

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-89973; File No. SR-FINRA-2020-029]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change Relating to Granularity of Timestamps in Trade Reports Submitted to FINRA's Equity Trade Reporting Facilities

September 23, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 17, 2020, the 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 require firms to report time fields in trade reports submitted to an equity trade reporting facility (or "FINRA Facility")<sup>3</sup> using the same timestamp granularity that they use to report to the consolidated audit trail ("CAT"), in accordance with an SEC order granting exemptive relief from certain CAT NMS Plan requirements.

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

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

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements

may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

##### 1. Purpose

##### Background

FINRA's equity trade reporting rules require members to report all time fields, including time of trade execution and, if applicable, time of trade cancellation, to the FINRA Facilities in seconds (i.e., HH:MM:SS) and milliseconds, if the member's system captures time in milliseconds.<sup>4</sup> Pursuant to Rule 6860 of FINRA's CAT Compliance Rule,<sup>5</sup> Industry Members are required to report timestamps for Reportable Events, including trade executions, to the CAT's Central Repository in milliseconds, and if their system captures time in finer increments, to report in such finer increments up to nanoseconds (except as otherwise provided under Rule 6860 for Manual Order Events).<sup>6</sup> This requirement is consistent with the CAT NMS Plan,<sup>7</sup> the CAT Compliance Rules

<sup>4</sup> See Rules 6282.04 and 7130.01 (relating to the ADF); 6380A.04 and 7230A.01 (relating to the FINRA/Nasdaq TRFs); 6380B.04 and 7230B.01 (relating to the FINRA/NYSE TRF); and 6622.04 and 7330.01 (relating to the ORF).

<sup>5</sup> "Compliance Rule" is defined under Section 1.1 of the CAT NMS Plan to mean "with respect to a Participant, the rule(s) promulgated by such Participant as contemplated by Section 3.11." FINRA's CAT Compliance Rule is the FINRA Rule 6800 Series (Consolidated Audit Trail Compliance Rule).

<sup>6</sup> Terms used but not otherwise defined herein have the meaning set forth in the CAT NMS Plan and FINRA's CAT Compliance Rule. Specifically, "Central Repository," "Industry Member," "Manual Order Event" and "Reportable Event" are defined under Section 1.1 of the CAT NMS Plan and FINRA Rule 6810.

<sup>7</sup> Section 6.8(b) of the CAT NMS Plan states:

Each Participant shall, and through its Compliance Rule shall require its Industry Members to, report information required by SEC Rule 613 and this Agreement to the Central Repository in milliseconds. To the extent that any Participant's order handling or execution systems utilize timestamps in increments finer than the minimum required in this Agreement, such Participant shall utilize such finer increment when reporting CAT Data to the Central Repository so that all Reportable Events reported to the Central Repository can be adequately sequenced. Each Participant shall, through its Compliance Rule: (i) Require that, to the extent that its Industry Members utilize timestamps in increments finer than the minimum required in this Agreement in their order handling or execution systems, such Industry Members shall utilize such finer increment when reporting CAT Data to the Central Repository; and (ii) provide that a pattern or practice of reporting events outside of the required clock synchronization time period without reasonable justification or exceptional

of the other Plan Participants and exemptive relief granted by the SEC relating to timestamp granularity.<sup>8</sup>

Thus, currently there is a difference in the timestamp granularity requirements applicable to member firms reporting to the FINRA Facilities (up to milliseconds) and to the CAT (up to nanoseconds). This difference in timestamp granularity has implications for exemptive relief granted by the SEC. On June 11, 2020, the SEC granted the Plan Participants exemptive relief from, in pertinent part, Section 6.4(d)(ii)(B) of the CAT NMS Plan, which states that each Participant, through its Compliance Rule, must require its Industry Members to report to the CAT a cancelled trade indicator when a trade is cancelled.<sup>9</sup> Specifically, since firms already report trade cancellations to the FINRA Facilities pursuant to FINRA's trade reporting rules, the Participants requested an exemption so that they could relieve firms of their obligation to report the same information to the CAT. Instead, the CAT will obtain trade cancellations from trade report data that FINRA reports to the CAT ("FINRA Facility Data") and will link such data to the related CAT execution reports submitted by Industry Members. As part of the FINRA Facility Data, FINRA submits to the CAT the time of trade cancellation as reported by the firm to the FINRA Facility. As noted above, under current rules and systems limitations, this timestamp is in milliseconds.

