

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>25</sup>

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[FR Doc. 2017-09817 Filed 5-15-17; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-80646; File No. SR-FINRA-2017-010]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend FINRA Rule 6191 To Modify the Date of Appendix B Web Site Data Publication Pursuant to the Regulation NMS Plan To Implement a Tick Size Pilot Program

May 10, 2017.

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 April 28, 2017, Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a “non-controversial” rule change under paragraph (f)(6) of Rule 19b-4 under the Act, <sup>3</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 Substance of the Proposed Rule Change

FINRA is proposing to amend Rule 6191 to modify the date of Appendix B Web site data publication pursuant to the Regulation NMS Plan to Implement a Tick Size Pilot Program (“Plan”).

The text of the proposed rule change is available on FINRA’s 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 the Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

Rule 6191(b) (Compliance with Data Collection Requirements) <sup>4</sup> implements the data collection and Web site publication requirements of the Plan. <sup>5</sup> Rule 6191.12 currently provides, among other things, that the requirement that FINRA make certain data for the Pre-Pilot Period and Pilot Period <sup>6</sup> publicly available on the FINRA Web site pursuant to Appendix B to the Plan shall commence on April 28, 2017. <sup>7</sup> FINRA is proposing to amend Rule 6191.12 to delay the Appendix B data Web site publication date until August 31, 2017. FINRA is proposing to further delay the Web site publication of Appendix B data until August 31, 2017 to permit additional time to consider a methodology to mitigate concerns raised

<sup>4</sup> See FINRA Rule 6191. See also Securities Exchange Act Release No. 76484 (November 19, 2015), 80 FR 73858 (November 25, 2015) (Notice of Filing of File No. SR-FINRA-2015-048); and Securities Exchange Act Release No. 77164 (February 17, 2016), 81 FR 9043 (February 23, 2016) (Notice of Filing of Partial Amendment No. 1 and Order Granting Accelerated Approval of File No. SR-FINRA-2015-048).

<sup>5</sup> The Participants filed the Plan to comply with an order issued by the Commission on June 24, 2014. See Letter from Brendon J. Weiss, Vice President, Intercontinental Exchange, Inc., to Secretary, Commission, dated August 25, 2014 (“SRO Tick Size Plan Proposal”). See Securities Exchange Act Release No. 72460 (June 24, 2014), 79 FR 36840 (June 30, 2014); see also Securities Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27513 (May 13, 2015).

<sup>6</sup> Unless otherwise defined herein, capitalized terms have the meaning ascribed to them in Rule 6191.

<sup>7</sup> See FINRA Rule 6191.12. See also Securities Exchange Act Release No. 80179 (March 8, 2017), 82 FR 13698 (March 14, 2017) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2017-005). See also Letter from David S. Shillman, Associate Director, Division of Trading and Markets, Commission, to Robert L.D. Colby, Executive Vice President and Chief Legal Officer, FINRA, dated February 28, 2017.

in connection with the publication of Appendix B data.<sup>8</sup>

Pursuant to this proposed amendment, FINRA would publish the required Appendix B data for the Pre-Pilot Period through April 30, 2017, by August 31, 2017. Thereafter, Appendix B data for a given month would be published within 120 calendar days following month end.<sup>9</sup> Thus, for example, Appendix B data for May 2017 would be made available on the FINRA Web site by September 28, 2017, and data for the month of June 2017 would be made available on the FINRA Web site by October 28, 2017.

FINRA has filed the proposed rule change for immediate effectiveness. The operative date of the proposed rule change will be the date of filing.

###### 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>10</sup> which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, and Section 15A(b)(9) of the Act,<sup>11</sup> which requires that FINRA rules not impose any burden on competition that is not necessary or appropriate.

The Plan is designed to allow the Commission, market participants, and the public to study and assess the impact of increment conventions on the liquidity and trading of the common stock of small-capitalization companies. FINRA believes that this proposal is consistent with the Act because it is in furtherance of the objectives of Section VII(A) of the Plan in that it is designed to provide FINRA with additional time to consider a methodology to mitigate concerns raised in connection with the publication of Appendix B data.

