

## OMB APPROVAL

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Required fields are shown with yellow backgrounds and asterisks.

Page 1 of \* 26

SECURITIES AND EXCHANGE COMMISSION  
 WASHINGTON, D.C. 20549  
 Form 19b-4

File No.\* SR - 2015 - \* 047

Amendment No. (req. for Amendments \*) 1

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) *
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Rule

Pilot <input checked="" type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)
			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)

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) \*

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Section 806(e)(2) \*

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Section 3C(b)(2) \*

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Exhibit 2 Sent As Paper Document



Exhibit 3 Sent As Paper Document



## Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked \*).

## 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 *	Andrew	Last Name *	Madar
Title *	Associate General Counsel		
E-mail *	andrew.madar@finra.org		
Telephone *	(202) 728-8056	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 02/23/2016

By Stephanie M. Dumont

(Name \*)

Senior Vice President and Director of Capital Markets  
 Policy

Stephanie Dumont,

NOTE: Clicking the button at right will digitally sign and lock  
 this form. A digital signature is as legally binding as a physical  
 signature, and once signed, this form cannot be changed.

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFT 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 \***

Add Remove View

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

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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

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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 November 13, 2015, FINRA filed with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change (“Proposal”) to adopt FINRA Rule 6191(a) to implement the quoting and trading requirements of the Regulation NMS Plan to Implement A Tick Size Pilot Program (“Plan”). The SEC published the Proposal in the Federal Register for notice and comment on November 25, 2015,<sup>1</sup> and the comment period expired on December 16, 2015.<sup>2</sup>

FINRA is filing this Partial Amendment No. 1 to modify four of the requirements set forth in the proposed rule. First, FINRA proposes to add an exception to permit members to fill a customer order in a Pilot Security in Test Group Two or Three at a non-nickel increment to comply with FINRA Rule 5320 (Prohibition Against Trading Ahead of Customer Orders) under limited circumstances. Second, FINRA is amending the proposal to adopt an exception to the Trade-at requirement for certain error correction transactions. Third, FINRA is proposing to modify the stopped order exception to the Trade-at requirement to better align with the stopped order exception in Rule 611 of SEC Regulation NMS.<sup>3</sup> Finally, FINRA is proposing to clarify the use of Intermarket Sweep Orders (“ISO”) in connection with the Trade-at requirement.

FINRA proposes to add an exception to Rule 6191 to permit members to fill a customer order in a Pilot Security in Test Group Two or Three at a non-nickel increment to comply with FINRA Rule 5320 (Prohibition Against Trading Ahead of Customer Orders) under limited circumstances. Specifically, the exception would allow the execution of a customer order following a proprietary trade by the member at an increment other than \$0.05 in the same security, on the same side and at the same price as (or within the prescribed amount of) a customer order owed a fill pursuant to FINRA Rule 5320, where the triggering proprietary trade was permissible pursuant to an exception under the Plan.

Thus, FINRA is proposing to add a customer order protection exception to Rule 6191(a)(5) and (a)(6) that would permit members to trade Pilot Securities in Test Group Two and Test Group Three, respectively, in increments less than \$0.05, and where the member is executing a customer order to comply with FINRA Rule 5320 following the execution of a proprietary trade by the member at an increment other than \$0.05 where such proprietary trade was permissible pursuant to an exception under the Plan. FINRA believes that this approach best facilitates the ability of members to continue to protect customer orders while retaining the flexibility to engage in proprietary trades that comply with an exception to the Plan.

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<sup>1</sup> See Securities Exchange Act Release No. 76483 (November 19, 2015), 80 FR 73853 (November 25, 2015) (Notice of Filing of SR-FINRA-2015-047).

<sup>2</sup> See supra note 1.

<sup>3</sup> See 17 CFR 242.611.