Given the difference in timestamp granularity requirements for firms reporting to the FINRA Facilities and the CAT, it is possible that the CAT could receive the time of trade cancellation in milliseconds from FINRA, while the time of trade cancellation for the same event might

circumstances may be considered a violation of SEC Rule 613 and the CAT NMS Plan.

<sup>8</sup> See Securities Exchange Act Release No. 88608 (April 8, 2020), 85 FR 20743 (April 14, 2020). Pursuant to this exemption, Industry Members that capture timestamps in increments more granular than nanoseconds must truncate the timestamps, after the nanosecond level, for submission to the CAT and not round up or down in such circumstances. The exemption remains in effect for five years, until April 8, 2025, unless extended by the SEC.

<sup>9</sup> See Securities Exchange Act Release No. 89051 (June 11, 2020), 85 FR 36631 (June 17, 2020) ("FINRA Facility Data Exemption Order").

FINRA notes that the FINRA Facility Data Exemption Order also grants exemptive relief from Section 6.4(d)(ii)(A)(2) of the CAT NMS Plan, which states that each Participant, through its Compliance Rule, must require its Industry Members to report the SRO-Assigned Market Participant Identifier of the clearing broker or prime broker, if applicable, for orders that are executed in whole or in part. This aspect of the Order is not at issue in the proposed rule change.

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

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

<sup>3</sup> Specifically, the equity FINRA Facilities are (1) the Alternative Display Facility, the FINRA/Nasdaq Trade Reporting Facilities and the FINRA/NYSE Trade Reporting Facility, through which member firms report OTC transactions in NMS stocks to FINRA, and (2) the OTC Reporting Facility, through which member firms report transactions in OTC Equity Securities to FINRA.

have been expressed in increments finer than milliseconds, had the firm reported such information directly to the CAT. In such instances, the CAT would not receive the same data it would have received absent the exemptive relief.<sup>10</sup> As a result, to ensure that the FINRA Facility Data provided to the CAT is equivalent to the data that would have otherwise been submitted by Industry Members, in the FINRA Facility Data Exemption Order, the SEC expressly conditioned the exemptive relief on the FINRA Facilities accepting timestamps up to nanoseconds.

Specifically, the FINRA Facility Data Exemption Order requires that FINRA amend its rules and technical specifications to permit the FINRA Facilities to accept timestamps up to the granularity under the CAT NMS Plan (which, as noted above, is currently up to nanoseconds) and to implement such changes by December 15, 2021 for the TRF's and ADF and by December 15, 2022 for the ORF. In the FINRA Facility Data Exemption Order, the SEC notes that if the Plan Participants do not meet all of the conditions set forth in the order, on the schedule set forth in the order, their ability to recover fees from Industry Members could be impacted pursuant to the terms of Section 11.6 of the CAT NMS Plan.<sup>11</sup>

#### Proposed Amendments to FINRA Trade Reporting Rules

FINRA is proposing to amend its equity trade reporting rules<sup>12</sup> to require Industry Members with an obligation to report order execution events to the Central Repository pursuant to FINRA's CAT Compliance Rule to report time fields (including time of execution and time of cancellation, if applicable) in trade reports submitted to a FINRA Facility using the same timestamp granularity, as set forth in Rule 6860 (currently up to nanoseconds), that they use to report to the Central Repository.

