SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79648; File No. SR–FINRA–2016–047]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change To Amend FINRA Rules To Conform to the Commission's Proposed Amendment to Commission Rule 15c6–1(a) and the Industry-Led Initiative To Shorten the Standard Settlement Cycle for Most Broker-Dealer Transactions From T+3 to T+2

December 21, 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 December 14, 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 amend FINRA Rules 2341 (Investment Company Securities), 11140 (Transactions in Securities ''Ex-Dividend,'' ''Ex-Rights'' or ''Ex-Warrants''), 11150 (Transactions ''Ex-Interest'' in Bonds Which Are Dealt in ''Flat''), 11210 (Sent by Each Party), 11320 (Dates of Delivery), 11620 (Computation of Interest), 11810 (Buy-In Procedures and Requirements), and 11860 (COD Orders) to conform to the Commission's proposed amendment to SEA Rule 15c6–1(a) to shorten the standard settlement cycle for most broker-dealer transactions from three business days after the trade date (''T+3'') to two business days after the trade date (''T+2'') and the industry-led initiative to shorten the settlement cycle from T+3 to T+2.[3]

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

SEC Proposing Release

On September 28, 2016, the Commission proposed amending SEA Rule 15c6–1(a) to shorten the standard settlement cycle for most broker-dealer transactions from T+3 to T+2 on the basis that the shorter settlement cycle would reduce the risks that arise from the value and number of unsettled securities transactions prior to the completion of settlement, including credit, market, and liquidity risk directly faced by U.S. market participants. The proposed rule amendment was published for comment in the **Federal Register** on October 5, 2016.[4]

Background

In 1995, the standard U.S. trade settlement cycle for equities, municipal and corporate bonds, and unit investment trusts, and financial instruments composed of these products was shortened from five business days after the trade date (''T+5'') to T+3.[5] Accordingly, FINRA and other self-regulatory organizations (''SROs'') amended their respective rules to conform to the T+3 settlement cycle.[6] Since that time, the SEC and the financial services industry have continued to explore the idea of shortening the settlement cycle even further.[7]

In April 2014, the Depository Trust & Clearing Corporation (''DTCC'') published its formal recommendation to shorten the standard U.S. trade settlement cycle to T+2 and announced that it would partner with market participants and industry organizations to devise the necessary approach and timelines to achieve T+2.[8]

In an effort to improve the overall efficiency of the U.S. settlement system by reducing the attendant risks in T+3 settlement of securities transactions, and to align U.S. markets with other major global markets that have already moved to T+2, DTCC, in collaboration with the financial services industry, formed an Industry Steering Committee (''ISC'') and an industry working group and sub-working groups to facilitate the move to T+2.[9] In June 2015, the ISC published a White Paper outlining the activities and proposed time frames that would be required to move to T+2 in the U.S.[10] Concurrently, the Securities Industry and Financial Markets Association (''SIFMA'') and the Investment Company Institute (''ICI'') jointly submitted a letter to SEC Chair White, expressing support of the financial services industry's efforts to shorten the settlement cycle and identifying SEA Rule 15c6–1(a) and several SRO rules that they believed would require amendments for an

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 78962 (September 28, 2016), 81 FR 69240 (October 5, 2016) (Amendment to Securities Transaction Settlement Cycle) (File No. S7–22–16) (''SEC Proposing Release'').

[4] *See supra* note 3.

[5] In 1993, the Commission adopted SEA Rule 15c6–1 which became effective in 1995. *See* Securities Exchange Act Release Nos. 33023 (October 6, 1993), 58 FR 52891 (October 13, 1993) and 34952 (November 9, 1994), 59 FR 59137 (November 16, 1994). SEA Rule 15c6–1(a) provides, in relevant part, that ''a broker or dealer shall not effect or enter into a contract for the purchase or sale of a security (other than an exempted security, government security, municipal security, commercial paper, bankers' acceptances, or commercial bills) that provides for payment of funds and delivery of securities later than the third business day after the date of the contract unless otherwise expressly agreed to by the parties at the time of the transaction.'' 17 CFR 240.15c6–1(a). Although not covered by SEA Rule 15c6–1, in 1995, the Commission approved the Municipal Securities Rulemaking Board's rule change requiring transactions in municipal securities to settle by T+3. *See* Securities Exchange Act Release No. 35427 (February 28, 1995), 60 FR 12798 (March 8, 1995) (Order Approving File No. SR–MSRB–94–10).