FINRA also proposes to add an exception to the Trade-at requirement. The exceptions to the Trade-at requirement set forth in the Plan and in FINRA's proposed rule are, in part, based on the exceptions to the trade-through requirement set forth in Rule 611,<sup>4</sup> including exceptions for an order that is executed as part of a transaction that was not a "regular way" contract, and an order that is executed as part of a single-priced opening, reopening, or closing transaction by the Trading Center.<sup>5</sup> Following the adoption of Rule 611 and its exceptions, the Commission issued exemptive relief that created exceptions from Rule 611 for certain error correction transactions.<sup>6</sup> FINRA has determined that it is appropriate to incorporate the error correction exception to the Trade-at prohibition, as this exception is equally applicable in the Trade-at context. Accordingly, FINRA is proposing to amend Rule 6191(a)(6) to exempt certain transactions to correct bona fide errors in the execution of customer orders from the Trade-at prohibition, subject to the conditions set forth by the SEC's order exempting these transactions from Rule 611 of SEC Regulation NMS.<sup>7</sup>

As with the corresponding exception under Rule 611 of SEC Regulation NMS, FINRA proposes to define a "bona fide error" as: (i) the inaccurate conveyance or execution of any term of an order including, but not limited to, price, number of shares or other unit of trading; identification of the security; identification of the account for which securities are purchased or sold; lost or otherwise misplaced order tickets; short sales that were instead sold long or vice versa; or the execution of an order on the wrong side of a market; (ii) the unauthorized or unintended purchase, sale, or allocation of securities, or the failure to follow specific client instructions; (iii) the incorrect entry of data into relevant systems, including reliance on incorrect cash positions, withdrawals, or securities positions reflected in an account; or (iv) a delay, outage, or failure of a communication system used to transmit market data prices or to facilitate the delivery or execution of an order. The bona fide error must be evidenced by objective facts and circumstances, the Trading Center must maintain documentation of such facts and circumstances, and the Trading Center must record the transaction in its error account. To avail itself of the exemption, the Trading Center must establish, maintain, and enforce written policies and procedures that are reasonably designed to address the occurrence of errors and, in the event of an error, the use and terms of a transaction to correct the error in compliance with this exemption. Finally, the Trading Center must regularly surveil to ascertain the effectiveness of its policies and procedures to address errors and

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<sup>4</sup> See 17 CFR 242.611.

<sup>5</sup> See 17 CFR 242.611(b)(2) and (b)(3).

<sup>6</sup> See Securities Exchange Act Release No. 55884 (June 8, 2007), 72 FR 32926 (June 14, 2007).

<sup>7</sup> See supra note 6.

transactions to correct errors and take prompt action to remedy deficiencies in such policies and procedures.<sup>8</sup>

FINRA also proposes to amend the Trade-at exception for stopped orders. The stopped order exemption in Rule 611 of SEC Regulation NMS applies where “[t]he price of the trade-through transaction was, for a stopped buy order, lower than the national best bid in the NMS stock at the time of execution or, for a stopped sell order, higher than the national best offer in the NMS stock at the time of execution.”<sup>9</sup> The Trade-at stopped order exception applies where “the price of the Trade-at transaction was, for a stopped buy order, equal to the national best bid in the Pilot Security at the time of execution or, for a stopped sell order, equal to the national best offer in the Pilot Security at the time of execution.”<sup>10</sup>

To illustrate the application of the stopped order exemption as it currently operates under Rule 611 of SEC Regulation NMS and as it is currently proposed for Trade-at, assume the National Best Bid (“NBB”) is \$10.00 and another protected quote is at \$9.95. Under Rule 611 of SEC Regulation NMS, a stopped order to buy can be filled at \$9.95 and the firm does not have to send an ISO to access the protected quote at \$10.00 since the price of the stopped order must be lower than the NBB. For the stopped order to also be executed at \$9.95 and satisfy the Trade-at requirements, the Trade-at exception would have to be revised to allow an order to execute at the price of a protected quote which, in this case, could be \$9.95.

