

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * <input type="text" value="26"/>	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - <input type="text" value="2016"/> - * <input type="text" value="042"/>	Amendment No. (req. for Amendments *) <input type="text"/>
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Filing by Financial Industry Regulatory Authority
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
			Rule		
Pilot <input 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 checked="" 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) * <input type="checkbox"/>	Section 806(e)(2) * <input type="checkbox"/>
Section 3C(b)(2) * <input type="checkbox"/>	

Exhibit 2 Sent As Paper Document <input checked="" type="checkbox"/>	Exhibit 3 Sent As Paper Document <input checked="" type="checkbox"/>
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Description

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

Proposed Rule Change to Amend FINRA Rule 6191 to Modify the Website Data Publication Requirements Relating to the Regulation NMS Plan to Implement a Tick Size Pilot Program

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 * <input type="text" value="Racquel"/>	Last Name * <input type="text" value="Russell"/>
Title * <input type="text" value="Associate General Counsel"/>	
E-mail * <input type="text" value="racquel.russell@finra.org"/>	
Telephone * <input type="text" value="(202) 728-8363"/>	Fax <input type="text" value="(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 <input type="text" value="11/15/2016"/>	Senior Vice President and Director of Capital Markets Policy
By <input type="text" value="Stephanie M. Dumont"/>	<input type="text" value="Stephanie Dumont,"/>
(Name *)	

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 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

Add Remove View

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.

1. Text of the Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ Financial Industry Regulatory Authority, Inc. (“FINRA”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to amend FINRA Rule 6191 to modify the website data publication requirements relating to the Regulation NMS Plan to Implement a Tick Size Pilot Program (“Plan”).

The text of the proposed rule change is attached as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

At its meeting on July 9, 2014, the FINRA Board of Governors authorized the filing of the proposed rule change with the SEC. No other action by FINRA is necessary for the filing of the proposed rule change.

FINRA has filed the proposed rule change for immediate effectiveness and has requested that the Commission waive the 30-day operative delay. If the Commission waives the 30-day operative delay, the operative date of the proposed rule change will be the date of filing.

¹ 15 U.S.C. 78s(b)(1).

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

(a) Purpose

On August 25, 2014, FINRA, and several other self-regulatory organizations (the “Participants”) filed with the Commission, pursuant to Section 11A of the Act² and Rule 608 of Regulation NMS thereunder,³ the Plan to Implement a Tick Size Pilot Program.⁴ The Participants filed the Plan to comply with an order issued by the Commission on June 24, 2014.⁵ The Plan was published for comment in the Federal Register on November 7, 2014, and approved by the Commission, as modified, on May 6, 2015.⁶ The Commission approved the Pilot on a two-year basis, with implementation to begin no later than May 6, 2016.⁷ On November 6, 2015, the SEC exempted the Participants from implementing the Pilot until October 3, 2016.⁸ Under the revised Pilot implementation date, the Pre-Pilot data collection period commenced on April 4, 2016. On September 13, 2016, the SEC exempted the Participants from the requirement to fully implement the

² 15 U.S.C. 78k-1.

³ 17 CFR 242.608.

⁴ See Letter from Brendon J. Weiss, Vice President, Intercontinental Exchange, Inc., to Secretary, Commission, dated August 25, 2014.

⁵ See Securities Exchange Act Release No 72460 (June 24, 2014), 79 FR 36840 (June 30, 2014).

⁶ See Securities Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27513 (May 13, 2015) (“Approval Order”).

⁷ See Approval Order at 27533 and 27545.

⁸ See Securities Exchange Act Release No. 76382 (November 6, 2015), 80 FR 70284 (November 13, 2015).

Pilot on October 3, 2016, to permit the Participants to implement the pilot on a phased-in basis, as described in the Participants' exemptive request.⁹

The Plan is designed to allow the Commission, market participants, and the public to study and assess the impact of increment conventions on the liquidity and trading of the common stock of small-capitalization companies. Each Participant is required to comply, and to enforce compliance by its member organizations, as applicable, with the provisions of the Plan.

FINRA adopted rule amendments to implement the requirements of the Plan, including relating to the Plan's data collection requirements and requirements relating to website data publication.¹⁰ Specifically, with respect to the website data publication requirements pursuant to Section VII and Appendices B and C to the Plan, FINRA Rule 6191(b)(2)(B) provides, among other things, that FINRA shall make the data required by Items I and II of Appendix B to the Plan, and collected pursuant to paragraph (b)(2)(A) of Rule 6191, publicly available on the FINRA website on a monthly basis at no charge and shall not identify the Trading Center that generated the data. FINRA Rule 6191(b)(3)(C),

⁹ See Letter from David S. Shillman, Associate Director, Division of Trading and Markets, Commission, to Eric Swanson, EVP, General Counsel and Secretary, Bats Global Markets, Inc., dated September 13, 2016; see also Letter from Eric Swanson, EVP, General Counsel and Secretary, Bats Global Markets, Inc., to Brent J. Fields, Secretary, Commission, dated September 9, 2016.

