



January 15, 2014

Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: File No. SR-FINRA-2013-042 - Response to Comments

Dear Ms. Murphy:

As a courtesy to commenters, attached is Amendment No. 1 to the above-referenced proposed rule change that was filed with the Securities and Exchange Commission earlier today. The Amendment includes FINRA's response to the comments raised.

If you have any questions, please contact me at (202) 728-6927.

Sincerely,

Brant K. Brown
Associate General Counsel

Attachment

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Filing by Financial Industry Regulatory Authority

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * Amendment * Withdrawal Section 19(b)(2) * Section 19(b)(3)(A) * Section 19(b)(3)(B) *

Pilot Extension of Time Period for Commission Action *

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010 Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 806(e)(1) * Section 806(e)(2) * Section 3C(b)(2) *

Description

Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name * Brant Last Name * Brown

Title * Associate General Counsel

E-mail * brant.brown@finra.org

Telephone * (202) 728-6927 Fax (202) 728-8264

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

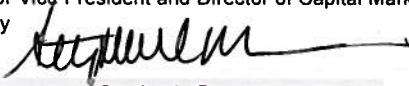
(Title *)

Date 01/15/2014

By Stephanie Dumont

(Name *)

Senior Vice President and Director of Capital Markets Policy



Stephanie Dumont,

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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFF website.

Form 19b-4 Information *

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

On September 30, 2013, FINRA filed with the Securities and Exchange Commission (“SEC” or “Commission”) SR-FINRA-2013-042, a proposed rule change to (i) adopt Rule 4552 to require each alternative trading system (“ATS”) to report to FINRA weekly volume information and number of trades regarding securities transactions within the ATS; and (ii) amend Rules 6160, 6170, 6480, and 6720 to require each ATS to acquire and use a single, unique market participant identifier (“MPID”) when reporting information to FINRA (“Proposal”). As noted in the Proposal, FINRA will make the reported volume and trade count information for equity securities publicly available on its web site.¹ The SEC published the Proposal in the Federal Register for notice and comment on October 22, 2013,² and the SEC received ten comment letters.³

¹ As noted in the Proposal, FINRA intends to make the general information available to the public on its website free of charge. In addition, FINRA intends to establish a fee for professional use of the data, which could include access to historical data, more sophisticated formats and delivery of the data, or other information. The fee will be established pursuant to a separate proposed rule change.

² See Securities Exchange Act Release No. 70676 (October 11, 2013), 78 FR 62862 (October 22, 2013) (Notice of Filing of File No. SR-FINRA-2013-042).

³ See Letter from Donald Bollerman, Head of Market Operations, IEX Services LLC, to Elizabeth M. Murphy, Secretary, SEC, dated November 11, 2013 (“IEX”); letter from Theodore R. Lazo, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, to Elizabeth M. Murphy, Secretary, SEC, dated November 11, 2013 (“SIFMA”); letter from Ari Burstein, Senior Counsel, Investment Company Institute, to Elizabeth M. Murphy, Secretary, SEC, dated November 12, 2013 (“ICI”); letter from Thomas M. Carter, Chairman of the Board & James Toes, President & CEO, Security Traders Association, to Elizabeth M. Murphy, Secretary, SEC, dated November 12, 2013 (“STA”); letter from Scott C. Goebel, Senior Vice President and Deputy General Counsel, Fidelity Investments, to Elizabeth M. Murphy, Secretary, SEC, dated November 12, 2013 (“Fidelity”); letter from Manisha Kimmel, Executive Director, Financial Information Forum, to Elizabeth M. Murphy, Secretary, SEC, dated November 12, 2013 (“FIF”); letter from Elizabeth K. King, Global Head of Regulatory Affairs, KCG Holdings, Inc., to Elizabeth M. Murphy, Secretary, SEC, dated November 12, 2013 (“KCG”); letter from Howard Meyerson, General Counsel, Liquidnet, Inc., to Elizabeth M. Murphy, Secretary, SEC, dated November 12, 2013 (“Liquidnet”); letter from William White, Head of Electronic Trading, Barclays Capital Inc., to Elizabeth M. Murphy, Secretary, SEC, dated November 12, 2013 (“Barclays”); and letter from Janet McGinness, EVP & Corporate Secretary, General Counsel, NYSE Markets, to Elizabeth M. Murphy, Secretary, SEC, dated November 15, 2013 (“NYSE”).

FINRA is filing this Amendment No. 1 to respond to comments submitted to the SEC regarding the Proposal and to propose new supplementary material clarifying the volume that should be reported by ATSS.

