and Redemption Instruments will be valued in the same manner as those investment positions currently held by the Funds. Applicants also seek relief from the prohibitions on affiliated transactions in section 17(a) to permit a Fund to sell its shares to and redeem its shares from a Fund of Funds, and to engage in the accompanying in-kind transactions with the Fund of Funds.[3] The purchase of Creation Units by a Fund of Funds directly from a Fund will be accomplished in accordance with the policies of the Fund of Funds and will be based on the NAVs of the Funds.

9. Applicants also request relief to permit a Feeder Fund to acquire shares of another registered investment company managed by the Adviser having substantially the same investment objectives as the Feeder Fund (''Master Fund'') beyond the limitations in section 12(d)(1)(A) and permit the Master Fund, and any principal underwriter for the Master Fund, to sell shares of the Master Fund to the Feeder Fund beyond the limitations in section 12(d)(1)(B).

10. Section 6(c) of the Act permits the Commission to exempt any persons or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

[3] The requested relief would apply to direct sales of shares in Creation Units by a Fund to a Fund of Funds and redemptions of those shares. Applicants, moreover, are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where a Fund could be deemed an Affiliated Person, or a Second-Tier Affiliate, of a Fund of Funds because an Adviser or an entity controlling, controlled by or under common control with an Adviser provides investment advisory services to that Fund of Funds.

For the Commission, by the Division of Investment Management, under delegated authority.

Robert W. Errett,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78196; File No. SR–FINRA–2016–023]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change To Increase Transparency for CMO Transactions

June 29, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 27, 2016, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by 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 to [sic] amend the FINRA Rule 6700 Series and the Trade Reporting and Compliance Engine (''TRACE'') dissemination protocols to provide for dissemination of transactions in an additional type of Securitized Products—specifically, collateralized mortgage obligations (''CMOs''). In addition, FINRA is proposing a corresponding change to Rule 6730 to reduce the reporting period for CMOs from end-of-day to 60 minutes, and also to amend Rule 6730 to simplify the reporting requirements for transactions in CMOs executed prior to issuance. FINRA further proposes technical and conforming changes to the FINRA Rule 6700 Series and Rule 7730 in connection with the changes referenced above.

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.

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

[2] 17 CFR 240.19b–4.

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

FINRA proposes to amend the Rule 6700 Series and the TRACE dissemination protocols to: (1) Provide for the dissemination of transactions in CMOs,[3] an additional group of Securitized Products[4] not yet subject to dissemination; (2) reduce the reporting timeframe for CMOs from end-of-day to 60 minutes; and (3) simplify the reporting requirements for pre-issuance CMO transactions. FINRA also proposes technical and conforming changes to the Rule 6700 Series and Rule 7730.

Background

FINRA requires members to report transactions in any security that meets the definition of ''TRACE-Eligible Security''[5] to TRACE. Most transactions

[3] The term ''Collateralized Mortgage Obligation,'' or CMO, is defined in FINRA Rule 6710(dd) to mean a type of Securitized Product backed by Agency Pass-Through Mortgage-Backed Securities as defined in paragraph (v), mortgage loans, certificates backed by project loans or construction loans, other types of mortgage-backed securities or assets derivative of mortgage-backed securities, structured in multiple classes or tranches with each class or tranche entitled to receive distributions of principal and/or interest according to the requirements adopted for the specific class or tranche, and includes a real estate mortgage investment conduit (''REMIC'').

[4] The term ''Securitized Product'' is defined in Rule 6710(m) to mean a security collateralized by any type of financial asset, such as a loan, a lease, a mortgage, or a secured or unsecured receivable, and includes but is not limited to an asset-backed security as defined in Section 3(a)(79)(A) of the Exchange Act, a synthetic asset-backed security, and any residual tranche or interest of any security specified above, which tranche or interest is a debt security for purposes of paragraph (a) and the Rule 6700 Series.

[5] Rule 6710 generally defines a ''TRACE-Eligible Security'' as: (1) A debt security that is U.S. dollar-denominated and issued by a U.S. or foreign private issuer (and, if a ''restricted security'' as defined in Securities Act Rule 144(a)(3), sold pursuant to Securities Act Rule 144A); or (2) a debt security that is U.S. dollar-denominated and issued or

Continued

must be reported to TRACE within 15 minutes of the time of execution and are subsequently disseminated.

Securitized Products were the last major group of fixed income securities to become subject to TRACE reporting. Initially, FINRA received reports of transactions in these products for regulatory audit trail purposes only and did not disseminate transaction data. FINRA used the transaction reports it received to study the liquidity and trading characteristics of various types of Securitized Products. Based on its study, FINRA then started a phased approach to disseminating transaction information for certain Securitized Products.

For the first phase, on November 12, 2012, FINRA began disseminating transactions in Agency Pass-Through Mortgage-Backed Securities traded To Be Announced (''TBA'') (''MBS TBA'' transactions), which are the most liquid types of Securitized Products.[6] Next, on July 22, 2013, FINRA began disseminating transactions in Agency Pass-Through Mortgage-Backed Securities and SBA-Backed ABS (as defined in FINRA Rule 6710(bb)) traded in Specified Pool Transactions.[7] On June 30, 2014, FINRA began to disseminate information on transactions in TRACE-Eligible Securities effected as Rule 144A transactions, provided that such transactions were in securities that would be subject to dissemination if effected in non-Rule 144A transactions.[8] And most recently, on June 1, 2015, FINRA began to disseminate transactions in Asset-Backed Securities.[9] Today, the remaining types of Securitized Products not yet subject to dissemination are CMOs, commercial mortgage-backed securities (''CMBSs''), and collateralized debt obligations (''CDOs'').[10] CMOs are the largest and most actively traded of these remaining Securitized Products types. In addition, CMOs typically have relatively smaller transaction sizes than those for CMBSs and CDOs.