FINRA notes that, except as discussed below, all trades that are reported to a

FINRA Facility must also be reported to the CAT. As such, firms with a trade reporting obligation under FINRA's trade reporting rules also have a CAT reporting obligation and are therefore already subject to the timestamp granularity requirements under the CAT Compliance Rule. Given that CAT Reporters must have systems that capture time in at least milliseconds to meet the requirement that they report to the CAT in milliseconds, FINRA expects such firms to report to the FINRA Facilities in milliseconds under FINRA's current trade reporting rules.<sup>13</sup> Once the proposed rule change is implemented, any firm capturing and reporting time to the CAT in increments finer than milliseconds would be required to report time to the FINRA Facilities in such finer increments up to nanoseconds.

There is one instance where firms have an obligation to report trades to a FINRA Facility without a corresponding CAT reporting obligation. Under FINRA trade reporting rules, firms must report trades in Restricted Equity Securities effected pursuant to Securities Act Rule 144A to the ORF.<sup>14</sup> Unlike trades in OTC Equity Securities, these 144A trades are not required to be reported within 10 seconds<sup>15</sup> and as such are not reportable to the CAT.<sup>16</sup> Therefore, in this limited instance, *i.e.*, where a firm reports a trade in a Restricted Equity Security effected pursuant to Rule 144A, the firm could report to the ORF in seconds or, if the firm's system captures time in milliseconds, the firm would be required to report in milliseconds. The firm would not be required under the proposed rule change to report in

increments finer than milliseconds; however, they could voluntarily do so.

Because the FINRA Facilities do not currently accept timestamps more granular than milliseconds, FINRA is unable to estimate, based on trade report information, how many firms capture time in increments more granular than milliseconds or have trade reporting systems capable of reporting time to a FINRA Facility in such finer increments. However, FINRA reviewed reporting statistics for order execution events in NMS stocks and OTC equity securities reported by Industry Members to the CAT (referred to in the CAT Industry Member Technical Specifications as "MEOTs") during the month of July 2020. On an average day, 12,617,227 out of 32,667,792 Industry Member order execution events (or 38.6%) have a timestamp granularity finer than milliseconds. Of the 167 firms that reported order execution events on an average day, 79 firms (or 47.2%) used a timestamp granularity finer than milliseconds. Seven of those firms reported time in nanoseconds, and together they reported 1,792,160 order execution events (or 5.5% of the total number of order execution events).

Some of these firms may already send timestamps to a FINRA Facility in increments finer than milliseconds;<sup>17</sup> FINRA does not believe that these firms would need to make any systems changes to comply with the proposed rule change. Other firms that capture time in increments finer than milliseconds may truncate the timestamp before sending to the FINRA Facility; these firms would need to make systems changes to send the more granular timestamp to the FINRA Facility. As noted above, FINRA will provide ample advance notice prior to the implementation date of the proposed rule change to allow firms to make and test the necessary systems changes.

FINRA understands that the securities information processors ("SIPs") currently accommodate timestamps up to nanoseconds<sup>18</sup> and at least some of the exchanges send quotation and transaction information to the SIPs in nanoseconds today. Once the proposed rule change is implemented, the FINRA Facilities will send transaction information to the SIPs with timestamps

<sup>10</sup> For example, a firm cancels a trade at 10:30:00.123456 and reports the cancellation to a FINRA Facility with a trade cancellation time of 10:30:00.123 (the timestamp is truncated at the millisecond level for reporting to the FINRA Facility). As a consequence of the FINRA Facility Data Exemption Order, the data in the CAT reflects the time of cancellation as 10:30:00.123, which is the time submitted in the FINRA Facility Data. Had the firm reported the trade cancellation directly to the CAT, the data in the CAT would reflect the time of cancellation as 10:30:00.123456.

<sup>11</sup> See FINRA Facility Data Exemption Order, citing CAT NMS Plan at Section 11.6 (effective June 22, 2020).

<sup>12</sup> See Rules 6282.04, 6380A.04, 6380B.04, 6622.04, 7130.01, 7230A.01, 7230B.01 and 7330.01. FINRA is proposing identical amendments to these rules.