In addition, this Amendment No. 1 makes the following changes to the proposed rule change:

1. In Form 19b-4, the paragraph beginning on page 3 and ending on page 4, and in Exhibit 1, the second full paragraph on page 35, FINRA proposes to replace the word “effective” with “implementation” throughout the paragraph. As amended, the paragraph reads as follows:

FINRA will announce the implementation date of the proposed rule change in a Regulatory Notice to be published no later than 30 days following Commission approval. The implementation date for the ATS reporting requirement will be no later than 90 days following publication of the Regulatory Notice announcing Commission approval. The implementation date for the MPID requirement will be no later than 270 days following publication of the Regulatory Notice announcing Commission approval.

2. In Form 19b-4, the first paragraph on page 17, FINRA proposes to replace the word “effective” with “implementation” throughout the paragraph. As amended, the paragraph reads as follows:

As noted in Item 2 of this filing, FINRA will announce the implementation date of the proposed rule change in a Regulatory Notice to be published no later than 30 days following Commission approval. The implementation date for the ATS reporting requirement will be no later than 90 days following publication of the Regulatory Notice announcing Commission approval. The implementation date for the MPID requirement will be no later than 270 days following publication of the Regulatory Notice announcing Commission approval.

This change is intended to clarify that the proposed rule change, including the provisions making the rules permitting multiple MPIDs permanent, will be effective upon Commission approval but will not be implemented upon Commission approval.

Finally, this Amendment No. 1 amends FINRA Rules 4552, 6160, 6170, 6480, and 6720 to reflect a change in FINRA’s style convention when referencing federal securities laws and rules by changing the references in those rules from “SEA Rule 300” to “Rule 300 of SEC Regulation ATS” and changing the reference in Rule 4552 from “SEA Rule 600(b)(47)” to “Rule 600(b)(47) of SEC Regulation NMS.”

As a general matter, the commenters supported the Proposal; however, each commenter made specific recommendations. The comments, and FINRA's responses thereto, are described below.

1. Scope of the Rule

Although most commenters supported the Proposal, several commenters expressed support for broadening certain requirements of the proposed rule change.⁴ For example, NYSE recommended that FINRA require ATSS to report end-of-month, trade-by-trade data. NYSE also suggested that all trading venues, including ATSSs, internalizers, and exchanges, be required to provide basic information on trading rules, order types, and pricing structures. Liquidnet stated that it would support a future requirement that individual ATS trades be identified to the public, subject to an appropriate delay. Fidelity recommended that FINRA provide additional market quality statistics (e.g., pricing information at the time of execution).

As noted in the Proposal, FINRA considered a variety of alternatives, but FINRA believes the proposed approach is an appropriate first step toward increased transparency in the over-the-counter market. FINRA will consider additional steps, including those suggested by the commenters, going forward after the initial ATS requirements are implemented.⁵

2. Reporting Timeframe

Under the Proposal, ATSSs are required to report weekly aggregate volume information on a security-by-security basis to FINRA. FINRA would disseminate the information on a two-week delayed basis for certain securities and a four-week delayed basis for others.⁶ Some commenters suggested FINRA require monthly, rather than weekly, reporting, which would allow some data to be disseminated more quickly after the reports are due and thus have little impact on the public availability of the data.⁷ Some commenters noted that ATSSs generally already aggregate this information on a monthly basis for purposes of reporting information pursuant to Rule 605 of Regulation NMS.⁸

⁴ See Fidelity, ICI, KCG, NYSE.

⁵ FINRA notes that certain of the suggestions, such as those imposing requirements on exchange activity, are beyond FINRA's jurisdiction.

⁶ FINRA is proposing to initially publish the information regarding NMS stocks in Tier 1 of the NMS Plan to Address Extraordinary Market Volatility (i.e., those NMS stocks in the S&P 500 Index or the Russell 1000 Index and certain ETPs) on a two-week delayed basis and the information on all other NMS stocks and OTC Equity Securities subject to FINRA trade reporting requirements on a four-week delayed basis.

⁷ See IEX, SIFMA, STA.

⁸ See 17 CFR 242.605.

As noted in the Proposal, FINRA considered a variety of alternatives, but believes that weekly information, with an appropriate delay in dissemination, balances the need to provide detailed information with timely dissemination. FINRA believes that the weekly information will provide more granularity to firms and the general public and, because ATSS are already required by Regulation ATS to maintain the information that must be reported, FINRA believes the burden to ATSS will be minor.⁹

3. Reporting Mechanism

Several commenters suggested that FINRA facilitate compliance with the reporting requirement by providing ATSS with a standard format for reporting volume information to FINRA. For example, FIF recommended that FINRA establish a standard spreadsheet template to be used by all ATSS to submit data to FINRA via email. Fidelity and SIFMA requested more generally that FINRA provide a standard format. Liquidnet stated that a 90-day implementation period should suffice “subject to FINRA providing a reporting format for reporting the data that is straightforward for firms to implement.”