[6] *See, e.g.,* Securities Exchange Act Release No. 35507 (March 17, 1995), 60 FR 15616 (March 24, 1995) (Order Approving File No. SR–NASD–94–56); Securities Exchange Act Release No. 35506 (March 17, 1995), 60 FR 15618 (March 24, 1995) (Order Approving File No. SR–NYSE–94–40); and Securities Exchange Act Release No. 35553 (March 31, 1995), 60 FR 18161 (April 10, 1995) (Order Approving File No. SR–Amex–94–57).

[7] *See, e.g.,* Securities Industry Association (''SIA''), ''SIA T+1 Business Case Final Report'' (July 2000); Concept Release: Securities Transactions Settlement, Securities Exchange Act Release No. 49405 (March 11, 2004), 69 FR 12922 (March 18, 2004); and Depository Trust & Clearing Corporation, ''Proposal to Launch a New Cost-Benefit Analysis on Shortening the Settlement Cycle'' (December 2011).

[8] *See* DTCC, ''DTCC Recommends Shortening the U.S. Trade Settlement Cycle'' (April 2014).

[9] The ISC includes, among other participants, DTCC, the Securities Industry and Financial Markets Association and the Investment Company Institute.

[10] *See* ''Shortening the Settlement Cycle: The Move to T+2'' (June 18, 2015).

effective transition to T+2.[11] In March 2016, the ISC announced the industry target date of September 5, 2017 for the transition to a T+2 settlement cycle to occur.[12]

Proposed Rule Change

In light of the SEC Proposing Release that would amend SEA Rule 15c6–1(a) to require standard settlement no later than T+2 and similar proposals from other SROs,[13] FINRA is proposing changes to its rules pertaining to securities settlement by, among other things, amending the definition of ''regular way'' settlement as occurring on T+2. SEA Rule 15c6–1(a) currently establishes standard settlement as occurring no later than T+3 for all securities, other than an exempted security, government security, municipal security, commercial paper, bankers' acceptances, or commercial bills.[14] FINRA is proposing changes to rules pertaining to securities settlement to support the industry-led initiative to shorten the standard settlement cycle to two business days. Most of the rules that FINRA has identified for these changes are successors to provisions under the legacy NASD Rules of Fair Practice and NASD Uniform Practice Code (''UPC'') that were amended when the Commission adopted SEA Rule 15c6–1(a), which established T+3 as the standard settlement cycle.[15] As such, FINRA is proposing to amend FINRA Rules 2341 (Investment Company Securities), 11140 (Transactions in Securities ''Ex-Dividend,'' ''Ex-Rights'' or ''Ex-Warrants''), 11150 (Transactions ''Ex-Interest'' in Bonds Which Are Dealt in ''Flat''), 11320 (Dates of Delivery), 11620 (Computation of Interest), and 11860 (COD Orders). In addition, FINRA is proposing to amend FINRA Rules 11210 (Sent by Each Party) and 11810 (Buy-In Procedures and Requirements) to conform provisions, where appropriate, to the T+2 settlement cycle.[16]

The details of the proposed rule change are described below.

(A) FINRA Rule 2341 (Investment Company Securities)[17]

Rule 2341(m) requires members, including underwriters, that engage in direct retail transactions for investment company shares to transmit payments received from customers for the purchase of investment company shares to the payee by the end of the third business day after receipt of a customer's order to purchase the shares, or by the end of one business day after receipt of a customer's payment for the shares, whichever is later. FINRA is proposing to amend Rule 2341(m) to change the three-business day transmittal requirement to two business days, while retaining the one-business day alternative.

(B) FINRA Rule 11140 (Transactions in Securities ''Ex-Dividend,'' ''Ex-Rights'' or ''Ex-Warrants'')

Rule 11140(b)(1) provides that for dividends or distributions, and the issuance or distribution of warrants, that are less than 25 percent of the value of the subject security, if definitive information is received sufficiently in advance of the record date, the date designated as the ''ex-dividend date'' shall be the second business day preceding the record date if the record date falls on a business day, or the third business day preceding the record date if the record date falls on a day designated by FINRA's UPC Committee as a non-delivery date. FINRA is proposing to shorten the time frames in Rule 11140(b)(1) by one business day.