<sup>13</sup> Small Industry Members that do not currently report to FINRA's Order Audit Trail System ("OATS") are not required to begin reporting to the CAT until December 13, 2021. Accordingly, FINRA would not expect these non-OATS reporters to report to the FINRA Facilities in milliseconds until December 13, 2021, unless their systems currently capture milliseconds.

<sup>14</sup> See Rule 6622(a)(3).

<sup>15</sup> Pursuant to Rule 6622(a)(3), such trades must be reported by the end of the day on trade date or, if executed after the ORF closes, by 8:00 p.m. the next business day. These trades are reported for regulatory purposes only and are not publicly disseminated.

<sup>16</sup> The CAT NMS Plan and FINRA's CAT Compliance Rule apply to "Eligible Securities," which are defined as all NMS Securities and all OTC Equity Securities. "OTC Equity Security" is defined, in turn, as "any equity security, other than an NMS Security, subject to prompt last sale reporting rules of a registered national securities association and reported to one of such association's equity trade reporting facilities." See Rule 6810. Accordingly, order and trade events relating to Restricted Equity Securities, including trades effected pursuant to Rule 144A, are not reportable to CAT.

<sup>17</sup> If a FINRA Facility receives a timestamp more granular than milliseconds, the Facility will truncate at the millisecond level (the Facility will not reject the trade report, nor will it round the timestamp up or down).

<sup>18</sup> Today, where a firm reports time in seconds or milliseconds, the FINRA Facilities add zeroes to convert the times to nanoseconds before sending to the SIPs.

at the level of granularity as reported by the firm.<sup>19</sup> As such, FINRA believes that the proposed rule change will enhance the granularity and sequencing of trade reports both for purposes of FINRA's audit trail and the publicly disseminated SIP data, to the extent firms are reporting time in increments finer than milliseconds. FINRA notes that, because not all firms capture and report timestamps at the same granularity, there may be questions about the potential for reverse engineering based on timestamps published by the SIPs, *e.g.*, could market participants attempt to identify the trading activity of a firm that they believe has the technological capability of capturing timestamps in nanoseconds. However, as noted above, on average, seven firms currently capture (and report to CAT) time in nanoseconds and these firms reported on average close to 1.8 million order execution events to CAT per day. FINRA believes that as more firms capture timestamps in more granular increments, the potential for such reverse engineering should decrease over time.

If the Commission approves the proposed rule change, FINRA will announce the implementation date of the proposed rule change in a *Regulatory Notice*. The implementation date of the proposed rule change relating to the TRFs and ADF will be no later than December 15, 2021, and the implementation date of the proposed rule change relating to the ORF will be no later than December 15, 2022. To provide member firms sufficient time to make any systems changes necessary to comply with the proposed rule change, FINRA will provide ample advance notice of the implementation date, including publication of the *Regulatory Notice*, as well as updated technical specifications and testing schedule, at

least 120 days prior to the implementation date.

## 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>20</sup> which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest and Section 15A(b)(9) of the Act,<sup>21</sup> which requires that FINRA rules not impose any burden on competition that is not necessary or appropriate.

FINRA believes that the proposed rule change is consistent with the Act because it is consistent with the SEC's FINRA Facility Exemption Order, which provides exemptive relief from certain provisions of the CAT NMS Plan, and the proposed rule change is necessary to comply with the express conditions of that order. In approving the CAT NMS Plan, the SEC noted that the Plan "is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act."<sup>22</sup> Because the proposed rule change implements exemptive relief under the CAT NMS Plan, FINRA believes that the proposed rule change furthers the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Act. In addition, FINRA believes that the proposed rule change will enhance the granularity and sequencing of trade reports both for purposes of FINRA's audit trail and the publicly disseminated SIP data, to the extent firms are reporting time in increments finer than milliseconds.

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

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

## Economic Impact Assessment

FINRA has undertaken an economic impact assessment, as set forth below, to analyze the potential economic impacts, including anticipated costs, benefits, and distributional and competitive

effects, relative to the current baseline, and the alternatives FINRA considered in assessing how to best meet its regulatory objectives.