FINRA agrees with the commenters that the reporting requirement should be as efficient as possible, and if the Proposal is approved, FINRA intends to work with firms to develop a standard format for reporting the information to ensure it is reported in a uniform and straightforward way.

4. Sunsetting of the Reporting Requirement

Several commenters requested that FINRA provide a more explicit statement that it was committed to removing the reporting requirement once the MPID requirement is in place.¹⁰ Some commenters suggested that firms already using unique MPIDs for their ATSS not be required to report,¹¹ and one commenter recommended that FINRA eliminate the reporting requirement since it would be an interim measure to allow firms to focus on the MPID requirement.¹²

As noted in the Proposal, FINRA intends to evaluate the reporting requirement after the MPID requirement is implemented to determine whether reporting continues to be necessary. If the MPID requirement is operating as anticipated, FINRA will eliminate the reporting

⁹ FINRA notes that one commenter indicated that ATSS should be able to comply with the reporting requirement within the proposed 90-day implementation timeframe provided the reporting mechanism was straightforward. See Liquidnet.

¹⁰ See Fidelity, FIF, KCG, SIFMA, STA.

¹¹ Barclays, FIF.

¹² Fidelity.

requirement for ATSS subject to FINRA trade reporting requirements.¹³ For those ATSS already using separate MPIDs, FINRA believes reporting is initially still necessary for comparison purposes; thus, initially, all ATSS will be required to report volume information to FINRA even if they already use a unique MPID for reporting information to FINRA. As indicated by the generally positive comments received, FINRA believes increased transparency in the over-the-counter market is necessary and beneficial and can be more readily achieved through reporting requirements before the MPID requirement is implemented. Consequently, FINRA declines to eliminate the reporting requirement from the first phase of the Proposal but reaffirms its commitment to reassessing its need following implementation of the MPID requirement, and if the MPID requirement is operating as anticipated, FINRA will eliminate the reporting requirement at that time for ATSS subject to FINRA trade reporting requirements.

5. Proposed Fee

Seven commenters objected, on some level, to FINRA charging a fee for some of the ATS data that will be made available.¹⁴ These comments ranged from asserting that the information should be provided free of charge to requesting more information on the fee itself. Several commenters asserted that a fee conflicts with the principles of accessibility of information and transparency,¹⁵ and some noted that free information may better facilitate analysis and market transparency and is consistent with the SEC's publication of market information.¹⁶ One commenter suggested that, given the delayed and limited scope of data, the effort to establish entitlements and fees was not justified,¹⁷ while another stated that since FINRA is not producing or validating the information, a fee is unnecessary.¹⁸

As noted in the Proposal, FINRA intends to make aggregated trade data reported by ATSS available on its website; however, FINRA does intend to establish a fee for professional use of the data via download to recover some of the costs associated with its collection and

¹³ An ATS that meets specified criteria can apply for an exemption from its trade reporting obligations. See FINRA Rules 6183, 6625 and 6731. Any ATS that is granted an exemption will likely need to continue to report, even after the MPID requirement is implemented, because its volume will not be captured by the use of a unique MPID in trade reports. The terms of the exemption already require exempt ATSS to provide FINRA with data relating to the volume of trades by security executed by the ATS's member subscribers using the ATS's system. FINRA may also consider making another field available on trade reports to identify the exempt ATS in those circumstances.

¹⁴ Barclays, Fidelity, FIF, ICI, IEX, Liquidnet, STA.

¹⁵ Barclays, Fidelity, Liquidnet.

¹⁶ See Barclays, Fidelity, FIF.

¹⁷ See FIF.

¹⁸ See Fidelity.

dissemination. Based on the information reported by the ATSS, FINRA will generate reports listing aggregate volume and number of trades by security for each ATS within the designated time period. These reports (the current report and limited rolling historic reports) will be viewable online via the FINRA.org website, and FINRA will provide a basic web display listing all reporting ATSS and aggregate volume for each symbol in which a trade was reported by the ATS during the designated time period. In addition to viewing the data via the FINRA.org website, professional users and data vendors will also have the ability to download the reports electronically for their internal use or, in the case of data vendors, for redistribution.¹⁹

Although FINRA appreciates and will consider the commenters' concerns, the fee will be subject to a separate filing, which will include, among other things, the proposed amount of the fee and its specific structure. Therefore, FINRA does not believe the comments regarding the fee need to be addressed as part of the Commission's consideration of the current Proposal.