Based on the fact that a stopped order would be treated differently under the Regulation NMS Rule 611 exception than under the proposed Trade-at exception, FINRA believes that it is appropriate to amend the Trade-at stopped order exception to ensure that the application of this exception will produce a consistent result under both Regulation NMS and the Plan. FINRA therefore proposes to amend the stopped order exception to allow a transaction to satisfy the Trade-at requirement if the stopped order price, for a stopped buy order, is equal to or less than the National Best Bid, and for a stopped sell order, is equal to or greater than the National Best Offer, as long as such order is priced at an acceptable increment.

Finally, FINRA also proposes to amend the rule text relating to the use of ISOs in connection with satisfying one of the proposed exceptions to Trade-at. The Plan defines a Trade-At Intermarket Sweep Order as a limit order for a Pilot Security that, when routed to a Trading Center, is identified as an Intermarket Sweep Order, and simultaneous with the routing of the limit order identified as an Intermarket Sweep Order, one or more additional limit orders, as necessary, are routed to execute against the full

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<sup>8</sup> See Securities Exchange Act Release No. 55884 (June 8, 2007), 72 FR 32926 (June 14, 2007).

<sup>9</sup> See 17 CFR 242.611(b)(9).

<sup>10</sup> See Plan, Section VI(D)(12).

displayed size of any protected bid (in the case of a limit order to sell) or the full displayed size of any protected offer (in the case of a limit order to buy) for the Pilot Security with a price that is equal to the limit price of the limit order identified as an Intermarket Sweep Order. These additional routed orders also must be marked as Intermarket Sweep Orders.<sup>11</sup> The Plan allows an order that is identified as an Intermarket Sweep Order to be executed at the price of a protected quotation as exception #8 to Trade-at. The Plan also allows, as exception #9 to Trade-at, an order to execute at the price of a protected quotation that “is executed by a trading center that simultaneously routed Trade-at Intermarket Sweep Orders to execute against the full displayed size of the protected quotation that was trade at.” In connection with the definition of a Trade-at ISO, exception #8 refers to the ISO that is received by a Trading Center; exception #9 refers to the Trading Center that routed the ISO.

FINRA proposed Rule 6191(a)(6)(D)(h) to clarify that an ISO that is received by a Trading Center (and which could form the basis of an execution at the price of a protection quotation pursuant to exception #8 of the Plan), is identified as a Trade-at ISO. Depending on whether Rule 611 or the Trade-at requirement applies, an ISO may mean that the sender of the ISO has swept better-priced protected quotations, so that the recipient of that ISO may trade through the price of the protected quotation (Rule 611), or it could mean that the sender of the ISO has swept protected quotations at the same price that it wishes to execute at (in addition to any better-priced quotations), so the recipient of that ISO may trade at the price of the protected quotation (Trade-at). Given that the meaning of an ISO may differ under Rule 611 and Trade-at, FINRA proposed Rule 6191(a)(6)(D)(h) so that the recipient of an ISO in a Test Group Three security would know, upon receipt of that ISO, that the Trading Center that sent the ISO had already executed against the full size of displayed quotations at that price, e.g., the recipient of that ISO could permissibly trade at the price of the protected quotation.

FINRA proposes to further clarify the use of an ISO in connection with the Trade-at requirement by adopting, as part of Rule 6191, a definition of “Trade-at Intermarket Sweep Order.” As set forth in the Plan and as noted above, the definition of a Trade-at ISO does not distinguish ISOs that are compliant with Rule 611 from ISOs that are compliant with Trade-at. FINRA therefore proposes to define a Trade-at ISO as a limit order for a Pilot Security that meets the following requirements: (1) when routed to a Trading Center, the limit order is identified as a Trade-at Intermarket Sweep Order; (2) simultaneously with the routing of the limit order identified as a Trade-at Intermarket Sweep Order, one or more additional limit orders, as necessary, are routed to execute against the full displayed size of any protected bid, in the case of a limit order to sell, or the full displayed size of any protected offer, in the case of a limit order to buy, for the Pilot Security with a price that is better than or equal to the limit price of the limit order identified as a Trade-at Intermarket Sweep Order. These additional routed orders also must be marked as Trade-at Intermarket Sweep Orders. FINRA proposes to make a corresponding change to the reference to Trade-at ISO in Rule 6191(a)(6)(D)(i). FINRA

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<sup>11</sup> See Plan, Section I(MM).

believes that this proposed change will further clarify to recipients of ISOs in Group Three securities whether the ISO satisfies the requirements of Rule 611 or Trade-at.