## Regulatory Need

On June 11, 2020, the SEC granted the Plan Participants exemptive relief from, in pertinent part, Section 6.4(d)(ii)(B) of the CAT NMS Plan, which states that each Participant, through its Compliance Rule, must require its Industry Members to report to the CAT a cancelled trade indicator when a trade is cancelled. As firms already report trade cancellations to the FINRA Facilities pursuant to FINRA's trade reporting rules, the Participants requested an exemption so that they could relieve firms of their obligation to report the same information to the CAT. Given the exemptive relief, the CAT will obtain trade cancellations from trade report data that FINRA reports to the CAT and will link such data to the related CAT execution reports submitted by Industry Members.

There is, however, a difference in the timestamp granularity requirements applicable to member firms reporting to the FINRA Facilities (up to milliseconds) and to the CAT (up to nanoseconds). Given the difference in timestamp granularity requirements for firms reporting to the FINRA Facilities and the CAT, it is possible that the CAT could receive a cancelled trade timestamp in milliseconds from FINRA, while a cancelled trade timestamp for the same trade cancellation might have been expressed in increments finer than milliseconds. In such instances, the CAT would not receive the same data it would have received absent the exemptive relief. The FINRA Facility Data Exemption Order requires that FINRA amend its rules and technical specifications to permit the FINRA Facilities to accept timestamps up to the granularity under the CAT NMS Plan.

## Economic Baseline

Pursuant to Rule 6860 of FINRA's CAT Compliance Rule, Industry Members are required to report timestamps for Reportable Events, including trade executions, to the CAT's Central Repository in milliseconds, and if their system captures time in finer increments, to report in such finer increments up to nanoseconds. The proposed rule change does not require firms to begin capturing time in more granular increments than milliseconds; however, if they are reporting timestamps to the CAT in increments finer than milliseconds, the proposed rule change requires that they also

<sup>19</sup> FINRA notes that the SIP NMS Plans require FINRA to send the trade execution time reported by its member firms to the SIPs. See Section IV(c) of the Consolidated Tape Association (CTA) Plan and Section VIII.B of the Nasdaq Unlisted Trading Privileges (UTP) Plan (stating that "in the case of FINRA, the time of the transaction shall be the time of execution that a FINRA member reports to a FINRA trade reporting facility in accordance with FINRA rules"). As such, once the FINRA Facilities begin accepting, and member firms begin reporting, more granular timestamps in accordance with the proposed rule change, FINRA will be required to send all timestamps in the granularity reported by the firm (up to nanoseconds) to the SIPs for publication. Any change (*e.g.*, truncating a more granular timestamp to the millisecond or microsecond level before sending to the SIPs) would require amendment (or, at a minimum, interpretation) of the SIP NMS Plans by the Plan Participants jointly and is beyond the scope of this proposed rule change.

<sup>20</sup> 15 U.S.C. 78o-3(b)(6).

<sup>21</sup> 15 U.S.C. 78o-3(b)(9).

<sup>22</sup> See Securities Exchange Act Release No. 79318 (November 15, 2016), 81 FR 84696, 84697 (November 23, 2016).

report to the FINRA Facilities in such finer increment (up to nanoseconds).

During the month of July 2020, 202 market participant identifiers ("MPIDs") submitted at least one trade cancellation message to a FINRA Facility. In total, 57,325 trade cancellation messages were submitted to the FINRA Facilities in July 2020 by these 202 MPIDs. Each of the 57,325 cancellation messages reported to the FINRA Facilities would then be reported to CAT by FINRA. Some of these cancellation messages are not publicly disseminated.<sup>23</sup> Out of the 202 MPIDs, 146 MPIDs submitted at least one trade cancellation message to a FINRA Facility that was publicly disseminated in July 2020. Of the total 57,325 cancellation messages, 14,539 were publicly disseminated.