¹⁰ See, e.g., Securities Exchange Act Release No. 76484 (November 19, 2015), 80 FR 73858 (November 25, 2015) (Notice of Filing of File No. SR-FINRA-2015-048); see also Securities Exchange Act Release No. 77164 (February 17, 2016), 81 FR 9043 (February 23, 2016) (Notice of Filing of Partial Amendment No. 1 and Order Granting Accelerated Approval of File No. SR-FINRA-2015-048) ("Accelerated Approval Order"); see also Letter from David S. Shillman, Associate Director, Division of Trading and Markets, Commission, to Marcia E. Asquith, Senior Vice President and Corporate Secretary, FINRA, dated February 17, 2016.

provides, among other things, that FINRA shall make the data required by Item IV of Appendix B to the Plan, and collected pursuant to paragraph (b)(3)(A) of Rule 6191, publicly available on the FINRA website on a monthly basis at no charge and shall not identify the Trading Center that generated the data. FINRA Rule 6191(b)(4)(B) provides, among other things, that FINRA shall make aggregated data required by Appendix C to the Plan, and collected pursuant to paragraph (b)(4)(A) of Rule 6191, publicly available on the FINRA website on a monthly basis at no charge and shall not identify the Market Makers that generated the data or the individual securities. FINRA Rule 6191.12 provides, among other things, that the requirement that FINRA make certain data publicly available on the FINRA website pursuant to Appendix B and C to the Plan shall commence at the beginning of the Pilot Period.

FINRA is proposing amendments to Rule 6191(b)(2)(B) (regarding Appendix B.I and B.II data), Rule 6191(b)(3)(C) (regarding Appendix B.IV data), and Rule 6191(b)(4)(B) (regarding Appendix C data), to provide that data required to be made available on FINRA's website be published within 120 calendar days following month end. In addition, the proposed amendments to Rule 6191.12 would provide that, notwithstanding the provisions of paragraphs (b)(2)(B), (b)(3)(C) and (b)(4)(B), FINRA shall make data for the Pre-Pilot period publicly available on the FINRA website pursuant to Appendix B and C to the Plan by February 28, 2017.¹¹

¹¹ With respect to data for the Pilot Period, the requirement that FINRA make data publicly available on the FINRA website pursuant to Appendix B and C to the Plan shall continue to commence at the beginning of the Pilot Period. Thus, the first website publication date for Pilot Period data (covering October 2016) would be published on the FINRA website by February 28, 2017, which is 120 days following the end of October 2016.

The proposed rule change also will provide that, with respect to Appendix C data, FINRA will aggregate and publish, categorized by Control Group and each Test Group:

(1) Market Maker profitability statistics for Market Makers for which FINRA is the designated examining authority (“DEA”), (2) Market Maker profitability statistics collected from other Participants that are DEAs, and (3) Market Maker profitability statistics for Market Makers whose DEA is not a Participant.¹² FINRA will make this data publicly available on the FINRA website at no charge and will not identify the Market Makers that generated the data or the individual securities.

The purpose of delaying the publication of the website data is to address confidentiality concerns by providing for the passage of additional time between the market information reflected in the data and the public availability of such information.¹³ Likewise, the publication by FINRA of Market Maker profitability data on the FINRA website, including Market Makers for which FINRA is not the DEA, is intended to address confidentiality concerns with respect to the Appendix C data required to be made publicly available by the Participants. Although the Participants that are DEAs also would not have identified the Market Makers when publishing required Appendix C data, some of the Participants are DEAs for a very small number of Market Makers, and the

¹² FINRA understands that some Market Makers may utilize a DEA that is not a Participant to the Plan and that their DEA would not be subject to the Plan’s data collection requirements. Prior to this proposal, the Participants implemented rules that required members that were Market Makers whose DEA is not a Participant to the Plan to transmit transaction data for Market Maker profitability calculations to FINRA. See, e.g., Securities Exchange Act Release No. 77456 (March 28, 2016), 81 FR 18925 (April 1, 2016) (Notice of Filing of File No. SR-NASDAQ-2016-043).