FINRA believes that the changes to (1) add an exception to Rule 6191 to permit members to fill a customer order in a Pilot Security at a non-nickel increment to comply with FINRA Rule 5320 under limited circumstances, (2) create an exception for certain error correction transactions, (3) modify the stopped order exception to the Trade-at requirement, and (4) clarify the use of ISOs in connection with the Trade-at requirement, are consistent with the Act. FINRA believes that the change to allow members to fill a customer order at a non-nickel increment to comply with Rule 5320 under limited circumstances best facilitates the ability of members to continue to protect customer orders while retaining the flexibility to engage in proprietary trades that comply with an exception to the Plan. With respect to the proposed exceptions for error correction transactions, FINRA believes that an exemption for error correction transactions is equally applicable to Trade-at as to Rule 611 of Regulation NMS, and that adopting this exception to the Trade-at requirement further aligns the requirements of the Trade-at requirement with Rule 611 of Regulation NMS. Similarly, FINRA believes that the proposed change to the stopped order exception will result in more consistent treatment under Regulation NMS and the Plan, which should ease compliance burdens for members. FINRA believes that the proposed definition of a Trade-at ISO is consistent with the Act because it will further clarify to recipients of ISOs in Group Three securities whether that ISO satisfies the requirements of Rule 611 or Trade-at.

## **EXHIBIT 4**

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

\* \* \* \* \*

### **6000. QUOTATION AND TRANSACTION REPORTING FACILITIES**

#### **6100. QUOTING AND TRADING IN NMS STOCKS**

\* \* \* \* \*

#### **6191. Compliance with Regulation NMS Plan to Implement a Tick Size Pilot Program**

##### **(a) Compliance with Quoting and Trading Restrictions**

**(1) through (4) No Change.**

##### **(5) Pilot Securities in Test Group Two**

(A) through (B) No Change.

(C) Pilot Securities in Test Group Two may trade in increments

less than \$0.05 under the following circumstances:

(i) Trading may occur at the midpoint between the NBBO  
or the PBBO;

(ii) Retail Investor Orders may be provided with price  
improvement that is at least \$0.005 better than the PBBO; [and]

(iii) Negotiated Trades may trade in increments less than  
\$0.05[.] ; and



(iv) Executions of a customer order to comply with FINRA Rule 5320 following the execution of a proprietary trade by the member at an increment other than \$0.05, where such proprietary trade was permissible pursuant to an exception under the Plan.

**(6) Pilot Securities in Test Group Three**

(A) through (B) No Change.

(C) Pilot Securities in Test Group Three may trade in increments less than \$0.05 under the following circumstances:

(i) Trading may occur at the midpoint between the NBBO or PBBO;

(ii) Retail Investor Orders may be provided with price improvement that is at least \$0.005 better than the PBBO; [and]

(iii) Negotiated Trades may trade in increments less than \$0.05[.] ; and

(iv) Executions of a customer order to comply with FINRA Rule 5320 following the execution of a proprietary trade by the member at an increment other than \$0.05, where such proprietary trade was permissible pursuant to an exception under the Plan.

(D) Pilot Securities in Test Group Three will be subject to the following Trade-at Prohibition:

(i) Absent any of the exceptions listed in subparagraph (D)(ii) below, no member that operates a Trading Center may execute a sell order for a Pilot Security in Test Group Three at the

price of a Protected Bid or execute a buy order for a Pilot Security in Test Group Three at the price of a Protected Offer during regular trading hours (“Trade-at Prohibition”). Under the Trade-at Prohibition, a member that operates a Trading Center that is displaying a quotation, via either a processor or an SRO quotation feed, that is at a price equal to the traded-at Protected Bid or Protected Offer is permitted to execute orders at that level, but only up to the amount of its displayed size. A member that operates a Trading Center that was not displaying a quotation at a price equal to the traded-at Protected Quotation, via either a processor or an SRO quotation feed, is prohibited from price-matching protected quotations unless an exception applies;

