Rules 9556, 9559.

[32] 15 U.S.C. 78*o*-3(b)(6).

[33] 15 U.S.C. 78*o*–3(b)(8).

[34] Consistent with the BATS framework approved by the SEC, the proposed rule eliminates an express intent element from the definition of prohibited activities, thereby lowering the burden of proof necessary to stop these prohibited activities from express intent to a ''frequent pattern or practice'' of such activities, coupled with the requirement that the conduct is likely to result in significant market disruption or significant harm to investors. *See* BATS Approval Order, *supra* note 4.

senior officers designated by the CEO. The proposed rule change also ensures the respondents have an opportunity for a hearing prior to the imposition of a sanction and an independent Hearing Panel has made findings that the standards for issuing the order have been met. Moreover, a party subject to a cease and desist order may appeal to the SEC.

Finally, FINRA also believes the proposal is consistent with Section 15A(h)(1) of the Act,[35] which requires that the rules of a national securities association with respect to a disciplinary proceeding: bring specific charges against a member or person associated with a member, notify such member or person of and provide an opportunity to defend against such charges, keep a record, and provide details regarding the findings and applicable sanctions in the event a determination to impose a disciplinary sanction is made. FINRA believes that each of these requirements is addressed by the notice and due process provisions included within its TCDO Rules and the amendments proposed thereto. Importantly, as noted above, FINRA anticipates using the authority proposed in this filing only in clear and egregious cases when necessary to protect investors or other members, and even in such cases, the respondent will be afforded a fair procedure in connection with the cease and desist proceedings.

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

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. FINRA has undertaken an economic impact assessment, as set forth below, to analyze the regulatory need for the proposed rulemaking and its potential economic impacts, including the anticipated costs and benefits associated with the proposed rule change.

Economic Impact Assessment

1. Regulatory Need

As discussed above, FINRA has developed a comprehensive surveillance program that allows it to identify potentially disruptive quoting and trading activity almost in real-time. However, under the current rules, it can often take FINRA up to several years to stop potentially disruptive activity. FINRA believes that there are certain clear cases of disruptive activity, or cases where the potential harm to investors is so large, in which FINRA should be able to stop the disruptive behavior and the associated ongoing investor harm from continuing in an expeditious manner. The proposed rule change defines and prohibits specific types of disruptive quoting and trading activity and gives FINRA the authority to initiate an expedited proceeding and issue a PCDO to take prompt action against these potentially harmful activities.

2. Anticipated Benefits

The proposed rule change would enhance investor protection and market integrity by allowing FINRA to issue cease and desist orders to stop certain disruptive and manipulative activity and prevent ongoing fraud or conversion of customer funds in an expeditious manner. FINRA anticipates that the issuance of cease and desist orders under the proposed rule change would be limited to those extreme circumstances where an expedited proceeding is the only means by which FINRA can stop ongoing violative conduct. While the expedited proceedings would be limited to extreme cases with clear violations, FINRA believes that the proposed rule would allow FINRA to initiate and resolve the proceedings sooner, in which case the potential benefits can be substantial in just a single case where investors are being harmed.

3. Anticipated Costs

FINRA does not believe that the proposed rule change would impose material costs on member firms as the underlying conduct is already prohibited by existing rules. Further, FINRA anticipates that any costs would likely be minimal relative to the substantial investor protection benefits that may arise from just a single case where investors are being harmed significantly.

4. Other Economic Impacts

FINRA recognizes that the proposed rule change lowers the threshold necessary to stop activity consistent with the patterns described above and suspend member firms engaging in such activity.[36] Accordingly, in developing this proposal, FINRA considered the possibility that the lower threshold may result in actions taken against firms for activity that is not manipulative. FINRA believes that such risks are mitigated by numerous controls in place to assure that cease and desist orders are sought and imposed only in appropriate cases. For example, as discussed above, FINRA anticipates that it would seek a cease and desist order only if it continues to see a frequent pattern of potentially manipulative activity from a member, even after making multiple requests to that member for an explanation. Similarly, FINRA could impose such an order only if the action has been authorized by FINRA's CEO or other senior officers designated by the CEO. The proposed rule also ensures the respondents have an opportunity for a hearing prior to the imposition of a suspension and an independent Hearing Panel has made findings that the standards for issuing the order have been met. Moreover, a party subject to a cease and desist order may appeal to the SEC.