Current Proposal

FINRA is proposing to expand the dissemination of Securitized Products to include CMOs. Under the proposal, a CMO transaction will be subject either to dissemination immediately upon receipt of the TRACE transaction report, or to aggregate, periodic dissemination, depending on the size of the transaction and the number of transactions in the CMO security during a given period.

Specifically, transactions in CMOs, including transactions effected pursuant to Securities Act Rule 144A, will be subject to aggregate, periodic dissemination on a weekly and monthly basis where the transaction value is $1 million or more (calculated based upon original principal balance) and where there have been five or more transactions of $1 million or more in the reporting period reported by at least two different market participant identifiers (''MPIDs'').[11] For the smaller-size transactions—*i.e.,* transactions valued under $1 million (calculated based upon original principal balance)—FINRA will disseminate trade-by-trade information immediately upon receipt by TRACE.[12]

The proposal will provide for this approach to CMO dissemination by amending FINRA Rule 6750 (Dissemination of Transaction Information). Rule 6750 currently contains two operative paragraphs—paragraph (a), which provides generally for the dissemination of TRACE-Eligible Securities immediately upon receipt of a transaction report, and paragraph (b), which contains an exception to the general dissemination provision in paragraph (a) and which notes the security or transaction types that are not subject to dissemination. Currently, the remaining Securitized Products—CMOs, CMBSs, and CDOs, are found within paragraph (b) and are therefore not subject to dissemination.

Under the proposal, current paragraph (b) will be replaced with a paragraph that provides specifically for the dissemination of larger-size ($1 million or more) CMO transactions on a periodic, rather than immediate, basis, provided the transaction occurs in a CMO security that meets the minimum activity threshold described above (*i.e.,* at least five transactions in the period reported by at least two different MPIDs). The exception paragraph, which sets forth the transaction types not subject to dissemination, will be new paragraph (c). It will be revised to note that the only Securitized Products not subject to dissemination are CMBSs, CDOs, and CMOs where the CMO transaction value is $1 million or more (calculated based upon original principal balance) and the transaction does not qualify for periodic dissemination. However, as noted above, all transactions in CMOs will become part of the historic data sets even if they were not subject to dissemination upon receipt or periodic dissemination.[13]

To facilitate the proposed dissemination of CMOs, the proposal will also amend Rule 6730(a)(3) to reduce the time period for reporting to TRACE transactions in CMOs to TRACE executed on or after issuance.[14] Currently, these CMO transactions must be reported to TRACE no later than the close of the TRACE system on the date

guaranteed by an ''Agency'' as defined in Rule 6710(k) or a ''Government-Sponsored Enterprise'' as defined in Rule 6710(n).

[6] *See* Securities Exchange Act Release No. 66829 (April 18, 2012), 77 FR 24748 (April 25, 2012) (Order Approving File No. SR–FINRA–2012–020); *Regulatory Notice* 12–26 (May 2012) and *Regulatory Notice* 12–48 (November 2012).

[7] *See* Securities Exchange Act Release No. 68084 (October 23, 2012), 77 FR 65436 (October 26, 2012) (Order Approving File No. SR–FINRA–2012–042) and *Regulatory Notice* 12–56 (December 2012).

[8] *See* Securities Exchange Act Release No. 70345 (September 6, 2013), 78 FR 56251 (September 12, 2013) (Order Approving File No. SR–FINRA–2013–029) and *Regulatory Notice* 13–35 (October 2013).

[9] *See* Securities Exchange Act Release No. 71607 (February 24, 2014), 79 FR 11481 (February 28, 2014) (Order Approving File No. SR–FINRA–2013–046) and *Regulatory Notice* 14–34 (August 2014).

[10] A ''Collateralized Debt Obligation,'' or CDO, would be defined in proposed FINRA Rule 6710(ff) to mean a type of Securitized Product backed by fixed-income assets (such as bonds, receivables on loans, or other debt) or derivatives of these fixed-income assets, structured in multiple classes or tranches with each class or tranche entitled to receive distributions of principal and/or interest in accordance with the requirements adopted for the specific class or tranche. A CDO includes, but is not limited to, a collateralized loan obligation, or CLO, and a collateralized bond obligation, or CBO.

[11] For example, if five transactions occurred in a particular CMO security during each of the four weeks in a calendar month and were reported by at least two unique MPIDs, then four weekly reports would be disseminated; in addition, information on those transactions would be included in the aggregate monthly report for that calendar month. If five transactions occurred over the course of a calendar month, but did not occur during a single week, then a weekly report would not be available for that security (but the transaction information would be included in the monthly report provided the transactions were reported by at least two unique MPIDs). For purposes of determining if a CMO security has been reported by at least two different MPIDs, FINRA notes that it would consider an interdealer trade to be reported by one MPID—the sell side dealer—even though the trade is reported by both sides of the transaction.

[12] Also in connection with the proposed dissemination of information on CMO transactions, FINRA proposes to amend Rule 7730 (fees for TRACE) to reflect the addition of CMOs to the applicable data sets. Disseminated periodic reports will become available as part of the Securitized Products Data Set and all CMO transactions—even if not previously disseminated upon receipt or as part of a periodic report—will become part of the Historic Securitized Products Data Set in FINRA Rule 7730. Similarly, disseminated periodic reports for transactions in CMOs issued pursuant to Rule 144A will become part of the Rule 144A Data Set, and all Rule 144A transactions in CMOs will become part of the Historic Rule 144A Data Set. The inclusion of this additional data in such data sets will not affect the fees currently in effect.

[13] *See supra* note 12.