(C) FINRA Rule 11150 (''Ex-Interest'' in Bonds Which Are Dealt in ''Flat'')

Rule 11150(a) prescribes the manner for establishing ''ex-interest dates'' for transactions in bonds or other similar evidences of indebtedness which are traded ''flat.'' Such transactions are ''ex-interest'' on the second business day preceding the record date if the record date falls on a business day, on the third business day preceding the record date if the record date falls on a day other than a business day, or on the third business day preceding the date on which an interest payment is to be made if no record date has been fixed. FINRA is proposing to shorten the time frames in Rule 11150(a) by one business day.

(D) FINRA Rule 11210 (Sent by Each Party)

Paragraphs (c) and (d) of Rule 11210 set forth the ''Don't Know'' (''DK'') voluntary procedures for using ''DK Notices'' (FINRA Form No. 101) or other forms of notices, respectively. Depending upon the notice used, a confirming member may follow the ''DK'' procedures when it sends a comparison or confirmation of a trade (other than one that clears through the National Securities Clearing Corporation (''NSCC'') or other registered clearing agency), but does not receive a comparison or confirmation or a signed ''DK'' from the contra-member by the close of four business days following the trade date of the transaction (''T+4''). The procedures generally provide that after T+4, the confirming member shall send a ''DK Notice'' (or similar notice) to the contra-member. The contra-member then has four business days after receipt of the confirming member's notice to either confirm or ''DK'' the transaction.

FINRA is proposing to amend paragraphs (c) and (d) of Rule 11210 to provide that the ''DK'' procedures may be used by the confirming member if it does not receive a comparison or confirmation or signed ''DK'' from the contra-member by the close of one business day following the trade date of the transaction, rather than the current T+4.[18] In addition, FINRA is proposing amendments to paragraphs (c)(2)(A), (c)(3), and (d)(5) of Rule 11210 to adjust

[11] *See* Letter from ICI and SIFMA to Mary Jo White, Chair, SEC, dated June 18, 2015. *See also* Letter from Mary Jo White, Chair, SEC, to Kenneth E. Bentsen, Jr., President and CEO, SIFMA, and Paul Schott Stevens, President and CEO, ICI, dated September 16, 2015 (expressing her strong support for industry efforts to shorten the trade settlement cycle to T+2 and commitment to developing a proposal to amend SEA Rule 15c6–1(a) to require standard settlement no later than T+2).

[12] *See* ISC Media Alert: ''US T+2 ISC Recommends Move to Shorter Settlement Cycle On September 5, 2017'' (March 7, 2016).

[13] *See, e.g.,* Securities Exchange Act Release No. 77744 (April 29, 2016), 81 FR 26851 (May 4, 2016) (Order Approving File No. SR–MSRB–2016–04).

[14] *See supra* note 5.

[15] The legacy NASD rules that were changed to conform to the move from T+5 to T+3 included Section 26 (Investment Companies) of the Rules of Fair Practice, and Section 5 (Transactions in Securities ''Ex-Dividend,'' ''Ex-Rights'' or ''Ex-Warrants''), Section 6 (Transactions ''Ex-Interest'' in Bonds Which Are Dealt in ''Flat''), Section 12 (Dates of Delivery), Section 46 (Computation of Interest) and Section 64 (Acceptance and Settlement of COD Orders) of the UPC. *See* Securities Exchange Act Release No. 35507 (March 17, 1995), 60 FR 15616 (March 24, 1995) (Order Approving File No. SR–NASD–94–56). *See also Notice to Members* 95–36 (May 1995) (enumerating the various sections under the NASD Rules of Fair Practice and UPC that were amended to implement T+3 settlement for securities transactions).

[16] FINRA Rules 11210 and 11810 are successors to legacy NASD UPC Sections 9 (Sent by Each Party) and 59 (''Buying-in''), respectively, which remained unchanged during the transition from T+5 to T+3. *See supra* note 15.

[17] In June 2016, legacy NASD Rule 2830 (Investment Company Securities) was adopted as FINRA Rule 2341 in the consolidated FINRA rulebook without any substantive changes. *See* Securities Exchange Act Release No. 78130 (June 22, 2016), 81 FR 42016 (June 28, 2016) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2016–019).

[18] As stated above, the time frames in Rule 11210 remained unchanged during the transition from T+5 to T+3. In light of the industry-led initiative to shorten the standard settlement cycle and the SEC Proposing Release to amend SEA Rule 15c6–1(a) to establish T+2 as the standard settlement for most broker-dealer transactions, FINRA believes that the current time frames in Rule 11210 are more protracted than necessary even in a T+3 environment and as such, FINRA is proposing to amend these time frames to reflect more current industry practices.

the time in which a contra-member has to respond to a ''DK Notice'' (or similar notice) from four business days after the contra-member's receipt of the notice to two business days. The proposed rule change would also make non-substantive technical changes to paragraph (c)(2)(A) to reflect FINRA Manual style convention.