Because the FINRA Facilities do not currently accept timestamps more granular than milliseconds, FINRA is unable to estimate, based on trade report information, how many firms capture time in increments more granular than milliseconds or have trade reporting systems capable of reporting time to a FINRA Facility in such finer increments. FINRA, however, has reviewed reporting statistics for order execution events<sup>24</sup> in NMS stocks and OTC equity securities reported by Industry Members to the CAT. On an average day in July 2020, 12,617,227 out of 32,667,792 Industry Member order execution events (or 38.6%) have a timestamp granularity finer than milliseconds. Of the 167 firms<sup>25</sup> that reported order execution events on an average day, 79 firms (or 47.2%) used a timestamp granularity finer than milliseconds (*i.e.*, microseconds or nanoseconds). Seven of those firms reported time in nanoseconds, and together these firms reported 1,792,160 order execution events (or 5.5% of the total number of order execution events).

#### Economic Impact

##### Benefits

Given the exemptive relief, firms reporting trade cancellations to the FINRA Facilities are not required to report the same information to CAT, as CAT will obtain trade cancellations from trade report data that FINRA reports to the CAT. Consequently, firms

are not required to report trade cancellations to both the FINRA Facilities and CAT.

Once the proposed rule change is implemented, any firm capturing and reporting time to the CAT in increments finer than milliseconds would be required to report time to the FINRA Facilities in such finer increments up to nanoseconds. This may enhance the granularity and sequencing of trade reports for FINRA's audit trail, which, in turn, may improve FINRA's ability to surveil equity markets. In addition, as the FINRA Facilities send transaction information to the SIPs with timestamps at the level of granularity as reported, the granularity of the publicly disseminated SIP would improve. This would benefit market participants who currently use data from the SIP, as the timestamps would be more granular.

##### Costs

Some firms that capture time in increments finer than milliseconds may already send timestamps to a FINRA Facility in such finer increment. If a firm already submits timestamps to a FINRA Facility in increments finer than milliseconds, then the firm would not need to make any systems changes to comply with this proposed rule change. However, if a firm currently truncates more granular timestamps at the millisecond level before sending to a FINRA Facility, then the firm would incur costs to make system changes to report more granular timestamps, up to nanoseconds. On an average day in July 2020, seven firms reported 1,792,160 order execution events to the CAT with timestamps reported in nanoseconds. As not all firms capture and report timestamps at that same granularity, there is a risk that firms that report executions with nanosecond timestamps published in the SIP may be identified by potential reverse engineering. This may put firms that report executions with nanosecond timestamps at a competitive disadvantage, relative to firms that do not report executions in nanoseconds, because firms reporting in nanoseconds might be identified by their executions. This risk of potential reverse engineering may decline over time as more firms capture timestamps in more granular increments.

##### Alternatives Considered

No further alternatives are under consideration.

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

Written comments were neither solicited nor received.

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

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](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2020-029 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-2020-029. 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 website (<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

<sup>23</sup> FINRA notes that where the original trade report was submitted for non-dissemination (*i.e.*, regulatory and/or clearing only) purposes, the cancellation of that report would not be disseminated.

<sup>24</sup> Order execution events are referred to in the CAT Industry Member Technical Specifications as "MEOTs."

<sup>25</sup> The number of firms is calculated by the number of unique Central Registration Depository ("CRD") numbers.

provisions of 5 U.S.C. 552, will be available for website 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FINRA-2020-029 and should be submitted on or before October 20, 2020.

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

**J. Matthew DeLesDernier,**  
Assistant Secretary.

[FR Doc. 2020-21409 Filed 9-28-20; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-89968; File No. SR-IEX-2020-15]

### Self-Regulatory Organizations: Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Transaction Fees Pursuant to IEX Rule 15.110 Concerning the CQ Remove Fee

September 23, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 11, 2020, the Investors Exchange LLC ("IEX" or the "Exchange") 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 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

Pursuant to the provisions of Section 19(b)(1) under the Act,<sup>3</sup> and Rule 19b-

4 thereunder,<sup>4</sup> IEX is filing with the Commission a proposed rule change, pursuant to IEX Rule 15.110(a) and (c), to remove the Crumbling Quote Remove Fee ("CQ Remove Fee" or "CQRF"). Fee changes pursuant to this proposal are effective upon filing,<sup>5</sup> and will be implemented as described herein.