[14] As discussed in further detail below, reporting requirements for transactions in a CMO prior to that CMO's issuance are addressed separately in FINRA Rule 6730(a)(3)(C). FINRA notes that it will also make a technical, clarifying edit to Rule 6730(a)(3) that is otherwise unrelated to this proposal; specifically, FINRA will delete language in Rule 6730(a)(3)(B) that describes the transitional reporting phase for Asset-Backed Securities, since the transitional phase is now complete.

of execution.[15] Under the proposal, paragraph (H) would be added to require that transactions in these CMOs must be reported to TRACE within 60 minutes of execution.[16]

Finally, FINRA proposes to modify the reporting timeframe for pre-issuance CMO transactions. FINRA is proposing to amend Rule 6730(a)(3)(C) to provide that transactions in CMOs that are executed before the date of issuance of the security must be reported no later than the first settlement date of the security. Under the current rule, firms generally must report CMO transactions that are executed prior to issuance on the earlier of the business day that the security is assigned a CUSIP, or the date of issuance of the security. FINRA is aware that some firms, particularly small and mid-size firms, have had difficulty in determining with accuracy in a timely manner when the reporting obligation has been triggered, due to inconsistencies in communicating the relevant information between underwriters and trading parties. As a result, these firms do not always report trades in these instruments on the earlier of the two dates specified in the current rule. FINRA believes that, because new issuances in CMOs generally settle on the last business day of the month, the amended proposal would provide for a uniform reporting deadline that can be easily ascertained by all firms.

If the Commission approves the proposed rule change, FINRA will announce the operative date of the proposed rule change in a *Regulatory Notice* to be published no later than 90 days following Commission approval. The operative date will be no later than 365 days following publication of the *Regulatory Notice* announcing Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[17] 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. As discussed throughout the filing, FINRA believes that the proposed rule change will promote greater transparency in the marketplace for CMOs. Based on dialogue with a variety of market participants, FINRA believes the information it proposes to disseminate would be valuable to assist in price discovery, determination of execution quality, and, in particular, valuation of securities positions. Furthermore, FINRA believes the proposal strikes an appropriate balance between promoting transparency and preserving anonymity, which may facilitate larger size trades and liquidity provision. Based on FINRA's ongoing study of the trading characteristics of Securitized Products, FINRA believes this proposal is an important next phase in dissemination that will position FINRA to evaluate whether and how to complete its expansion of dissemination to cover all Securitized Product types.

FINRA further believes that the proposed change to 60-minute trade reporting will facilitate CMO dissemination by ensuring that FINRA is able to receive and disseminate CMO transaction information in a timely manner. Accordingly, FINRA believes this element of the filing will help promote transparency and enhance investor protection and the public interest.

Finally, FINRA believes the proposed change to the reporting timeframe for pre-issuance CMOs will further just and equitable principles of trade by providing greater clarity and promoting compliance with applicable reporting rules.

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 rule change, its potential economic impacts, including anticipated costs and benefits, and the alternatives FINRA considered in assessing how to best meet its regulatory objectives.

Need for the Rule

As discussed above, FINRA believes this proposal is necessary and appropriate to further promote transparency in the markets for additional Securitized Products. FINRA believes the proposed dissemination of transaction information for CMOs would be valuable to assist in price discovery, determination of execution quality, and, in particular, valuation of securities positions. FINRA believes the proposed transition to 60-minute trade reporting for transactions in CMOs executed on or after issuance is necessary to facilitate meaningful dissemination of information for these securities. Finally, FINRA believes the proposed change to the reporting timeframe for transactions in pre-issuance CMOs is necessary to simplify the reporting process, given that some firms, small and medium size firms in particular, may have difficulty in determining with accuracy and in a timely manner when their reporting obligations have been triggered.

Economic Impacts

FINRA believes that enhanced transparency in CMOs will benefit market participants, as discussed above, by contributing to more efficient pricing and better execution quality for market participants and clients. However, the proposed changes may impose direct and indirect costs on market participants; for example, the proposal might impose direct costs associated with more timely reporting of CMO transactions and indirect costs associated with the potential leakage of proprietary information. In the analysis below, we individually assess the impact on market participants of each proposed change—(1) dissemination of CMO transactions, (2) reducing the timeframe for reporting CMO transactions, and (3) simplifying the reporting requirements for pre-issuance CMO transactions.

(1) Dissemination of CMO Transactions

The proposed dissemination of CMO transactions will enhance transparency, which should benefit market participants and clients via improved market quality. However, while enhanced transparency should provide benefits broadly to the marketplace, it may impose indirect costs on certain market participants, like those whose transaction information is subject to dissemination. FINRA is cognizant of the concern that the risk of information leakage could potentially harm market quality if it discourages liquidity provision. Accordingly, FINRA staff considered the potential for indirect costs associated with providing information publicly that might permit competitors to reverse engineer the disseminated data to produce private

[15] *See* FINRA Rule 6730(a)(3)(A). As part of this proposal, FINRA is proposing a technical, clarifying change to Rule 6730(a)(3)(A). This paragraph currently is titled ''General Reporting Requirements'' for Securitized Products, but because only CDOs and CMBSs will remain subject to the paragraph after this proposal becomes effective, FINRA will rename this paragraph to make clear that applies specifically to CDOs and CMBSs.

[16] As with other TRACE-Eligible Securities that are subject to 60-minute reporting, under proposed Rules 6730(a)(3)(H)(iii)–(iv), transactions in CMOs, CMBSs, and CDOs that are executed less than 60 minutes before the TRACE system closes, or after, would need to be reported no later than 60 minutes after TRACE opens the following business day.

[17] 15 U.S.C. 78*o*–3(b)(6).

information about trade participants, their trade positions and possibly their trading strategies.