(E) FINRA Rule 11320 (Dates of Delivery)

Rule 11320 prescribes delivery dates for various transactions. Paragraph (b) states that for a ''regular way'' transaction, delivery must be made on, but not before, the third business day after the date of the transaction. FINRA is proposing to amend Rule 11320(b) to change the reference to third business day to second business day. Paragraph (c) provides that in a ''seller's option'' transaction, delivery may be made by the seller on any business day after the third business day following the date of the transaction. FINRA is proposing to amend Rule 11320(c) to change the reference to third business day to second business day.

(F) FINRA Rule 11620 (Computation of Interest)

In the settlement of contracts in interest-paying securities other than for cash, Rule 11620(a) requires the calculation of interest at the rate specified in the security up to, but not including, the third business day after the date of the transaction. The proposed amendment would shorten the time frame to the second business day. In addition, the proposed amendment would make non-substantive technical changes to the title of paragraph (a).

(G) FINRA Rule 11810 (Buy-in Procedures and Requirements)

Rule 11810(j)(1)(A) sets forth the fail-to-deliver and liability notice procedures where a securities contract is for warrants, rights, convertible securities or other securities which have been called for redemption; are due to expire by their terms; are the subject of a tender or exchange offer; or are subject to other expiring events such as a record date for the underlying security and the last day on which the securities must be delivered or surrendered is the settlement date of the contract or later.[19]

Under Rule 11810(j)(1)(A), the receiving member delivers a liability notice to the owing counterparty. The liability notice sets a cutoff date for the delivery of the securities by the counterparty and provides notice to the counterparty of the liability attendant to its failure to deliver the securities in time. If the owing counterparty, or delivering member, delivers the securities in response to the liability notice, it has met its delivery obligation. If the delivering member fails to deliver the securities on the expiration date, it will be liable for any damages that may accrue thereby.

Rule 11810(j)(1)(A) further provides that when both parties to a contract are participants in a registered clearing agency that has an automated liability notification service, transmission of the liability notice must be accomplished through such system.[20] When the parties to a contract are not both participants in a registered clearing agency that has an automated liability notification service, such notice must be issued using written or comparable electronic media having immediate receipt capabilities not later than one business day prior to the latest time and the date of the offer or other event in order to obtain the protection provided by the Rule.[21]

Given the proposed shortened settlement cycle, FINRA is proposing to amend Rule 11810(j)(1)(A) in situations where both parties to a contract are not participants of a registered clearing agency with an automated notification service, by extending the time frame for delivery of the liability notice. Rule 11810(j)(1)(A) would be amended to provide that in such cases, the receiving member must send the liability notice to the delivering member as soon as practicable but not later than two hours prior to the cutoff time set forth in the instructions on a specific offer or other event to obtain the protection provided by the Rule. FINRA believes that extending the time given to the receiving member to transmit liability notifications will maintain the efficiency of the notification process while mitigating the possible overuse of such notifications.

Currently, FINRA understands that the identity of the counterparty, or delivering member, becomes known to the receiving member by mid-day on the business day after trade date (''T+1''), and by that time, the receiving member will generally also know which transactions are subject to an event identified in Rule 11810(j)(1)(A) that would prompt the receiving member to issue a liability notice to the delivering member. FINRA believes that the receiving member regularly issues liability notices to the seller or other parties from which the securities involved are due when the security is subject to an event identified in Rule 11810(j)(1)(A) during the settlement cycle as a way to mitigate the risk of a potential fail-to-deliver. In the current T+3 settlement environment, the one business day time frame gives the receiving member the requisite time needed to identify the parties involved and undertake the liability notification process.