(ii) A member that operates a Trading Center may execute a sell order for a Pilot Security in Test Group Three at the price of a Protected Bid or execute a buy order for a Pilot Security in Test Group Three at the price of a Protected Offer under the following circumstances:

a. The order is executed within the same independent aggregation unit of the member that operates the Trading Center that displayed the quotation via either a processor or an SRO Quotation Feed, to the extent such member uses independent aggregation units, at a price equal to the traded-at Protected Quotation that was

displayed before the order was received, but only up to the full displayed size of that independent aggregation unit's previously displayed quote. A Trading Center that is displaying a quotation as agent or riskless principal may only execute as agent or riskless principal and a Trading Center displaying a quotation as principal (excluding riskless principal) may execute as principal, agent or riskless principal. "Independent aggregation unit" has the same meaning as provided under Rule 200(f) of SEC Regulation SHO;

b. The order is of Block Size at the time of origin and may not be:

1. An aggregation of non-block orders;
2. Broken into orders smaller than Block Size prior to submitting the order to a Trading Center for execution; or
3. Executed on multiple Trading Centers;

c. The order is a Retail Investor Order executed with at least \$0.005 price improvement;

d. The order is executed when the Trading Center displaying the Protected Quotation that was traded at was experiencing a failure, material delay, or malfunction of its systems or equipment;

e. The order is executed as part of a transaction that was not a “regular way” contract;

f. The order is executed as part of a single-priced opening, reopening, or closing transaction by the Trading Center;

g. The order is executed when a Protected Bid was priced higher than a Protected Offer in the Pilot Security;

h. The order is identified as a Trade-at Intermarket Sweep Order;

i. The order is executed by a Trading Center that simultaneously routed Trade-at Intermarket Sweep Orders to execute against the full displayed size of [the] a Protected Quotation with a price that is better than or equal to the limit price of the limit order identified as a Trade-at Intermarket Sweep Order [that was traded at];

j. The order is executed as part of a Negotiated Trade;

k. The order is executed when the Trading Center displaying the Protected Quotation that was traded at had displayed, within one second prior to execution of the transaction that constituted the Trade-at, a Best Protected Bid or Best Protected Offer, as applicable, for the Pilot

Security with a price that was inferior to the price of the Trade-at transaction;

l. The order is executed by a Trading Center which, at the time of order receipt, the Trading Center had guaranteed an execution at no worse than a specified price (a “stopped order”), where:

1. The stopped order was for the account of a customer;

2. The customer agreed to the specified price on an order-by-order basis; and

3. The price of the Trade-at transaction was, for a stopped buy order, equal to or less than the National Best Bid in the Pilot Security at the time of execution or, for a stopped sell order, equal to or greater than the National Best Offer in the Pilot Security at the time of execution, as long as such order is priced at an acceptable increment; [or]

m. The order is for a fractional share of a Pilot Security, provided that such fractional share order was not the result of breaking an order for one or more whole shares of a Pilot Security into orders for fractional shares or was not otherwise effected to evade the requirements of the

Trade-at Prohibition or any other provisions of the Plan; or  
[.]

n. The order is to correct a bona fide error, which is recorded by the Trading Center in its error account. A bond fide error is defined as:

1. The inaccurate conveyance or execution of any term of an order including, but not limited to, price, number of shares or other unit of trading; identification of the security; identification of the account for which securities are purchased or sold; lost or otherwise misplaced order tickets; short sales that were instead sold long or vice versa; or the execution of an order on the wrong side of a market;

2. The unauthorized or unintended purchase, sale, or allocation of securities, or the failure to follow specific client instructions;

3. The incorrect entry of data into relevant systems, including reliance on incorrect cash positions, withdrawals, or securities positions reflected in an account; or

4. A delay, outage, or failure of a communication system used to transmit market data

prices or to facilitate the delivery or execution of an order.