To investigate whether dissemination, as proposed, could potentially allow market participants to reverse-engineer the identities of broker-dealers or positions, FINRA staff examined the distribution of the number of MPIDs reporting transactions in each CMO CUSIP, over the time period spanning May 13, 2011 to August 14, 2015. Table 1 suggests that trading activity in CMOs, on a per-CUSIP basis, is quite concentrated, with 32,200 CUSIPs—33.3% of all CMO CUSIPs—in the sample traded by only one MPID over the sample period. These CUSIPs traded by only one MPID are referred to as ''concentrated'' CUSIPs. There were 64,449 remaining CUSIPs in the sample traded by two or more MPIDs, referred to as ''non-concentrated'' CUSIPs.[18] CUSIPs are classified as concentrated and non-concentrated based on a threshold of one MPID, as it represents cases where the information about firm activity is most concentrated.

TABLE 1—THE NUMBER OF DIFFERENT MPIDS TRADING IN CMO CUSIPS

Number of MPIDs	CUSIPs	%
1	32,220	33.3
2	17,792	18.4
3	10,573	10.9
4	6,677	6.9
5	4,595	4.8
6	3,511	3.6
7	2,737	2.8
8	2,229	2.3
9	1,903	2.0
10	1,590	1.6
11	1,317	1.4
12	1,128	1.2
13	955	1.0
14	869	0.9
15	753	0.8
15+	7,820	8.1
Total	96,669	100

Table 2 reports trading activity (the number of transactions and trading volume) for the sample by concentrated versus non-concentrated CUSIPs. Trading activity in concentrated CUSIPs represents only 1.73% of transactions, but 15.75% of the trading volume. This suggests that concentrated CUSIPs have relatively larger trade sizes.

TABLE 2—AGGREGATE TRADING ACTIVITY BY CONCENTRATION

	Number of transactions	Volume ($bil.)
HHI = 1	50,714	$1,692
HHI < 1	2,879,089	9,049
Total	2,929,803	10,741

Table 3 reports that the typical concentrated CUSIP trades only about one to two times over the entire sample period. For non-concentrated CUSIPs reported by two or more MPIDs, the typical CMO trades 44.67 times over the sample period.[19] In general, concentrated CUSIPs have on average about half of the trading volume of non-concentrated CUSIPs.

TABLE 3—AVERAGE TRADING ACTIVITY PER CUSIP

		Mean	Median
HHI = 1	Number of transactions/CUSIP	1.57	1.00
	Transaction size ($mil.)	$33.37	$10.60
	Volume ($mil.)	$52.52	$19.00
HHI < 1	Number of transactions/CUSIP	44.67	10.00
	Transaction size ($mil.)	$3.14	$0.03
	Volume ($mil.)	$140.40	$41.85
Overall	Number of transactions/CUSIP	30.31	5.00
	Transaction size ($mil.)	$3.67	$0.03
	Volume ($mil.)	$111.11	$30.67

FINRA staff also investigated the trading activity above and below the proposed threshold for immediate dissemination upon receipt, $1 million in original principal balance traded. Table 4 reports the frequency of transactions that would have fallen above and below the proposed threshold had they been in place during the sample period, broken down by concentrated and non-concentrated CUSIPs. In the sample, 79.21% (0.36% + 78.85%) of transactions and 1.64% (0.02% + 1.62%) of trading volume in CMOs would have been below the proposed threshold, and thus would have been disseminated immediately upon receipt to FINRA under the proposal.

TABLE 4—DISTRIBUTION OF TRANSACTIONS ABOVE AND BELOW PROPOSED THRESHOLD

	Number of transactions	Percent	Volume ($bil.)	Percent
HHI = 1 Below Threshold	10,526	0.36	$1.97	0.02
HHI = 1 At/Above Threshold	40,188	1.37	1,690.13	15.74
HHI < 1 Below Threshold	2,310,110	78.85	173.98	1.62
HHI < 1 At/Above Threshold	568,979	19.42	8,874.67	82.63

[18] Concentrated CUSIPs have a Herfindahl-Hirschman Index (HHI) of one, while non-concentrated have an HHI that is less than one. Algebraically, HHI is calculated as follows: $HHI = \Sigma^{N}_{i=1} s_i^2$ where s_i is the market share of firm i, and there are N total firms in a market. HHI is a succinct measure of market concentration, and it is widely used in analyses of monopoly power, antitrust litigation, and other prominent issues in industrial organization. The HHI of a market can range from 0 to 1 (some publications use 0 to 10,000, but the interpretation is the same after adjusting for scale), where HHI = 1 represents a perfectly concentrated market (one firms controls the entire market) and HHI = 0 represents a perfectly competitive market (infinitely many firms have infinitesimally small market share).

[19] On average, CMOs trade in 10.74 days out of 1,071 days in the sample period.

TABLE 4—DISTRIBUTION OF TRANSACTIONS ABOVE AND BELOW PROPOSED THRESHOLD—Continued

	Number of transactions	Percent	Volume ($bil.)	Percent
Total	2,929,803	100.00	10,740.75	100.00

The total number of transactions and the trading volume that would be disseminated under the $1 million threshold and the minimum five-trade per CUSIP requirement are presented in Table 5. The table shows that approximately 8.65% (6.24% + 2.41%) of transactions and 28.63% (16.64% + 7.99%) of trading volume in CMOs would be disseminated in weekly and monthly reports.