However, FINRA believes that the move to a T+2 settlement environment will create inefficiencies in the liability notification process under Rule 11810(j)(1)(A) when both parties to a contract are not participants in a registered clearing agency with an automated notification service. The shorter settlement cycle, with the loss of one-business day, would not afford the receiving member sufficient time to: (1) Ascertain that the securities are subject to an event listed in Rule 11810(j)(1)(A) during the settlement cycle; (2) identify the delivering member and other parties from which the securities involved are due; and (3) determine the likelihood that such parties may fail to deliver. Where the receiving member has sufficient time (*e.g.,* one business day

[19] Rule 11810(j) is the successor to legacy NASD UPC Section 59(i) (Failure to Deliver and Liability Notice Procedures). When this provision was added to NASD's existing close-out procedures in 1984, it was drafted to be similar to the liability notice provisions adopted by the NSCC so that members that were also participants in NSCC could use the same procedures for both ex-clearing and NSCC cleared transactions, thereby simplifying members' back office procedures. *See* Securities Exchange Act Release No. 21262 (August 22, 1984), 49 FR 34321 (August 29, 1984) (Notice of Filing of File No. SR–NASD–84–20). *See also* Securities Exchange Act Release No. 21406 (October 19, 1984), 49 FR 43006 (October 25, 1984) (Order Approving File No. SR–NASD–84–20).

[20] In 2007, NYSE Rule 180 was amended to require that when the parties to a failed contract were both participants in a registered clearing agency that had an automated service for notifying a failing party of the liability that will be attendant to a failure to deliver and the contract was to be settled through the facilities of that registered clearing agency, the transmission of the liability notification must be accomplished through the use of the registered clearing agency's automated liability notification system. *See* Securities Exchange Act Release No. 55132 (January 19, 2007), 72 FR 3896 (January 26, 2007) (Order Approving File No. SR–NYSE–2006–57). FINRA followed suit and effective in 2008, Rule 11810(j) mandated the use of an automated liability notification system when the parties to a contract are participants in a registered clearing agency that has an automated service for notifying a failing party of the liability that would be attendant to failure to deliver. *See* Securities Exchange Act Release No. 56972 (December 14, 2007), 72 FR 73927 (December 28, 2007) (Order Approving File No. SR–NASD–2007–035). *See also Regulatory Notice* 08–06 (February 2008).

[21] While Rule 11810 has undergone amendments over the years, the one-day time frame in paragraph (j) has remained unchanged. The one-day time frame also appears in comparable provisions of other SROs. *See, e.g.,* NSCC Rules & Procedures, Procedure X (Execution of Buy-Ins) (Effective August 10, 2016); NYSE Rule 282.65 (Fail to Deliver and Liability Notice Procedures); and Nasdaq Rule IM–11810 (Buying-in). *See also infra* note 30 and accompanying text.

after), it can transmit liability notices as needed to the right parties. However, as a consequence of the shortened settlement cycle, the receiving member would be compelled to issue liability notices proactively to all potentially failing parties as a matter of course to preserve its rights against such parties without the benefit of knowing which transactions would actually necessitate the delivery of such notice. This would create a significant increase in the volume of liability notices members send and receive, many of which may be unnecessary. Members would then have to manage this overabundance of liability notices, increasing the possibility of errors, which would adversely impact the efficiency of the process. Therefore, FINRA believes its proposal to extend the time for the receiving member to deliver a liability notice when the parties to a contract are not both participants in a registered clearing agency with an automated notification service would help alleviate the potential burden on the liability notification process in a T+2 settlement environment.

(H) FINRA Rule 11860 (COD Orders)

Rule 11860(a) directs members to follow various procedures before accepting collect on delivery (''COD'') or payment on delivery (''POD'') orders. Rule 11860(a)(4)(A) states that the member must obtain an agreement from the customer that the customer will furnish instructions to the agent no later than the close of business on the second business day after the date of execution of the trade to which the confirmation relates in the case of a purchase by the customer where the agent is to receive the securities against payment, or COD. In light of the proposed shortened settlement cycle, FINRA is proposing to amend Rule 11860(a)(4)(A) to provide that the time period for a customer buying COD to furnish instructions to the agent will be no later than the close of business on the first business day after the date of execution of the trade, rather than the close of business on the second business day.

If the Commission approves the proposed rule change, FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice,* which date would correspond with the industry-led transition to a T+2 standard settlement, and the effective date of the Commission's proposed amendment to SEA Rule 15c6–1(a) to require standard settlement no later than T+2.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[22] 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, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change supports the industry-led initiative to shorten the settlement cycle to two business days. Moreover, the proposed rule change is consistent with the SEC's proposed amendment to SEA Rule 15c6–1(a) to require standard settlement no later than T+2. FINRA believes that the proposed rule change will provide the regulatory certainty to facilitate the industry-led move to a T+2 settlement cycle.