6. Retrospective Review

One commenter recommended that FINRA conduct a "second comment period" twelve months after the implementation date to review the effects of the rule and provide informed input based on empirical data.²⁰ The commenter included a list of specific items that it believed could be better addressed in a post-implementation comment period, including an assessment of whether the proposed rule has enhanced FINRA's regulatory and surveillance efforts, the burdens and costs imposed on ATSS, and whether the disclosure timeframes have resulted in damaging information leakage.

FINRA does not believe that, if the Proposal is approved, a formal "second comment period" should be instituted for this rule, but, as noted in the Proposal, FINRA "intends periodically to assess the reporting and publication of information to consider whether modifications to the scope of securities covered, the delay between the activity and publication, or the frequency of publication of the information are appropriate." FINRA discussed the proposed requirement for ATSS to use single, unique MPIDs with several of its industry committees and a number of ATS operators, and these consulted firms generally supported the proposed MPID requirement. Several firms noted that requiring unique MPIDs could impose costs on some firms resulting from systems changes needed to incorporate multiple MPIDs; however, other firms indicated that they already use a separate MPID for their ATS reporting and, therefore, such a requirement would not be burdensome. FINRA stated in the Proposal that although some firms may incur costs associated with acquiring and using multiple MPIDs,

¹⁹ The professional downloadable reports will provide the same data as the web-based reports but in pipe delimited format. As noted in the Proposal, FINRA intends to charge a fee to professional users and data vendors but will file a separate rule change proposing such fees. FINRA expects the fee structure to include assignment of an enterprise license to professional users that would be issued and paid for annually, while data vendors would pay a similar annual fee for the right to redistribute the data.

²⁰ STA.

FINRA believes that using a separate MPID for each ATS is feasible on an ongoing basis, and that the primary costs result from initial changeover costs. In fact, many members already voluntarily use separate MPIDs to report ATS transactions. FINRA notes that none of the commenters disagreed with this statement, and FINRA continues to believe that the burdens imposed by the Proposal will be minimal for many firms and that the proposed delays in dissemination are sufficient to avoid potentially damaging information leakage of trading information.²¹

7. Fixed Income ATSS

One commenter stated that “[a]s FINRA is aware, it is common practice on fixed income ATSS . . . for many trades to be given up to the broker-dealer counterparties to the trade and then reported by those counterparties to FINRA. In these cases, trades would not be reported to FINRA with an ATS MPID, but with the MPIDs of the broker-dealer counterparties.”²² The commenter suggested that FINRA create a new field in trade reports that would allow reporting counterparties to indicate the MPID of an ATS on which a trade may have been executed.

With respect to TRACE-Eligible Securities, a member that is a “Party to a Transaction” as defined in FINRA Rule 6710(e) must report the trade to TRACE under Rule 6730(a).²³ “Party to a Transaction” is defined as “an introducing broker-dealer, if any, an executing broker-dealer, or a customer.”²⁴ An ATS, which term includes electronic communications networks, is a Party to a Transaction and has a trade reporting obligation when a transaction in a TRACE-Eligible Security is executed through the ATS.²⁵ Similarly, FINRA equity trade reporting rules require that over-the-counter transactions between members be reported to FINRA by the “executing party.”²⁶ “Executing party” is defined as the member that receives an order for handling or

²¹ One commenter specifically noted that it agrees “with FINRA’s statement in the Release that these delays are appropriate and are adequate to prevent potential information leakage regarding sensitive trading activity, particularly in more illiquid securities.” ICI.

²² KCG.

²³ See Rule 6730(a). In transactions between members, each member must report the trade, and for transactions between a member and a customer, the member must report the trade.

²⁴ Under Rule 6710(e), “customer” includes a broker-dealer that is not a FINRA member.

²⁵ See www.finra.org/Industry/Compliance/MarketTransparency/TRACE/FAQ/P125244#reporting (FAQ: **Who reports trades executed through electronic trading systems that are themselves broker-dealers?** All FINRA members that are “parties to a transaction” have a trade reporting obligation under TRACE Rules. Where two FINRA members effect/execute a transaction through an electronic trading system that is registered as a broker-dealer, both members, as well as the electronic trading system would have a trade reporting obligation).