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

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

<sup>8</sup> On March 3, 2017, FINRA filed a proposed rule change to implement an anonymous, grouped masking methodology for Appendix B.I, B.II. and B.IV. data. The comment period ended on April 5, 2017, and the Commission received three comment letters. See Securities Exchange Act Release No. 80193 (March 9, 2017) 82 FR 13901 (March 15, 2017) (Notice of Filing of File No. SR-FINRA-2017-006).

<sup>9</sup> FINRA also is submitting an exemptive request to the SEC in connection with the instant filing.

<sup>10</sup> 15 U.S.C. 78o-3(b)(6).

<sup>11</sup> 15 U.S.C. 78o-3(b)(9).

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

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

<sup>3</sup> 17 CFR 240.19b-4(f)(6).

of the purposes of the Act. FINRA notes that the proposed rule change implements the provisions of the Plan.

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

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<sup>12</sup> and Rule 19b-4(f)(6) thereunder.<sup>13</sup>

A proposed rule change filed under Rule 19(b)-4(f)(6) normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii), the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. FINRA has filed the proposed rule change for immediate effectiveness and has requested that the Commission waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing so that it may become operative on the date of filing.

FINRA notes that the proposed rule change is intended to mitigate confidentiality concerns raised in connection with Section VII(A) of the Plan, which provides that the data made publicly available will not identify the Trading Center that generated the data. FINRA states that the additional time would allow consideration of a methodology to mitigate concerns related to the publication of Appendix B data.<sup>14</sup>

The commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will provide FINRA with additional time to develop

the necessary systems changes to implement the anonymous, grouped masking methodology for Appendix B data related to OTC trading activity.<sup>15</sup> Therefore, the Commission hereby waives the 30-day operative delay and designates the proposed rule change to be operative on the date of filing.<sup>16</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 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-2017-010 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-2017-010. 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

<sup>15</sup> The Commission recently granted exemptive relief to the Participants to delay the publication of their Appendix B data until August 31, 2017. See Letter from David S. Shillman, Associate Director, Division of Trading and Markets, Commission, to Jennifer Piorko Mitchell, Vice President and Deputy Corporate Secretary, FINRA, dated April 28, 2017. The Commission notes that other Participants have submitted proposed rule changes to delay the publication of Appendix B data until August 31, 2017. See e.g., SR-BatsBYX-2017-10; SR-BatsBZX-2017-31; SR-BatsEDGA-2017-10; SR-BatsEDGX-2017-19; SR-BX-2017-022; SR-CHX-2017-07; SR-IEX-2017-12; SR-NASDAQ-2017-044; SR-Phlx-2017-33; SR-NYSE-2017-19; SR-NYSEArca-2017-49; SR-NYSEMKT-2017-24.

<sup>16</sup> For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-2017-010 and should be submitted on or before June 6, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

**Eduardo A. Aleman,**

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[FR Doc. 2017-09818 Filed 5-15-17; 8:45 am]

BILLING CODE 8011-01-P

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-80648; File No. SR-NYSEMKT-2017-24]

**Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amend Rule 67-Equities To Modify the Date of Appendix B Web Site Data Publication Pursuant to the Regulation NMS Plan To Implement a Tick Size Pilot Program**

May 10, 2017.

Pursuant to Section 19(b)(1) <sup>1</sup> of the Securities Exchange Act of 1934 (the "Act") <sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on April 27, 2017, NYSE MKT LLC (the "Exchange" or "NYSE MKT") filed with the Securities and Exchange Commission (the "Commission") the proposed rule

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

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(6).

<sup>14</sup> The Commission recently approved a FINRA proposal to implement an aggregated, anonymous grouped masking methodology for the publication of Appendix B data related to OTC trading activity. See Securities Exchange Release No. 80551, (April 28, 2017), 82 FR 20948 (May 4, 2017). See also Letter from David S. Shillman, Associate Director, Division of Trading and Markets, Commission, to Marcia E. Asquith, Executive Vice President FINRA, dated April 28, 2017.