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. The proposed rule change makes changes to rules pertaining to securities settlement and is intended to facilitate the implementation of the industry-led transition to a T+2 settlement cycle. Moreover, the proposed rule changes are consistent with the SEC's proposed amendment to SEA Rule 15c6–1(a) to require standard settlement no later than T+2. Accordingly, FINRA believes that the proposed changes do not impose any burdens on the industry in addition to those necessary to implement amendments to SEA Rule 15c6–1(a) as described and enumerated in the SEC Proposing Release.[23]

These conforming changes include changes to rules that specifically establish the settlement cycle as well as rules that establish time frames based on settlement dates, including for certain post-settlement rights and obligations. FINRA believes that the proposed changes set forth in the filing are necessary to support a standard settlement cycle across the U.S. for secondary market transactions in equities, corporate and municipal bonds, unit investment trusts, and financial instruments composed of these products, among others.[24] A standard U.S. settlement cycle for such products is critical for the operation of fair and orderly markets.

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* 16–09 (March 2016). Eight comments were received in response to the *Regulatory Notice*.[25] A copy of the *Regulatory Notice* is attached as Exhibit 2a.[26] A list of commenters is attached as Exhibit 2b and copies of the comment letters received in response to the *Regulatory Notice* are attached as Exhibit 2c.

Of the eight comment letters received, seven expressed support for the industry-led move to T+2 stating, among other benefits, that the move will align U.S. markets with international markets that already work in the T+2 environment, improve the overall efficiency and liquidity of the securities markets, and the stability of the financial system by reducing counterparty risk and pro-cyclical and liquidity demands, and decreasing clearing capital requirements.[27] Several

[22] 15 U.S.C. 78*o*–3(b)(6).

[23] *See supra* note 3.

[24] *See supra* note 3.

[25] *See* Letter from Michael Nicholas, Chief Executive Officer, Bond Dealers of America, to Marcia E. Asquith, Corporate Secretary, FINRA, dated April 4, 2016 (''BDA''); letter from Stephen E. Roth, Sutherland Asbill & Brennan LLP on behalf of the Committee of Annuity Insurers, to Marcia E. Asquith, Corporate Secretary, FINRA, dated April 4, 2016 (''CAI''); letter from Norman L. Ashkenas, Chief Compliance Officer, Fidelity Brokerage Services, LLC, and Richard J. O'Brien, Chief Compliance Officer, National Financial Services, LLC, to Marcia E. Asquith, Corporate Secretary, FINRA, dated April 4, 2016 (''Fidelity''); letter from David T. Bellaire, Executive Vice President and General Counsel, Financial Services Institute, to Marcia E. Asquith, Corporate Secretary, FINRA, dated April 4, 2016 (''FSI''); letter from Martin A. Burns, Chief Industry Operations Officer, Investment Company Institute, to Marcia E. Asquith, Corporate Secretary, FINRA, dated April 4, 2016 (''ICI''); letter from Thomas F. Price, Managing Director, Operations, Technology & BCP, Securities Industry and Financial Markets Association, to Marcia E. Asquith, Corporate Secretary, FINRA, dated April 4, 2016 (''SIFMA'') (April 4, 2016); letter from Manisha Kimmel, Chief Regulatory Officer, Wealth Management, Thomson Reuters, to Marcia E. Asquith, Corporate Secretary, FINRA, dated April 4, 2016 (''Thomson Reuters''); and letter from Robert J. McCarthy, Director of Regulatory Policy, Wells Fargo Advisors, LLC, to Marcia E. Asquith, Corporate Secretary, FINRA, dated April 4, 2016 (''WFA'').

[26] The Commission notes that the exhibits referred to are attached to the filing and not to this Notice.

[27] BDA, Fidelity, FSI, ICI, SIFMA, Thomson Reuters and WFA. CAI did not comment on the proposed rule amendments and instead requested FINRA's ''acknowledgment and confirmation that insurance securities products, which are currently exempt from the T+3 settlement cycle requirements,

commenters encouraged FINRA to coordinate with other regulators to make the necessary regulatory changes to help facilitate the move to a T+2 standard settlement cycle [28] with two commenters [29] providing their views on the proposed amendments to two rules under the FINRA Rule 11800 Series (Close-Out Procedures).