**(7) Operation of Certain Exceptions to Tick Size Pilot Program**

(A) No Change.

(B) Trade-at Requirement

(i) “Trade-at Intermarket Sweep Order” means a limit order for a Pilot Security that meets the following requirements:

1. When routed to a Trading Center, the limit order is identified as a Trade-at Intermarket Sweep Order; and

2. Simultaneously with the routing of the limit order identified as a Trade-at Intermarket Sweep Order, one of more additional limit orders, as necessary, are routed to execute against the full size of any protected bid, in the case of a limit order to sell, or the full displayed size of any protected offer, in the case of a limit order to buy, for the Pilot Security with a price that is better than or equal to the limit price of the limit order identified as a Trade-at Intermarket Sweep Order. These additional routed orders also must be marked as Trade-at Intermarket Sweep Orders.

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

.01 through .03 No Change

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**EXHIBIT 5**

Below is the text of the proposed rule change. Proposed new language is underlined.

\* \* \* \* \*

**6000. QUOTATION AND TRANSACTION REPORTING FACILITIES**

**6100. QUOTING AND TRADING IN NMS STOCKS**

\* \* \* \* \*

**6191. Compliance with Regulation NMS Plan to Implement a Tick Size Pilot**

**Program**

**(a) Compliance with Quoting and Trading Restrictions**

**(1) Member Compliance**

Members shall establish, maintain and enforce written policies and procedures that are reasonably designed to comply with the applicable quoting and trading requirements of the Plan.

**(2) FINRA Compliance**

FINRA systems will not display quotations in violation of the Plan and this Rule.

**(3) Pilot Securities That Drop Below \$1.00 during the Pilot Period**

If the price of a Pilot Security drops below \$1.00 during regular trading hours on any trading day, such Pilot Security will continue to be subject to the Plan and the requirements enumerated in subparagraphs (4) through (6) below and will continue to trade in accordance with such Rules. However, if the Closing Price of a Pilot Security on any given trading day is below \$1.00, such Pilot Security will be moved out of its Pilot Test Group into the Control Group, and



may then be quoted and traded at any price increment that is currently permitted for the remainder of the Pilot Period. Notwithstanding anything contained herein to the contrary, at all times during the Pilot Period, Pilot Securities (whether in the Control Group or any Pilot Test Group) will continue to be subject to the requirements contained in Paragraph (b).

**(4) Pilot Securities in Test Group One**

No member may display, rank, or accept from any person any displayable or non-displayable bids or offers, orders, or indications of interest in any Pilot Security in Test Group One in increments other than \$0.05. However, orders priced to execute at the midpoint of the national best bid and national best offer (“NBBO”) or best protected bid and best protected offer (“PBBO”) and orders entered in a Participant-operated retail liquidity program may be ranked and accepted in increments of less than \$0.05. Pilot Securities in Test Group One may continue to trade at any price increment that is currently permitted by applicable Participant, SEC and FINRA rules.

**(5) Pilot Securities in Test Group Two**

(A) No member may display, rank, or accept from any person any displayable or non-displayable bids or offers, orders, or indications of interest in any Pilot Security in Test Group Two in increments other than \$0.05. However, orders priced to execute at the midpoint of the NBBO or PBBO and orders entered in a Participant-operated retail liquidity program may be ranked and accepted in increments of less than \$0.05.

(B) Absent any of the exceptions listed in subparagraph (5)(C) below, no member may execute orders in any Pilot Security in Test Group Two in price increments other than \$0.05. The \$0.05 trading increment will apply to all trades, including Brokered Cross Trades.

(C) Pilot Securities in Test Group Two may trade in increments less than \$0.05 under the following circumstances:

(i) Trading may occur at the midpoint between the NBBO or the PBBO;

(ii) Retail Investor Orders may be provided with price improvement that is at least \$0.005 better than the PBBO;

(iii) Negotiated Trades may trade in increments less than \$0.05; and

(iv) Executions of a customer order to comply with FINRA Rule 5320 following the execution of a proprietary trade by the member at an increment other than \$0.05, where such proprietary trade was permissible pursuant to an exception under the Plan.