¹³ See, e.g., Accelerated Approval Order at 9049.

published data from these DEAs raised concerns regarding the potential for identifying the Market Makers that correspond to those statistics.¹⁴

As noted in Item 2 of this filing, FINRA has filed the proposed rule change for immediate effectiveness and has requested that the Commission waive the 30-day operative delay. If the Commission waives the 30-day operative delay, the operative date of the proposed rule change will be the date of filing.

(b) Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,¹⁵ which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, and Section 15A(b)(9) of the Act,¹⁶ which requires that FINRA rules not impose any burden on competition that is not necessary or appropriate.

FINRA believes that this proposal is consistent with the Act because it is designed to assist the Participants in meeting their regulatory obligations pursuant to the Plan and is in furtherance of the objectives of the Plan, as identified by the SEC. FINRA believes that the instant proposal is consistent with the Act in that it is designed to address

¹⁴ FINRA notes that FINRA is the DEA for the vast majority of Market Makers, and, therefore, FINRA already would have been responsible for publishing aggregated data covering the profitability of the vast majority of Market Makers. In fact, FINRA is the DEA for all but fifteen of 115 Market Makers; thus, the majority of the publicly available Appendix C data would already have been aggregated and provided on the FINRA website.

¹⁵ 15 U.S.C. 78o-3(b)(6).

¹⁶ 15 U.S.C. 78o-3(b)(9).

confidentiality concerns by permitting FINRA to delay website publication to provide for passage of additional time between the market information reflected in the data and the public availability of such information.

In addition, in approving the Plan, the Commission recognized that requiring the publication of Market Maker data may raise confidentiality concerns, especially for Pilot Securities that may have a relatively small number of designated Market Makers.¹⁷ For this reason, the Commission modified the Plan so that the data that would be made publicly available would not contain profitability measures for each security, but would be aggregated by the Control Group and each Test Group. Thus, FINRA believes that the instant proposal is consistent with the Act in that it is designed to further address confidentiality concerns by permitting FINRA to aggregate and publish Market Maker profitability data for all Participant DEAs, including Market Makers for which FINRA is not the DEA.

4. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. FINRA notes that the proposed rule change implements the provisions of the Plan, and is designed to assist the Participants in meeting their regulatory obligations pursuant to the Plan.

The proposal is intended to address confidentiality concerns that may adversely impact competition, especially for Pilot Securities that may have a relatively small number of designated Market Makers, by permitting FINRA to (1) delay website

¹⁷ See Approval Order at 27543 - 27544.

publication to provide for passage of additional time between the market information reflected in the data and the public availability of such information; and (2) aggregate and publish Market Maker profitability data for all Participant DEAs, including Market Makers for which FINRA is not the DEA. FINRA notes that the proposed change will not affect the data reporting requirements for members for which FINRA is the DEA.¹⁸ The proposal also does not alter the information required to be submitted to the SEC.

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

Written comments were neither solicited nor received.¹⁹

6. **Extension of Time Period for Commission Action**

Not applicable.

7. **Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2) or Section 19(b)(7)(D)**

The proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A) of the Act²⁰ and paragraph (f)(6) of Rule 19b-4 thereunder,²¹ in that the proposed rule change: (1) does not significantly affect the protection of investors or the public interest, (2) does not impose any significant burden on competition, and (3) and does not become

¹⁸ See supra note 14.

¹⁹ Financial Information Forum (FIF) submitted a letter to the staff of the Commission, copying FINRA, raising concerns regarding the publication of certain Appendix B statistics on a disaggregated basis using a unique masked market participant identifier. See Letter from Mary Lou Von Kaenel, Managing Director, FIF, to David S. Shillman, Associate Director, Division of Trading and Markets, Commission, dated August 16, 2016, available at <https://www.fif.com/comment-letters>.

²⁰ 15 U.S.C. 78s(b)(3)(A).

²¹ 17 CFR 240.19b-4(f)(6).

operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate. FINRA has filed the proposed rule change for immediate effectiveness and has requested that the Commission waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing so that it may become operative immediately. In addition, FINRA provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing, or such shorter time as designated by the Commission.²²

FINRA notes that the proposed rule change implements the provisions of the Plan, and is designed to assist the Participants in meeting their regulatory obligations pursuant to the Plan. The proposal is intended to address confidentiality concerns by permitting FINRA to (1) delay website publication to provide for passage of additional time between the market information reflected in the data and the public availability of such information; and (2) aggregate and publish Market Maker profitability data for all Participant DEAs, including Market Makers for which FINRA is not the DEA. FINRA notes that the proposed change will not affect the data reporting requirements for members for which FINRA is the DEA.²³ The proposal also does not alter the information required to be submitted to the SEC.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the

²² 17 CFR 240.19b-4(f)(6)(iii).