²⁶ See Rules 6282, 6380A, 6380B, and 6622.

execution or is presented an order against its quote, does not subsequently re-route the order, and executes the transaction. An ATS is the “executing party” and has the trade reporting obligation where the transaction is executed on the ATS.²⁷

As noted in the Proposal, however, some differences do exist between the existing equity and debt trade reporting regimes, and this is one of the reasons FINRA is not disseminating information on debt ATS transactions initially. To further ensure uniform reporting, FINRA is proposing in this Amendment No. 1 to add supplementary material clarifying the volume that must be reported by ATSs. Under the proposed supplementary material, volume would be considered to be “within an ATS” for purposes of the rule if the ATS (i) executes the trade; (ii) is considered the “executing party” to the trade under FINRA rules; or (iii) otherwise matches orders constituting the trade in a manner as contemplated by SEC Rule 3b-16²⁸ or SEC Regulation ATS.²⁹ Thus, for example, a trade would be considered to have occurred “within an ATS” for purposes of the proposed rule if the ATS uses established, non-discretionary methods under which orders interact with each other, and the buyers and sellers entering the orders agree to the terms of the trade.³⁰ The proposed supplementary material would further clarify that this “within an ATS” standard would include, but not be limited to:

- any trade executed as a result of the ATS bringing together the purchaser and seller on or through its system;
- any trade executed by the ATS’s subscribers where the subscribers used the ATS to negotiate the trade, even if the ATS did not itself execute the trade; or
- any trade in which the ATS takes either side of a trade for clearing or settlement or in any other way inserts itself into a trade (e.g., exchanging securities or funds on behalf of one or both subscribers taking part in the trade).

If an ATS routes an order to another member firm or other execution venue for handling or execution where that initial order matches against interest resident at the other venue, then the trade would not be considered “within an ATS” (i.e., the ATS would not be considered to have executed the trade or to be the executing party) and would not include such volume for reporting

²⁷ See Securities Exchange Act Release No. 58903 (November 5, 2008), 73 FR 67905 (November 17, 2008) (Order Approving File No. SR-FINRA-2008-011); and Regulatory Notice 09-08 (January 2009). See also, e.g., Trade Reporting Frequently Asked Questions, Sections 203, 307 and 308, available at www.finra.org/Industry/Regulation/Guidance/P038942.

²⁸ See 17 CFR 240.3b-16.

²⁹ See 17 CFR 242.300 et seq.

³⁰ See 17 CFR 240.3b-16(a)(2).

purposes.³¹ As noted above, FINRA is considering potential modifications to trade reports to identify ATSS on trade reports, but only in the limited circumstance where the ATS has been granted an exemption to its trade reporting obligations under Rule 6183, 6625, or 6731.³²

8. Additional Guidance

FIF requested FINRA issue guidance on a number of detailed, specific issues related to trade reporting. If the Proposal is approved, FINRA intends to provide guidance in the Regulatory Notice announcing approval regarding many of these issues;³³ however, one issue raised by the commenter indicated a potential misunderstanding with the Proposal that FINRA believes needs to be clarified. Specifically, the commenter requested guidance on how firms would select the MPID to be used for firms that have multiple MPIDs associated with their ATS. Pursuant to the proposed rule change, each ATS can have only one MPID. ATSS would not be permitted to have multiple MPIDs; thus, firms would need to select one MPID for the ATS on a going-forward basis after the rule's implementation.

³¹ If, however, an ATS matches orders but routes those orders to another execution venue for execution and dissemination, the trade would be considered to have occurred “within the ATS” and would count as volume of the ATS for reporting purposes.

³² See supra note 13.

³³ FINRA believes that some of the issues raised in the comment letter, such as those pertaining to the phasing-out of the reporting requirement, have been addressed above.

EXHIBIT 4

Exhibit 4 shows the changes proposed in this Amendment No. 1, with the proposed changes in the original filing shown as if adopted. Proposed additions in this Amendment No. 1 appear underlined; proposed deletions appear in brackets.

* * * * *

4000. FINANCIAL AND OPERATIONAL RULES

* * * * *

4500. BOOKS, RECORDS AND REPORTS

* * * * *

4550. ATS Reporting

* * * * *

4552. Alternative Trading Systems – Trading Information for Securities Executed

Within the Alternative Trading System

(a) through (c) No Change.

(d) Definitions

For purposes of this Rule, the term:

(1) “ATS” has the same meaning as the term “alternative trading system” as that term is defined in [SEA] Rule 300 of SEC Regulation ATS;

(2) “NMS stock” has the same meaning as that term is defined in [SEA] Rule 600(b)(47) of SEC Regulation NMS;

(3) though (5) No Change.