TABLE 5—AGGREGATE PERCENTAGE OF TRANSACTIONS BY TYPE AND DISSEMINATION WITH MINIMUM TWO MPID REQUIREMENT FOR PERIODIC REPORTS

	Transactions	%	Volume ($bil.)	%
Immediate	2,320,636	79.21	176	1.64
Weekly	182,893	6.24	1,787	16.64
Monthly	70,528	2.41	858	7.99
Not dis.	355,746	12.14	7,919	73.73
Total	2,929,803	100.00	10,741	100.00

Table 6 reports the average trade characteristics by concentration at the MPID level. As illustrated by the table, 79.29% of an MPID's CMO transactions would be disseminated immediately upon receipt, with 0.18% in concentrated CUSIPs and 79.11% in non-concentrated CUSIPs. Similarly, 11.74% (9.19% + 2.55%) of CMO transactions for the typical MPID would be disseminated via weekly and monthly periodic reports, with all transactions in non-concentrated CUSIPs. Finally, on average, 8.97% of an MPID's CMO transactions would not be subject to any dissemination under the proposal, with 0.36% of in concentrated CUSIPs and 8.61% in non-concentrated CUSIPs.

TABLE 6—AVERAGE TRADING ACTIVITY PER MPID BY DISSEMINATION FREQUENCY AND CONCENTRATION

	(Number of MPIDs = 1,002)			
	% of transactions		% of volume	
	HH = 1	HH < 1	HH = 1	HH < 1
Immediate	0.18	79.11	0.13	58.17
Weekly	0.00	9.19	0.02	20.46
Monthly	0.00	2.55	0.00	4.31
Not dis.	0.36	8.61	0.85	16.05

This analysis suggests that information leakage may not be a significant issue based on the concentration of trading activity in certain CUSIPs. Tables 5 and 6 confirm that it would be difficult to ascertain significant information about a single MPID's trading strategy from both the real time and periodic dissemination of CMO trades, as less than 1% of trading in concentrated CUSIPs is expected to be disseminated. Moreover, there are no concentrated CUSIPs where the proposed rule would have led to dissemination of all trades by any individual MPID.[20]

(2) Reducing the Timeframe for Reporting CMO Transactions

The second proposed change, reducing the reporting timeframe for CMOs from end-of-day to 60 minutes is intended to facilitate timely dissemination of information for these securities. However, FINRA is aware that a narrower reporting window may impose direct costs on firms to the extent that the firms have to modify or upgrade their reporting systems to comply with the reduced time period for transactions in CMOs executed on or after issuance.

In a sample of 2,476,666 transactions reported on the day of the execution, the average and median reporting time after execution are approximately 19 minutes and 33 seconds, respectively.[21] Approximately 92% of CMO transactions are currently reported to TRACE within 60 minutes. Reports received 60 minutes or more after the transaction execution are significantly larger than those that are reported within 60 minutes.[22]

Of the 974 market participants that reported CMO trades during the sample period, 417 reported all transactions

[20] 463 MPIDs would have all of their CMO trades disseminated immediately upon receipt; however, none of those trades are in concentrated CUSIPs.

[21] The sample for the analysis of the reporting timeframes excludes 453,137 ''as of'' trades that were in the original sample, since such trades are reported at least a day after the transaction day and are disseminated with a ''late'' flag and are subject to a fine.

[22] Trades that are reported after 60 minutes have an average transaction size of approximately $9.76 million, whereas the same figure is approximately $2.76 million for trades that are reported within 60 minutes. The difference of $7.00 million is statistically significant at the 1% level.

within 60 minutes. Another 400 market participants reported at least 90%, but less than 100% of their CMO transactions within 60 minutes of execution. Finally, 157 market participants reported less than 90% of their transactions within 60 minutes; of these, only six reported all of their transactions more than 60 minutes after execution, but each of the six reported fewer than five trades during the sample period.

This analysis suggests that many market participants will require no change in behavior to meet the proposed rule, and, as such, should face no material costs. A second group of market participants currently meet the proposed reporting standards at least 90% of the time, suggesting that their costs for compliance should also be low. The data indicate that there are a small but material number of market participants that currently do not report in a manner consistent with the proposed rule, but these firms engage in small numbers of transactions in CMO securities. The cost that these firms would be expected to incur as a result of the shorter reporting timeframe would depend on the extent of the modification or upgrade to the reporting systems to stay in compliance with the proposed rule.

(3) Simplifying the Reporting Requirements for Pre-Issuance CMO Transactions

The final proposed change would impact the reporting timeframe for pre-issuance CMO transactions and is expected to benefit firms, since it is intended to eliminate potential confusion about when the reporting obligation has been triggered. The proposed requirement that transactions in CMOs that are executed before the issuance of the security must be reported no later than the first settlement date provides firms with more time to report the transactions than they have today.

Alternatives Considered

As discussed in detail below, FINRA staff also considered the dissemination of CMBSs and CDOs in addition to CMOs. Likely due to differences in the customers that trade Securitized Products, CMOs typically have relatively smaller transactions sizes than those for CMBSs and CDOs and thus would be more likely disseminated under the thresholds applied in this rule. For example, Table 5 above demonstrates that 79.21% (0.36% + 78.85%) of CMO transactions would have been below the proposed threshold, and thus would have been disseminated immediately upon receipt under the proposal, whereas, FINRA staff found that, under the same thresholds, only 29.51% and 37.92% of CDO and CMBS transactions would have been disseminated, respectively, upon receipt. This observation suggests that differences in average trade characteristics may lead to different outcomes for dissemination across security types. Therefore, FINRA believes that proceeding with CMO dissemination is a sensible next step, and it will continue to analyze the potential for enhanced transparency for the remaining Securitized Product types.

FINRA staff also assessed whether the five-transaction requirement for periodic dissemination of trades in weekly and monthly reports is reasonable and appropriate based on trading frequency. The staff found that increasing the requirement from five to ten transactions creates a significant shift of transactions from aggregate, periodic dissemination to no dissemination. If the threshold were increased to a minimum of 20 transactions, then approximately 96% of trading volume would not be disseminated.