FINRA Rule 11810(j)—Failure To Deliver and Liability Notice Procedures

In its comment letter, SIFMA raised a concern with the one-day time frame in Rule 11810(j)(1)(A), asserting that the requirement for the delivering member to deliver a liability notice to the receiving member no later than one business day prior to the latest time and the date of the offer or other event in order to obtain the protection provided by the Rule may no longer be appropriate in a T+2 environment in some situations such as where the delivery obligation is transferred to another party as a result of continuous net settlement, settlements outside of the NSCC, and settlements involving a third party that is not a FINRA member firm. SIFMA noted that NYSE Rule 180 (Failure to Deliver) includes a similar requirement for NYSE member firms that are participants in a registered clearing agency to transmit liability notification through an automated notification service and proposed amending Rule 11810(j)(1)(A) to omit the reference to a notification time frame, which would align with NYSE Rule 180.[30] In the alternative, SIFMA proposed amending Rule 11810(j)(1)(A) to require that the liability notice be delivered in a ''reasonable amount of time'' ahead of the settlement obligation in light of facts and circumstances. SIFMA maintained that under either proposed amendment to paragraph (j), the delivering member would be liable for any damages caused by its failure to deliver in a timely fashion.

While FINRA did not initially propose amendments to Rule 11810 for the T+2 initiative,[31] in light of SIFMA's concern regarding Rule 11810(j)(1)(A), FINRA is proposing to amend the Rule to provide that, where both parties to a contract are not participants of a registered clearing agency with an automated notification service, the receiving member must send the liability notice to the delivering member as soon as practicable but not later than two hours prior to the cutoff time set forth in the instructions on a specific offer or other event to obtain the protection provided by the Rule.[32]

FINRA Rule 11860 (COD Orders)

Rule 11860(a)(3) requires a member that accepts a COD or POD order from a customer to deliver to the customer a confirmation not later than the close of business on T+1. In *Regulatory Notice* 16–09, FINRA proposed shortening the confirmation delivery time frame to the close of business on the date of the trade (''T+0''). In its comment letter, BDA urged FINRA to consider leaving the requirement for delivering customer confirmations under Rule 11860(a)(3) unchanged and allow customer confirmations to continue to be sent T+1 to minimize the regulatory and compliance costs of the proposed amendment without limiting the risk-reducing benefits of the shortened settlement cycle. BDA asserted that shortening confirmation delivery to T+0 would be a tremendous undertaking for small firms that would need to commit large amounts of internal resources to change the systems and processes that are used to deliver confirmations in order to process confirmations on a T+0 basis.

FINRA has considered the comment and agrees that the proposed change to T+0 may present significant difficulties for member firms, particularly small firms. Moreover, FINRA believes that the existing requirement to deliver customer confirmations on T+1 would still assure the efficient clearance and settlement of transactions in a T+2 settlement environment. Therefore, in order to remain aligned with the provisions of other SROs and current industry practices, FINRA has determined to retain the current T+1 confirmation delivery requirement under Rule 11860(a)(3).[33]

Other Comments

Several commenters conveyed the importance of testing systems and educating market participants and retail investors on the impacts of a shorter settlement cycle.[34] BDA explained that currently, a customer has five business days to submit payment for purchases of securities in a cash account or in a margin account before a broker-dealer would cancel or liquidate the transaction in whole or in part.[35] BDA further explained that ''[s]hortening the settlement cycle to T+2 would automatically reduce the timeframe before a dealer would have to liquidate an unpaid for transaction to T+4.'' BDA noted that shortening the settlement cycle by one day may negatively impact retail clients that still use checks, which may not be sent, received, processed, and cleared, within the shortened four-day window. BDA expressed that firms that do a large amount of retail business would need ample time to communicate the practical impacts on a shortened settlement cycle.

FINRA recognizes that market participants will have to undergo systemic and procedural changes to implement the shorter payment period for a securities purchase as part of the ongoing transition to the T+2 framework. As BDA acknowledged, the 2017 timeline should allow firms to make all the necessary changes to systems that the proposed rule will require. FINRA further recognizes the importance of educating retail investors regarding the impact of a shortened settlement cycle and is committed to

will continue to be exempt from the settlement cycle requirements after the timetable is shortened to T+2.'' The Commission has granted an exemption for transactions involving certain insurance contracts from the scope of SEA Rule 15c6–1. *See* Securities Exchange Act Release No. 35815 (June 6, 1995), 60 FR 30906 (June 12, 1995). FINRA notes that any modification or revocation of the current exemptions to SEA Rule 15c6–1 rests with the Commission.

[28] Fidelity, FSI, ICI, and Thomson Reuters.

[29] BDA and SIFMA.