• • • Supplementary Material: -----

.01 For purposes of reporting volume under this rule, a trade is considered to be executed within an ATS if the ATS (i) executes the trade; (ii) is considered the “executing party”

to the trade under FINRA rules; or (iii) otherwise matches orders constituting the trade in a manner as contemplated by SEA Rule 3b-16 or SEC Regulation ATS. This would include, but not be limited to: any trade executed as a result of the ATS bringing together the purchaser and seller on or through its systems; any trade executed by the ATS's subscribers where the subscribers used the ATS to negotiate the trade, even if the ATS did not itself execute the trade; or any trade in which the ATS takes either side of a trade for clearing or settlement or in any other way inserts itself into a trade (e.g., exchanging securities or funds on behalf of one or both subscribers taking part in the trade). If an ATS routes an order to another member firm or other execution venue for handling or execution where that initial order matches against interest resident at the other venue, then the ATS would not be considered the executing party and would not include such volume for reporting purposes. A trade continues to be considered executed "within an ATS" for purposes of reporting volume under this rule, even if the ATS has been granted an exemption to its trade reporting obligations under Rule 6183, 6625 or 6731.

* * * * *

6000. QUOTATION AND TRANSACTION REPORTING FACILITIES

6100. QUOTING AND TRADING IN NMS STOCKS

* * * * *

6160. Multiple MPIDs for Trade Reporting Facility Participants

(a) through (b) No Change.

(c) A Trade Reporting Facility Participant that operates an alternative trading system ("ATS"), as that term is defined in [SEA] Rule 300 of SEC Regulation ATS, must obtain a single, separate MPID for each such ATS designated for exclusive use for

reporting each ATS's transactions. The member must use such separate MPID to report all transactions executed within the ATS to a Trade Reporting Facility (or Facilities). The member shall not use such separate MPID to report any transaction that is not executed within the ATS. Any member that operates multiple ATSs must obtain a separate MPID for each ATS. Members must have policies and procedures in place to ensure that trades reported with a separate MPID obtained under this paragraph are restricted to trades executed within the ATS.

• • • **Supplementary Material:** -----

.01 through .02 No Change.

* * * * *

6170. Primary and Additional MPIDs for Alternative Display Facility Participants

(a) through (c) No Change.

(d) A member reporting trades to the ADF that operates an alternative trading system ("ATS"), as that term is defined in [SEA] Rule 300 of SEC Regulation ATS, must obtain a single, separate MPID for each such ATS designated for exclusive use for reporting each ATS's transactions. The member must use such separate MPID to report all transactions executed within the ATS to the ADF. The member shall not use such separate MPID to report any transaction that is not executed within the ATS. Any member that operates multiple ATSs must obtain a separate MPID for each ATS. Members must have policies and procedures in place to ensure that trades reported with a separate MPID obtained under this paragraph are restricted to trades executed within the ATS.

• • • **Supplementary Material:** -----

.01 through .05 No Change.

* * * * *

6400. QUOTING AND TRADING IN OTC EQUITY SECURITIES

* * * * *

6480. Multiple MPIDs for Quoting and Trading in OTC Equity Securities

(a) through (b) No Change.

(c) An OTC Reporting Facility Participant that operates an alternative trading system (“ATS”), as that term is defined in [SEA] Rule 300 of SEC Regulation ATS, must obtain a single, separate MPID for each such ATS designated for exclusive use for reporting each ATS’s transactions. The member must use such separate MPID to report all transactions executed within the ATS to the OTC Reporting Facility. The member shall not use such separate MPID to report any transaction that is not executed within the ATS. Any member that operates multiple ATSs must obtain a separate MPID for each ATS. Members must have policies and procedures in place to ensure that trades reported with a separate MPID obtained under this paragraph are restricted to trades executed within the ATS.

• • • **Supplementary Material:** -----

.01 No Change.

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6700. TRADE REPORTING AND COMPLIANCE ENGINE (TRACE)

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6720. Participation in TRACE

(a) through (b) No Change.

(c) Alternative Trading Systems

A TRACE Participant that operates an alternative trading system (“ATS”), as that term is defined in [SEA] Rule 300 of SEC Regulation ATS, must obtain a single, separate MPID for each such ATS designated for exclusive use for reporting each ATS’s transactions. The member must use such separate MPID to report all transactions executed within the ATS to TRACE. The member shall not use such separate MPID to report any transaction that is not executed within the ATS. Any member that operates multiple ATSS must obtain a separate MPID for each ATS. Members must have policies and procedures in place to ensure that trades reported with a separate MPID obtained under this paragraph are restricted to trades executed within the ATS.

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EXHIBIT 5

Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

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4000. FINANCIAL AND OPERATIONAL RULES

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4500. BOOKS, RECORDS AND REPORTS

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4550. ATS Reporting

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4552. Alternative Trading Systems – Trading Information for Securities Executed

Within the Alternative Trading System

(a) Within seven business days after the end of each week, each member that operates an ATS that has filed a Form ATS with the SEC shall report to FINRA, in such format as FINRA may require, the aggregate weekly Trading Information for each NMS stock, OTC Equity Security and TRACE-Eligible Security executed within each such ATS operated by the member during the previous week.