A higher minimum transaction number threshold may also result in aggregate, periodic dissemination for transactions reported by far fewer market participants. For example, based on the sample data referenced above and assuming a five-transaction threshold for periodic dissemination, 14 MPIDs would have had all of their transactions disseminated weekly and an additional three MPIDs would have had all of their transactions disseminated monthly. However, if the minimum trade threshold were increased to ten, there would only be a single MPID whose transactions would be consistently disseminated in weekly reports, and another single MPID whose transactions would be consistently disseminated via monthly reports.

The analysis implies that increasing the minimum transaction number threshold for periodic dissemination would dramatically reduce the amount of information that is disseminated. In addition, it may actually increase the risk of reverse-engineering the identity or trading strategies of the single or few MPIDs whose trades would be subject to dissemination under a higher minimum transaction number threshold.

Another alternative that FINRA considered was a 15-minute reporting requirement for CMO transactions, rather than the 60-minute requirement that FINRA proposes in this filing. As noted above, based on sample data that FINRA has analyzed, the median reporting time for CMO transactions is just under 20 minutes. Accordingly, FINRA believes that a 15-minute reporting requirement may impose significantly greater costs than a 60-minute requirement. Notably, FINRA believes that the 60 minute requirement is still expected to provide sufficiently timely transparency to the market. FINRA also notes that the proposed 60-minute requirement for CMOs mirrors the 60-minute requirement currently in place for another type of Securitized Product—agency pass-through mortgage-backed securities traded to be announced not good for delivery.

Finally, with respect to the reporting process for pre-issuance CMOs, FINRA considered requiring that transactions be reported no later than two days prior to the first settlement date. However, FINRA understands that in many cases, particularly for private label securities, the characteristics of a new issue may not be finalized until the first settlement date of the securities. As a result, FINRA is instead proposing that pre-issuance CMO transactions be reported by the first settlement date.

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

The proposed rule change was published for comment in *Regulatory Notice* 15–04 (February 2015). Five comments were received in response to the *Regulatory Notice.*[23] A copy of the *Regulatory Notice* is attached as Exhibit 2a. Copies of the comment letters received in response to the *Regulatory Notice* are attached as Exhibit 2c. The comments are summarized below.

As an initial step, prior to issuing *Regulatory Notice* 15–04, FINRA staff solicited industry input from several of its industry advisory committees. At this stage, as in the *Regulatory Notice,* FINRA was contemplating expanding dissemination to all remaining Securitized Products, including CMOs, CMBSs, and CDOs. FINRA was also considering reducing the reporting timeframe for these remaining Securitized Products to 15 minutes. The committees were generally supportive. To the extent the committees raised concerns, they were focused primarily

[23] *See* Letters from Letters from the Financial Information Forum, dated April 7, 2015 (''FIF Letter''); Bond Dealers of America, dated April 9, 2015 (''BDA Letter''); Association of Institutional INVESTORS, dated April 10, 2015 (''INVESTORS Letter''); Bloomberg's Valuation Service, dated April 10, 2015 (''BVAL Letter''); and the Securities Industry and Financial Markets Association, dated April 13, 2015 (''SIFMA Letter'').

on what an appropriate threshold would be to determine whether transactions are subject to immediate or periodic dissemination. At the time FINRA raised this proposal with the committees, it was proposing immediate dissemination for transactions below a threshold of $1 million in transaction size, and aggregate periodic reporting for transactions greater than $1 million, provided there were at least five trade reports in the same security during the applicable reporting period. FINRA committed to vetting these proposed thresholds more completely through the *Regulatory Notice* comment process.

FINRA then published *Regulatory Notice* 15–04 in February 2015 and received five comments in response. Like the industry advisory committees, commenters focused primarily on the merits of disseminating transaction information for the remaining Securitized Products, as well as the thresholds proposed for immediate versus aggregate, periodic reporting. Some of the commenters also discussed the elements of the proposal that would have reduced the reporting timeframe for the remaining Securities Products to 15 minutes.

Two of the commenters took different views on the merits of expanding dissemination to include the remaining Securitized Products. The Association of Institutional INVESTORS (''INVESTORS'') strongly favored dissemination because ''transparency will be extremely beneficial to all market participants and greatly assist in price discovery and in decreasing price dispersion.'' [24] In contrast, the Securities Industry and Financial Markets Association (''SIFMA'') acknowledged that dissemination may contribute to better price formation for additional Securitized Products but expressed its belief that dissemination may negatively impact market liquidity. In SIFMA's view, liquidity should be prioritized over enhancing price discovery.[25]

With respect to the specific items of transaction information FINRA proposed in the *Regulatory Notice* to disseminate, the Financial Information Forum (''FIF'') argued that the information disseminated for the remaining Securitized Products should align with the information disseminated for Asset-Backed Securities. FIF specifically recommended suppressing the contra-party indicator and identifying transactions that meet the definition of a List or Fixed Offering Price Transaction.[26] SIFMA similarly argued that only secondary trades in CMOs should be disseminated, to align dissemination for additional Securitized Products with dissemination for corporate and agency debt and Asset-Backed Securities. SIFMA also expressed concerns about the ability to reverse engineer transactions more easily if last sale price and last sale date information were included in the periodic reports.[27]

Four of the commenters disagreed with the $1 million real-time dissemination threshold that FINRA proposed in the *Regulatory Notice,* although they took opposing views as to whether the threshold would result in too many or too few transactions being subject to real-time dissemination. According to INVESTORS, $1 million is too low given that the market for Securitized Products is primarily institutional, so INVESTORS recommended a $5 million threshold instead.[28] Another commenter, Bloomberg's Valuation Service (''BVAL'') also stated that the $1 million threshold is too low to provide relevant pricing information to the market, since less than 1% of the market trades below $1 million, and the trades that do occur below the threshold involve a different buyer base and pricing model.[29]