[30] *See* NYSE Rule 180 (Failure to Deliver) providing in part that ''[w]hen the parties to a contract are both participants in a registered clearing agency which has an automated service for notifying a failing party of the liability that will be attendant to a failure to deliver and that contract was to be settled through the facilities of said registered clearing agency, the transmission of the liability notification must be accomplished through use of said automated notification service.'' FINRA notes that NYSE Rule 180 does not address the transmission of the liability notification for parties to a contract that are not both participants in a registered clearing agency (or non-participants). The transmission of the liability notification for non-participants is addressed under NYSE Rule 282.65 (Failure to Deliver and Liability Notice Procedures). *See supra* note 21.

[31] *See Regulatory Notice* 16–09 (March 2016).

[32] FINRA expects similar amendments to other comparable SRO provisions in NYSE Rule 282.65 (Fail to Deliver and Liability Notice Procedures) and Nasdaq Rule IM–11810 (Buying-in), and NSCC Rules & Procedures, Procedure X (Execution of Buy-Ins) to address SIFMA's concern about the one-day notification time frame.

[33] In *Regulatory Notice* 16–09, FINRA preliminarily identified Rule 11210(a) (Comparisons or Confirmations) to undergo an amendment to reflect the T+2 settlement cycle. Rule 11210(a)(1) requires each party to a transaction, other than a cash transaction, to send a Uniform Comparison or Confirmation on or before T+1. FINRA proposed changing the delivery time frame to T+0. While not specifically referenced by BDA, Rule 11210(a) would raise similar concerns. Thus, the time frame under Rule 11210(a)(1) for sending a Uniform Comparison or Confirmation would also remain unchanged at T+1.

[34] BDA, FSI and WFA.

[35] Federal Reserve Board Regulation T governs, among other things, the extension of credit by broker-dealers to customers to pay for the purchase of securities. Regulation T provides that a customer has one payment period (currently five business days) to submit payment for purchases of securities in a cash account or in a margin account. 12 CFR 220.2 (Definitions), 220.4 (Margin Account) and 220.8 (Cash Account).

working with market participants to provide the information necessary to educate retail investors.

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–2016–047 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–2016–047. 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–2016–047 and should be submitted on or before January 18, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[36]

Eduardo A. Aleman,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79644; File No. SR–ISEGemini–2016–22]

Self-Regulatory Organizations; ISE Gemini, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adjust Qualifying Tier Thresholds and Fees and Rebates

December 21, 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 December 9, 2016, ISE Gemini, LLC (''ISE Gemini'' or ''Exchange'') 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 the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to adjust qualifying tier thresholds and fees and rebates under the Schedule of Fees.

The text of the proposed rule change is available on the Exchange's Web site at *www.ise.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[36] 17 CFR 200.30–3(a)(12).

[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, 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 aspects of such statements.

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

1. Purpose

The purpose of the proposed rule change is to adjust qualifying tier thresholds and fees and rebates under the Exchange's Schedule of Fees. Each of the proposed changes is described in more detail below.

Qualifying Tier Thresholds

ISE Gemini currently provides volume-based maker rebates to Market Maker[3] and Priority Customer[4] orders in five tiers based on a member's average daily volume (''ADV'') in the following categories: (i) Total Affiliated Member ADV,[5] (ii) Priority Customer Maker ADV,[6] and (iii) Total Affiliated Member ADV with a Minimum Priority Customer Maker ADV, as shown in the table below.[7] In addition, the Exchange

[3] The term Market Maker refers to ''Competitive Market Makers'' and ''Primary Market Makers'' collectively.

[4] A Priority Customer is a person or entity that is not a broker/dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s).

[5] The Total Affiliated Member ADV category includes all volume in all symbols and order types, including both maker and taker volume and volume executed in the PIM, Facilitation, Solicitation, and QCC mechanisms.

[6] The Priority Customer Maker ADV category includes all Priority Customer volume that adds liquidity in all symbols.

[7] All eligible volume from affiliated members is aggregated in determining applicable tiers, provided there is at least 75% common ownership between the Members as reflected on each Member's Form BD, Schedule A.

The highest tier threshold attained by any method above applies retroactively in a given month to all eligible traded contracts and applies to all eligible market participants.

Any day that the market is not open for the entire trading day or the Exchange instructs members in writing to route their orders to other markets may be excluded from the ADV calculation; provided that the Exchange will only remove the day for members that would have a lower ADV with the day included.