(b) FINRA will publish on its public web site the Trading Information for equity securities as reported by each ATS on the following timeframes:

(1) no earlier than two weeks following the end of the Trading Information week, Trading Information regarding NMS stocks in Tier 1 of the NMS Plan to Address Extraordinary Market Volatility; and

(2) no earlier than four weeks following the end of the Trading Information week, Trading Information regarding (A) NMS stocks that are

subject to FINRA trade reporting requirements and are not in Tier 1 of the NMS Plan to Address Extraordinary Market Volatility and (B) OTC Equity Securities.

(c) When calculating and reporting the volume of securities traded and the number of trades, an ATS shall include only those trades executed within the ATS. If two orders are crossed by the ATS, the volume shall include only the number of shares or par value of bonds crossed as a single trade (e.g., crossing a buy order of 1,000 shares with a sell order of 1,000 shares would be calculated as a single trade of 1,000 shares of volume).

(d) Definitions

For purposes of this Rule, the term:

(1) “ATS” has the same meaning as the term “alternative trading system” as that term is defined in Rule 300 of SEC Regulation ATS;

(2) “NMS stock” has the same meaning as that term is defined in Rule 600(b)(47) of SEC Regulation NMS;

(3) “OTC Equity Security” has the same meaning as that term is defined in Rule 6420;

(4) “TRACE-Eligible Security” has the same meaning as that term is defined in Rule 6710; and

(5) “Trading Information” includes:

(A) the number of shares of each NMS stock or OTC Equity Security executed within an alternative trading system;

(B) the par value of each TRACE-Eligible Security executed within an alternative trading system; and

(C) the number of trades in a security executed within an alternative trading system.

• • • Supplementary Material: -----

.01 For purposes of reporting volume under this rule, a trade is considered to be executed within an ATS if the ATS (i) executes the trade; (ii) is considered the “executing party” to the trade under FINRA rules; or (iii) otherwise matches orders constituting the trade in a manner as contemplated by SEA Rule 3b-16 or SEC Regulation ATS. This would include, but not be limited to: any trade executed as a result of the ATS bringing together the purchaser and seller on or through its systems; any trade executed by the ATS’s subscribers where the subscribers used the ATS to negotiate the trade, even if the ATS did not itself execute the trade; or any trade in which the ATS takes either side of a trade for clearing or settlement or in any other way inserts itself into a trade (e.g., exchanging securities or funds on behalf of one or both subscribers taking part in the trade). If an ATS routes an order to another member firm or other execution venue for handling or execution where that initial order matches against interest resident at the other venue, then the ATS would not be considered the executing party and would not include such volume for reporting purposes. A trade continues to be considered executed “within an ATS” for purposes of reporting volume under this rule, even if the ATS has been granted an exemption to its trade reporting obligations under Rule 6183, 6625 or 6731.

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6000. QUOTATION AND TRANSACTION REPORTING FACILITIES

6100. QUOTING AND TRADING IN NMS STOCKS

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6160. Multiple MPIDs for Trade Reporting Facility Participants

(a) [For a pilot period ending on January 31, 2014, a]Any Trade Reporting Facility Participant that is required to obtain, or otherwise wishes to use, more than one Market Participant Symbol (“MPID”) for purposes of reporting trades to a Trade Reporting Facility must submit a written request, in the form required by FINRA, to, and obtain approval from, FINRA Market Operations for such additional MPID(s).

(b) No Change.

(c) A Trade Reporting Facility Participant that operates an alternative trading system (“ATS”), as that term is defined in Rule 300 of SEC Regulation ATS, [“dark pool” (defined for purposes of this Rule as an ATS that does not display quotations or subscribers' orders to any person or entity either internally within the ATS dark pool or externally beyond the ATS dark pool (other than employees of the ATS)) and opts to have its data included in published aggregate trading volume data] must obtain a single, separate MPID for each such ATS designated for exclusive use for reporting [its] each ATS's [dark pool] transactions. The member must use such separate MPID to report all transactions executed within the ATS [dark pool] to a Trade Reporting Facility (or Facilities). The member shall not use such separate MPID to report any transaction that is not executed within the ATS [dark pool]. Any member that operates multiple ATSs [dark pools and opts to have the data for each ATS dark pool included in the published data] must obtain a separate MPID for each ATS [dark pool]. Members must have policies and procedures in place to ensure that trades reported with a separate MPID obtained under this paragraph are restricted to trades executed within the ATS [dark pool].

• • • **Supplementary Material:** -----

.01 No Change.