On the other hand, two of the commenters believed that the proposed $1 million threshold was too high. SIFMA stated that the threshold should be lowered from $1 million to $100,000 ''to ensure only truly retail-sized transactions'' are subject to real-time dissemination. According SIFMA, setting the threshold at $1 million would include inter-dealer trades as well as retail, and disseminating information on both types of transactions could be ''misleading'' to retail investors. Additionally, SIFMA expressed its belief that disseminating larger-size trades could harm liquidity in an already illiquid marketplace.[30] The Bond Dealers of America (''BDA'') echoed the concern that disseminating trades up to $1 million in value could impact market pricing and liquidity and impact trading strategies.[31]

Three of the commenters provided views on the proposed five transaction threshold for the dissemination of aggregate periodic reports for larger-size transactions. INVESTORS and BVAL did not believe that there should be any minimum number of transactions required per reporting period to qualify for dissemination, and that such a minimum would restrict the proposal's usefulness.[32] In contrast, SIFMA argued that the five transaction minimum was too low, and believed that it should be raised from five to 20, because ''[l]iquidity in the securitized products markets will be least impacted by price dissemination if only truly actively traded CUSIPs are captured in the weekly and monthly reports.'' [33]

One commenter also addressed the proposed reduction of the reporting timeframe to 15 minutes for transactions in the remaining Securitized Products. BDA expressed concern that a reduced reporting timeframe could have a disproportionate impact on smaller dealers and may result in these products being traded less by dealers and more by banking institutions that do not have to comply with TRACE reporting requirements. BDA stated that additional Securitized Products typically trade in ''odd lot'' sizes, where liquidity has traditionally been provided by small to medium size dealers, who would face ''significant challenges'' complying with a 15-minute reporting requirement.[34]

Finally, three of the commenters addressed the element of the proposal that would simplify the reporting process for pre-issuance CMOs, which in the *Regulatory Notice* would have required reporting no later than two days prior to the first settlement date, with varying levels of support. SIFMA strongly supported the change as proposed.[35] BDA expressed support for the proposed change, but recommended that the reporting deadline be moved back further, to settlement minus one day.[36] FIF recommended greater relaxation of the reporting timeframe, proposing a settlement date deadline, rather than settlement minus two.

[24] INVESTORS Letter at 1.

[25] *See* SIFMA Letter at 1–2.

[26] *See* FIF Letter at 2. The term ''List or Fixed Price Transaction'' is defined in Rule 6710(q) to mean a primary market sale transaction sold on the first day of trading of a security, including an Asset-Backed Security as defined in paragraph (cc), but excluding any other Securitized Product as defined in paragraph (m): (i) By a sole underwriter, syndicate manager, syndicate member or selling group member at the published or stated list or fixed offering price, or (ii) in the case of a primary market sale transaction effected pursuant to Securities Act Rule 144A, by an initial purchaser, syndicate manager, syndicate member or selling group member at the published or stated fixed offering price.

[27] *See* SIFMA Letter at 3.

[28] *See* INVESTORS Letter at 2–3.

[29] *See* BVAL Letter at 1.

[30] *See* SIFMA Letter at 2.

[31] *See* BDA Letter at 3.

[32] *See* INVESTORS Letter at 2–3 and BVAL Letter at 1.

[33] *See* SIFMA Letter at 2–3. This commenter further asked that the proposed aggregate periodic reports not include last price and trade date, to minimize the potential for reverse engineering.

[34] *See* BDA Letter at 2–3.

[35] *See* SIFMA Letter at 3.

[36] *See* BDA Letter at 4.

According to FIF, information for pre-issuance CMOs ''is not consistently available two days prior to the first settlement date.'' [37]

FINRA carefully considered the committee views and written comments. After analyzing this feedback, FINRA believes it is appropriate to proceed with the proposal as described and explained above in the filing, which has been modified from what FINRA proposed in *Regulatory Notice* 15–04. Based on FINRA's continued study of the impact of dissemination on TRACE-Eligible Securities, and Securitized Products in particular, in addition to dialogue with a variety of market participants and the feedback received on *Regulatory Notice* 15–04, FINRA believes the proposed dissemination of transaction information for CMOs would be valuable to assist in price discovery, determination of execution quality, and, in particular, valuation of securities positions. FINRA recognizes, however, that CMOs generally are more complex and less fungible than the securities that are currently subject to dissemination. As a result, FINRA believes it is important to calibrate its proposal to provide for tiered dissemination of these products in a way that promotes transparency while minimizing potential negative impacts on liquidity. Importantly, while FINRA has decided not to expand dissemination to CMBSs and CDOs at this time, FINRA believes this proposal is a careful step towards enhanced transparency for these remaining Securitized Product types, and that it will allow FINRA and market participants to consider how best to approach the final phase of dissemination expansion.

In an effort to further calibrate the proposal to provide additional safeguards against the risk of reverse-engineering, FINRA modified the minimum security activity threshold first proposed in *Regulatory Notice* 15–04 for periodic reporting. The *Regulatory Notice* proposed to disseminate larger-size transactions ($1 million or more) on an aggregate periodic basis provided there were five or more transactions in the security during the reporting period. In response to the feedback FINRA received, FINRA is now proposing to disseminate aggregate periodic reports for larger-size transactions provided there are five or more transactions in the security during the reporting period, and further that the transactions must be reported by at least two different MPIDs. FINRA believes that this modified threshold for aggregate periodic reporting will further the interests of transparency while being sensitive to the confidentiality of positions or trading strategies, particularly in securities that trade in a concentrated market made by just one dealer.