**(6) Pilot Securities in Test Group Three**

(A) No member may display, rank, or accept from any person any displayable or non-displayable bids or offers, orders, or indications of interest in any Pilot Security in Test Group Three in increments other than \$0.05. However, orders priced to execute at the midpoint of the NBBO or PBBO and orders entered in a Participant-operated retail liquidity program may be ranked and accepted in increments of less than \$0.05.

(B) Absent any of the exceptions listed in subparagraph (6)(C) below, no member that operates a Trading Center may execute orders in any Pilot Security in Test Group Three in price increments other than \$0.05. The \$0.05 trading increment will apply to all trades, including Brokered Cross Trades.

(C) Pilot Securities in Test Group Three may trade in increments less than \$0.05 under the following circumstances:

(i) Trading may occur at the midpoint between the NBBO or PBBO;

(ii) Retail Investor Orders may be provided with price improvement that is at least \$0.005 better than the PBBO;

(iii) Negotiated Trades may trade in increments less than \$0.05; and

(iv) Executions of a customer order to comply with FINRA Rule 5320 following the execution of a proprietary trade by the member at an increment other than \$0.05, where such proprietary trade was permissible pursuant to an exception under the Plan.

(D) Pilot Securities in Test Group Three will be subject to the following Trade-at Prohibition:

(i) Absent any of the exceptions listed in subparagraph

(D)(ii) below, no member that operates a Trading Center may execute a sell order for a Pilot Security in Test Group Three at the price of a Protected Bid or execute a buy order for a Pilot Security

in Test Group Three at the price of a Protected Offer during regular trading hours (“Trade-at Prohibition”). Under the Trade-at Prohibition, a member that operates a Trading Center that is displaying a quotation, via either a processor or an SRO quotation feed, that is at a price equal to the traded-at Protected Bid or Protected Offer is permitted to execute orders at that level, but only up to the amount of its displayed size. A member that operates a Trading Center that was not displaying a quotation at a price equal to the traded-at Protected Quotation, via either a processor or an SRO quotation feed, is prohibited from price-matching protected quotations unless an exception applies;

(ii) A member that operates a Trading Center may execute a sell order for a Pilot Security in Test Group Three at the price of a Protected Bid or execute a buy order for a Pilot Security in Test Group Three at the price of a Protected Offer under the following circumstances:

a. The order is executed within the same independent aggregation unit of the member that operates the Trading Center that displayed the quotation via either a processor or an SRO Quotation Feed, to the extent such member uses independent aggregation units, at a price equal to the traded-at Protected Quotation that was displayed before the order was received, but only up to the

full displayed size of that independent aggregation unit's previously displayed quote. A Trading Center that is displaying a quotation as agent or riskless principal may only execute as agent or riskless principal and a Trading Center displaying a quotation as principal (excluding riskless principal) may execute as principal, agent or riskless principal. "Independent aggregation unit" has the same meaning as provided under Rule 200(f) of SEC Regulation SHO;

b. The order is of Block Size at the time of origin and may not be:

1. An aggregation of non-block orders;

2. Broken into orders smaller than Block Size prior to submitting the order to a Trading Center for execution; or

3. Executed on multiple Trading Centers;

c. The order is a Retail Investor Order executed with at least \$0.005 price improvement;

d. The order is executed when the Trading Center displaying the Protected Quotation that was traded at was experiencing a failure, material delay, or malfunction of its systems or equipment;

e. The order is executed as part of a transaction that was not a “regular way” contract;

f. The order is executed as part of a single-priced opening, reopening, or closing transaction by the Trading Center;

g. The order is executed when a Protected Bid was priced higher than a Protected Offer in the Pilot Security;

h. The order is identified as a Trade-at Intermarket Sweep Order;

i. The order is executed by a Trading Center that simultaneously routed Trade-at Intermarket Sweep Orders to execute against the full displayed size of a Protected Quotation with a price that is better than or equal to the limit price of the limit order identified as a Trade-at Intermarket Sweep Order;

j. The order is executed as part of a Negotiated Trade;

k. The order is executed when the Trading Center displaying the Protected Quotation that was traded at had displayed, within one second prior to execution of the transaction that constituted the Trade-at, a Best Protected Bid or Best Protected Offer, as applicable, for the Pilot