Similarly, FINRA also considered the possibility that in response to the proposed rule, firms may avoid legitimate activities that may be appear to fall within the trading scenarios discussed above to avoid regulatory and enforcement related costs. If such a response is large, it might manifest itself in the provision of liquidity in the relevant market. FINRA believes the controls discussed above, particularly those associated with providing opportunities to the firms to explain their trading strategy prior to any regulatory action, would largely mitigate this risk.

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

Written comments were neither solicited nor received.

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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[37] and Rule 19b–4(f)(6) thereunder.[38]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may

[35] 15 U.S.C. 78*o*–3(h)(1).

[36] Consistent with the BATS framework approved by the SEC, the proposed rule eliminates an express intent element from the definition of prohibited activities, thereby lowering the burden of proof necessary to stop these prohibited activities from express intent to a ''frequent pattern or practice'' of such activities. *See* BATS Approval Order, *supra* note 4.

[37] 15 U.S.C. 78s(b)(3)(A).

[38] 17 CFR 240.19b–4(f)(6).

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

IV. Solicitation of Comments

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

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*. Please include File Number SR–FINRA–2016–043 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–2016–043. 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 the filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2016–043 and should be submitted on or before December 19, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[39]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–28458 Filed 11–25–16; 8:45 am]

BILLING CODE 8011–01–P

[39] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission Equity Market Structure Advisory Committee will hold a public meeting on Tuesday, November 29, 2016, in the Multipurpose Room, LL–006 at the Commission's headquarters, 100 F Street NE., Washington, DC.

The meeting will begin at 9:30 a.m. (EST) and will be open to the public. Seating will be on a first-come, first-served basis. Doors will be open at 9:00 a.m. Visitors will be subject to security checks. The meeting will be webcast on the Commission's Web site at *www.sec.gov*.

On November 8, 2016, the Commission published notice of the Committee meeting (Release No. 34–79257), indicating that the meeting is open to the public and inviting the public to submit written comments to the Committee. This Sunshine Act notice is being issued because a majority of the Commission may attend the meeting.

The agenda for the meeting will focus on recommendations and updates from the four subcommittees.

For further information, please contact Brent J. Fields from the Office of the Secretary at (202) 551–5400.

Dated: November 22, 2016.

Brent J. Fields,

Secretary.

[FR Doc. 2016–28642 Filed 11–23–16; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Securities Exchange Act of 1934; Release No. 79370/November 21, 2016]

In the Matter of the New York Stock Exchange LLC for an Order Granting the Approval of Proposed Rule Change Adopting Maximum Fees Member Organizations May Charge in Connection With the Distribution of Investment Company Shareholder Reports Pursuant to Any Electronic Delivery Rules Adopted by the Securities and Exchange Commission; Order Scheduling Filing of Statements on Review

On August 15, 2016, the New York Stock Exchange LLC (''NYSE'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 [1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt maximum fees NYSE member organizations may charge in connection with the distribution of investment company shareholder reports pursuant to any ''notice and access'' electronic delivery rules adopted by the Commission.[3] On October 5, 2016, the Commission extended the time period for Commission action on the proposal to November 20, 2016.[4] On November 18, 2016, the Division of Trading and Markets took action, pursuant to delegated authority, 17 CFR 200.30–3(a)(12), approving the proposed rule change.[5]

Pursuant to Commission Rule of Practice 431,[6] the Commission is

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *Notice of Filing of Proposed Rule Change Adopting Maximum Fees Member Organizations may Charge in Connection with the Distribution of Investment Company Shareholder Reports Pursuant to Any Electronic Delivery Rules Adopted by the Securities and Exchange Commission, Securities Exchange Act of 1934,* Release No. 78589 (August 16, 2016), 81 FR 56717 (August 22, 2016) (SR–NYSE–2016–55).

[4] *Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change Adopting Maximum Fees Member Organizations May Charge in Connection with the Distribution of Investment Company Shareholder Reports Pursuant to Any Electronic Delivery Rules Adopted by the Securities and Exchange Commission, Securities Exchange Act of 1934,* Release No. 79051 (October 5, 2016), 81 FR 70449 (October 12, 2016).

[5] *Order Granting Approval of Proposed Rule Change Adopting Maximum Fees Member Organizations May Charge in Connection with the Distribution of Investment Company Shareholder Reports Pursuant to Any Electronic Delivery Rules Adopted by the Securities and Exchange Commission,* Securities Exchange Act of 1934, Release No. 79355 (November 18, 2016).

[6] 17 CFR 201.431.