Concerning the specific items of transaction information that FINRA would disseminate for CMOs, FINRA has modified the proposal in part to reflect the input it received from commenters. Specifically, FINRA will remove counterparty information from transactions that are disseminated and will also remove the data fields that it proposed in *Regulatory Notice* 15–04 for the periodic reports that would have conveyed last sale price, last sale date, customer buy, customer sell, and interdealer prices. FINRA believes these modifications are appropriate to address commenters' concerns about reverse engineering. FINRA has not modified the proposal, however, in response to commenters' suggestion to suppress new issue transactions in CMOs. The definition of List or Fixed Price Transaction does not apply to CMOs. FINRA believes that redefining the term List or Fixed Price Transaction to include CMOs would result in a significantly less effective proposal, according to input FINRA has received from various market participants.

Concerning the reporting timeframe for transactions in CMOs executed on or after issuance, FINRA modified its proposal to allow for 60-minute reporting rather than 15-minute reporting. FINRA believes this change is appropriate to minimize firms' reporting burdens while improving the timeliness in the receipt and dissemination of CMO transaction information. FINRA notes that the proposed 60-minute timeframe is the same as the reporting requirement for other Securitized Products, namely, agency pass-through mortgage-backed securities traded to be announced not for good delivery.

Finally, FINRA has modified its approach to simplifying the reporting process for pre-issuance CMOs from what it proposed in its *Regulatory Notice.* As noted above, FINRA understands that in many cases, particularly for private label securities, the characteristics of a new issue may not be finalized until the first settlement date of the securities. As a result, FINRA is no longer proposing a reporting deadline two days prior to the first settlement date, but is instead proposing that pre-issuance CMO transactions be reported by the first settlement date.

[37] *See* FIF Letter at 2.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be 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–2016–023 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–FINRA–2016–023. 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–2016–023, and should be submitted on or before July 27, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[38]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–15918 Filed 7–5–16; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78194; File No. SR–BatsBYX–2016–16]

Self-Regulatory Organizations; Bats BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Remove Interpretation and Policy .01 From Rule 11.13, Order Execution and Routing

June 29, 2016.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 23, 2016, Bats BYX Exchange, Inc. (the ''Exchange'' or ''BYX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a ''non-controversial'' proposed rule change pursuant to section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(6) thereunder,[4] which renders it effective upon filing with 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

The Exchange filed a proposal to remove Interpretation & Policy .01 from Exchange Rule 11.13, as further described below.

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com,* at the principal office of the Exchange, 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, the Exchange 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. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

1. Purpose

Introduction

In 2011, the Exchange identified an inefficiency in its handling of certain non-displayed orders resting on the Exchange at a price equal to the Exchange's best displayed orders on the opposite side of the market (''Locking Price'') (the non-displayed orders at the Locking Price, ''Non-Displayed Orders''). Similarly, the Exchange identified an inefficiency in its handling of certain displayed orders that were ranked at the Locking Price and displayed at a permissible price one minimum price variation away from the Locking Price (such orders ''Resting Order Subject to NMS Price Sliding''). In order to avoid an apparent issue under its then-existing priority rule, the Exchange was rejecting incoming orders that were otherwise marketable against the Non-Displayed Orders or the Resting Orders Subject to NMS Price Sliding. In order to optimize available liquidity for incoming orders and to provide price improvement for market participants, the Exchange proposed in May of 2011 to execute a resting Non-Displayed Order or Resting Order Subject to NMS Price Sliding at one-half minimum price variation less than the Locking Price in the case of a bid and one-half minimum price variation more than the Locking Price in the case of an offer.[5]

To ease concerns that these new order-handling procedures could be abused solely for the purpose of obtaining executions at one-half minimum price variations—although there was no evidence to suggest this might occur—the Exchange included Interpretation and Policy .01 to Rule 11.13 stating:

> The Exchange will consider it inconsistent with just and equitable principles of trade to engage in a pattern or practice of using Non-Displayed Orders or orders subject to price sliding solely for the purpose of executing such orders at one-half minimum price variation from the locking price. Evidence of such behavior may include, but is not limited to, a User's pattern of entering orders at a price that would lock or be ranked at the price of a displayed quotation and cancelling orders when they no longer lock the displayed quotation.

The Exchange also stated in the 2011 Proposal that it would conduct surveillance to monitor for such potential abuse.[6]

The Commission approved the 2011 Proposal,[7] and the Exchange has conducted nearly five years of surveillance as it promised in the 2011 Proposal. After this lengthy period of surveillance, the Exchange has determined that there is no evidence that market participants attempt to use the Exchange's order handling procedures in Rule 11.13 solely to obtain executions at one-half minimum price variations. Further, the Exchange has found no way in which a market participant could abuse these order handling procedures. It is the Exchange's position, therefore, that Interpretation and Policy .01 and its corollary surveillance is now unnecessary. The Exchange proposes to remove the unnecessary Interpretation and Policy and to discontinue the corollary surveillance.

Background

Prior to the implementation of the 2011 Proposal, consistent with the Exchange's rule regarding priority of orders, Rule 11.12, in order to avoid an apparent priority issue under the Exchange's rules Non-Displayed Orders and Resting Orders Subject to NMS Price Sliding were not executed by the Exchange pursuant to Rule 11.13 when such orders would be executed at a Locking Price. Specifically, if incoming

[38] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

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

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 64476 (May 12, 2011), 76 FR 28826 (May 18, 2011) (SR–BYX–2011–009) (''2011 Proposal''). The reference to the most ''aggressive'' price, as used in that filing, means for bids the highest price the User is willing to pay, and for offers the lowest price at which the User is willing to sell.

[6] *See* 2011 Proposal, *supra* note 5, at 28829.

[7] *See* Securities Exchange Act Release No. 64753 (June 27, 2011), 76 FR 38714 (July 1, 2011) (SR–BYX–2011–009) (Order Approving a Proposed Rule Change To Amend BYX Rule 11.9, Entitled ''Orders and Modifiers'' and BYX Rule 11.13, Entitled ''Order Execution'') (''2011 Approval'').