The text of the proposed rule change is available at the Exchange's website at [www.iextrading.com](http://www.iextrading.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 self-regulatory organization 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 self-regulatory organization 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 Exchange proposes to amend its fee schedule, pursuant to IEX Rule 15.110 (a) and (c), to eliminate the CQ Remove Fee, which is an additional fee on Members that that execute more than a certain threshold of orders that take liquidity during periods when the IEX crumbling quote indicator ("CQI") is on for the security in question.

###### Background

The CQI is a transparent proprietary mathematical calculation (specified in IEX Rule 11.190(g)) designed to predict whether a particular quote is unstable or "crumbling," meaning that the NBB is likely about to decline or the NBO is likely about to increase. The Exchange utilizes real time relative quoting activity of certain Protected Quotations<sup>6</sup> and the proprietary mathematical calculation (the "quote instability

calculation") to assess the probability of an imminent change to the current Protected NBB to a lower price or Protected NBO to a higher price for a particular security ("quote instability factor"). When the quoting activity meets predefined criteria and the quote instability factor calculated is greater than the Exchange's defined quote instability threshold, the System<sup>7</sup> treats the quote as unstable and the CQI is on. During all other times, the quote is considered stable, and the CQI is off. The System independently assesses the stability of the Protected NBB and Protected NBO for each security. When the System determines that a quote, either the Protected NBB or the Protected NBO, is unstable, the determination remains in effect at that price level for up to two milliseconds.

IEX currently offers two non-displayed order types—Discretionary Peg<sup>8</sup> and primary peg<sup>9</sup>—that each leverage the protective features of the CQI by restricting such orders from exercising price discretion to a more aggressive price when the CQI is on. As described more fully below, the Commission recently approved a new IEX order type—D-Limit—that can be displayed or non-displayed and will also leverage the protective features of the CQI and is pending deployment. Prior to deployment of the D-Limit order type, the CQ Remove Fee has been the only IEX functionality that was designed to leverage the CQI to protect displayed orders.

In the absence of a displayed order type that could leverage the protective features of the CQI, the CQ Remove Fee was designed to incentivize market participants to send orders (including displayed orders) to provide liquidity to IEX by reducing the volume of orders involving latency arbitrage trading strategies that seek to exploit information advantages during narrow time windows when the CQI is on.

The Exchange currently charges the CQ Remove Fee to orders that remove resting liquidity when the CQI is on if such executions exceed the CQRF Threshold.<sup>10</sup> Executions of orders that remove resting liquidity during periods when the CQI is on are assessed a fee of \$0.0030 per each incremental share

<sup>7</sup> See IEX Rule 1.160(nn).

<sup>8</sup> See IEX Rule 11.190(b)(10). IEX has two other order types that are based on the DPeg order type: The Retail Liquidity Provider order and the Corporate Discretionary Peg order. See IEX Rule 11.190(b)(14) and (16).

<sup>9</sup> See IEX Rule 11.190(b)(8).

<sup>10</sup> The threshold is equal to 5% of the sum of a Member's total monthly executions on IEX, measured on a per logical port (i.e., session) per MPID basis. See Investors Exchange Fee Schedule, available on the Exchange public website.

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

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

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

<sup>3</sup> 15 U.S.C. 78s(b)(1).

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

<sup>5</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>6</sup> Pursuant to IEX Rule 11.190(g), references to "Protected Quotations" include quotations from the New York Stock Exchange LLC ("NYSE"); The Nasdaq Stock Market LLC ("Nasdaq"); NYSE Arca, Inc. ("NYSE Arca"); Nasdaq BX, Inc. ("Nasdaq BX"); Cboe BZX Exchange, Inc. ("Cboe BZX"); Cboe BYX Exchange, Inc. ("Cboe BYX"); Cboe EDGX Exchange, Inc. ("EDGX"); and Cboe EDGA Exchange, Inc. ("EDGA").