Security with a price that was inferior to the price of the Trade-at transaction;

l. The order is executed by a Trading Center which, at the time of order receipt, the Trading Center had guaranteed an execution at no worse than a specified price (a “stopped order”), where:

1. The stopped order was for the account of a customer;

2. The customer agreed to the specified price on an order-by-order basis; and

3. The price of the Trade-at transaction was, for a stopped buy order, equal to or less than the National Best Bid in the Pilot Security at the time of execution or, for a stopped sell order, equal to or greater than the National Best Offer in the Pilot Security at the time of execution, as long as such order is priced at an acceptable increment;

m. The order is for a fractional share of a Pilot Security, provided that such fractional share order was not the result of breaking an order for one or more whole shares of a Pilot Security into orders for fractional shares or was not otherwise effected to evade the requirements of the Trade-at Prohibition or any other provisions of the Plan; or

n. The order is to correct a bona fide error, which is recorded by the Trading Center in its error account. A bond fide error is defined as:

1. The inaccurate conveyance or execution of any term of an order including, but not limited to, price, number of shares or other unit of trading; identification of the security; identification of the account for which securities are purchased or sold; lost or otherwise misplaced order tickets; short sales that were instead sold long or vice versa; or the execution of an order on the wrong side of a market;

2. The unauthorized or unintended purchase, sale, or allocation of securities, or the failure to follow specific client instructions;

3. The incorrect entry of data into relevant systems, including reliance on incorrect cash positions, withdrawals, or securities positions reflected in an account; or

4. A delay, outage, or failure of a communication system used to transmit market data prices or to facilitate the delivery or execution of an order.



**(7) Operation of Certain Exceptions to Tick Size Pilot Program**

(A) Retail Investor Order Exception.

(i) “Retail Investor Order” means an order that originates from a natural person, provided that, prior to submission, no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology. A Retail Investor Order may be an odd lot, round lot, or partial round lot.

(ii) Any member that operates a Trading Center may execute against a Retail Investor Order otherwise than on an exchange to satisfy the Retail Investor Order exceptions to the Tick Size Pilot Program.

(iii) Any member for which FINRA is the Designated Examining Authority (“DEA”) that operates a Trading Center and executes Retail Investor Orders must submit a signed attestation to FINRA that substantially all orders to be executed as Retail Investor Orders will qualify as such under this Rule.

(B) A member relying on an exception to the Trade-At Prohibition for a transaction otherwise than on a national securities exchange must include all applicable modifiers in trade reports pursuant to Rules 6282, 6380A and 6380B.

(B) Trade-at Requirement.

“Trade-at Intermarket Sweep Order” means a limit order for a Pilot Security that meets the following requirements:

(i) When routed to a Trading Center, the limit order is identified as a Trade-at Intermarket Sweep Order; and

(ii) Simultaneously with the routing of the limit order identified as a Trade-at Intermarket Sweep Order, one or more additional limit orders, as necessary, are routed to execute against the full size of any protected bid, in the case of a limit order to sell, or the full displayed size of any protected offer, in the case of a limit order to buy, for the Pilot Security with a price that is better than or equal to the limit price of the limit order identified as a Trade-at Intermarket Sweep Order. These additional routed orders also must be marked as Trade-at Intermarket Sweep Orders.

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

.01 The terms used in this Rule 6191 shall have the same meaning as provided in the Plan, unless otherwise specified.

.02 No member shall break an order into smaller orders or otherwise effect or execute an order to evade the requirements of the Trade-at Prohibition of this Rule or any other provisions of the Plan.

.03 This Rule shall be in effect during a pilot period to coincide with the pilot period for the Plan (including any extensions to the pilot period for the Plan).

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