.02 Any FINRA Trade Reporting Facility Business Member that chooses to publish aggregate daily trading volume for transactions executed within an ATS “dark pool” (defined for purposes of this Rule as an ATS that does not display quotations or subscribers' orders to any person or entity either internally within the ATS dark pool or externally beyond the ATS dark pool (other than employees of the ATS)) and reported to the Trade Reporting Facility will base such volume solely on transactions reported by the ATS dark pool for purposes of publication. The Business Member will prominently disclose that its web site may not reflect 100% of the volume for any given ATS dark pool and interested parties must consult all Business Members' web sites for purposes of obtaining an ATS dark pool's total volume.

A member's dark pool transaction data will not be included in the published volume unless the member affirmatively opts in to have its data included. A member operating an ATS dark pool must certify in writing to FINRA that (1) the member is affirmatively opting in for purposes of having its dark pool transaction data included in the published data and acknowledges that its data may be presented as an overall percentage volume only or may be broken down by security; (2) the member meets the definition of ATS dark pool above [in paragraph (c) of this Rule]; and (3) the member has obtained a separate MPID that will be used exclusively for reporting all transactions executed within the ATS dark pool as required by paragraph (c) of this Rule.

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6170. Primary and Additional MPIDs for Alternative Display Facility Participants

(a) No Change.

(b) The first Market Participant Identifier (“MPID”) issued to a FINRA Market Participant shall be referred to as the FINRA Market Participant's “Primary MPID.” [For a pilot period ending January 31, 2014, a] A Registered Reporting ADF ECN may request the use of Additional MPIDs for displaying quotes/orders and reporting trades through TRACS for any ADF-Eligible Security. Any ADF Participant that is required to obtain, or otherwise wishes to use, more than one MPID must submit a written request, in the form required by FINRA, to, and obtain approval from, FINRA Market Operations for such Additional MPID(s). A Registered Reporting ADF ECN that ceases to meet the obligations appurtenant to its Primary MPID in any security shall not be permitted to use Additional MPIDs for any purpose in that security.

(c) No Change.

(d) A member reporting trades to the ADF that operates an alternative trading system (“ATS”), as that term is defined in Rule 300 of SEC Regulation ATS, must obtain a single, separate MPID for each such ATS designated for exclusive use for reporting each ATS’s transactions. The member must use such separate MPID to report all transactions executed within the ATS to the ADF. The member shall not use such separate MPID to report any transaction that is not executed within the ATS. Any member that operates multiple ATSS must obtain a separate MPID for each ATS. Members must have policies and procedures in place to ensure that trades reported with a separate MPID obtained under this paragraph are restricted to trades executed within the ATS.

• • • **Supplementary Material:** -----

.01 through .05 No Change.

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6400. QUOTING AND TRADING IN OTC EQUITY SECURITIES

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6480. Multiple MPIDs for Quoting and Trading in OTC Equity Securities

(a) [For a pilot period ending on January 31, 2014, a]Any member that is required to obtain, or otherwise wishes to use, more than one Market Participant Symbol (“MPID”) for purposes of quoting and trading OTC Equity Securities or for reporting trades to the OTC Reporting Facility must submit a written request, in the form required by FINRA, to, and obtain approval from, FINRA Market Operations for such additional MPID(s).

(b) No Change.

(c) An OTC Reporting Facility Participant that operates an alternative trading system (“ATS”), as that term is defined in Rule 300 of SEC Regulation ATS, must obtain a single, separate MPID for each such ATS designated for exclusive use for reporting each ATS’s transactions. The member must use such separate MPID to report all transactions executed within the ATS to the OTC Reporting Facility. The member shall not use such separate MPID to report any transaction that is not executed within the ATS. Any member that operates multiple ATSS must obtain a separate MPID for each ATS. Members must have policies and procedures in place to ensure that trades reported with a separate MPID obtained under this paragraph are restricted to trades executed within the ATS.

• • • **Supplementary Material:** -----

.01 No Change.

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6700. TRADE REPORTING AND COMPLIANCE ENGINE (TRACE)

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6720. Participation in TRACE

(a) through (b) No Change.

(c) Alternative Trading Systems

A TRACE Participant that operates an alternative trading system (“ATS”), as that term is defined in Rule 300 of SEC Regulation ATS, must obtain a single, separate MPID for each such ATS designated for exclusive use for reporting each ATS’s transactions. The member must use such separate MPID to report all transactions executed within the ATS to TRACE. The member shall not use such separate MPID to report any transaction that is not executed within the ATS. Any member that operates multiple ATSs must obtain a separate MPID for each ATS. Members must have policies and procedures in place to ensure that trades reported with a separate MPID obtained under this paragraph are restricted to trades executed within the ATS.

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