²³ See supra note 14.

Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

Exhibit 1. Completed notice of proposed rule change for publication in the Federal Register.

Exhibit 5. Text of the proposed rule change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-FINRA-2016-042)

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend FINRA Rule 6191 to Modify the Website Data Publication Requirements Relating to the Regulation NMS Plan to Implement a Tick Size Pilot Program

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on , Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a “non-controversial” rule change under paragraph (f)(6) of Rule 19b-4 under the Act,³ which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

FINRA is proposing to amend FINRA Rule 6191 to modify the website data publication requirements relating to the Regulation NMS Plan to Implement a Tick Size Pilot Program (“Plan”).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

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

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

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

On August 25, 2014, FINRA, and several other self-regulatory organizations (the "Participants") filed with the Commission, pursuant to Section 11A of the Act⁴ and Rule 608 of Regulation NMS thereunder,⁵ the Plan to Implement a Tick Size Pilot Program.⁶ The Participants filed the Plan to comply with an order issued by the Commission on June 24, 2014.⁷ The Plan was published for comment in the Federal Register on

⁴ 15 U.S.C. 78k-1.

⁵ 17 CFR 242.608.

⁶ See Letter from Brendon J. Weiss, Vice President, Intercontinental Exchange, Inc., to Secretary, Commission, dated August 25, 2014.

⁷ See Securities Exchange Act Release No 72460 (June 24, 2014), 79 FR 36840 (June 30, 2014).

November 7, 2014, and approved by the Commission, as modified, on May 6, 2015.⁸

The Commission approved the Pilot on a two-year basis, with implementation to begin no later than May 6, 2016.⁹ On November 6, 2015, the SEC exempted the Participants from implementing the Pilot until October 3, 2016.¹⁰ Under the revised Pilot implementation date, the Pre-Pilot data collection period commenced on April 4, 2016. On September 13, 2016, the SEC exempted the Participants from the requirement to fully implement the Pilot on October 3, 2016, to permit the Participants to implement the pilot on a phased-in basis, as described in the Participants' exemptive request.¹¹

The Plan is designed to allow the Commission, market participants, and the public to study and assess the impact of increment conventions on the liquidity and trading of the common stock of small-capitalization companies. Each Participant is required to comply, and to enforce compliance by its member organizations, as applicable, with the provisions of the Plan.

FINRA adopted rule amendments to implement the requirements of the Plan, including relating to the Plan's data collection requirements and requirements relating to

⁸ See Securities Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27513 (May 13, 2015) ("Approval Order").

⁹ See Approval Order at 27533 and 27545.

¹⁰ See Securities Exchange Act Release No. 76382 (November 6, 2015), 80 FR 70284 (November 13, 2015).

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website data publication.¹² Specifically, with respect to the website data publication requirements pursuant to Section VII and Appendices B and C to the Plan, FINRA Rule 6191(b)(2)(B) provides, among other things, that FINRA shall make the data required by Items I and II of Appendix B to the Plan, and collected pursuant to paragraph (b)(2)(A) of Rule 6191, publicly available on the FINRA website on a monthly basis at no charge and shall not identify the Trading Center that generated the data. FINRA Rule 6191(b)(3)(C), provides, among other things, that FINRA shall make the data required by Item IV of Appendix B to the Plan, and collected pursuant to paragraph (b)(3)(A) of Rule 6191, publicly available on the FINRA website on a monthly basis at no charge and shall not identify the Trading Center that generated the data. FINRA Rule 6191(b)(4)(B) provides, among other things, that FINRA shall make aggregated data required by Appendix C to the Plan, and collected pursuant to paragraph (b)(4)(A) of Rule 6191, publicly available on the FINRA website on a monthly basis at no charge and shall not identify the Market Makers that generated the data or the individual securities. FINRA Rule 6191.12 provides, among other things, that the requirement that FINRA make certain data publicly available on the FINRA website pursuant to Appendix B and C to the Plan shall commence at the beginning of the Pilot Period.

¹² See, e.g., Securities Exchange Act Release No. 76484 (November 19, 2015), 80 FR 73858 (November 25, 2015) (Notice of Filing of File No. SR-FINRA-2015-048); see also Securities Exchange Act Release No. 77164 (February 17, 2016), 81 FR 9043 (February 23, 2016) (Notice of Filing of Partial Amendment No. 1 and Order Granting Accelerated Approval of File No. SR-FINRA-2015-048) (“Accelerated Approval Order”); see also Letter from David S. Shillman, Associate Director, Division of Trading and Markets, Commission, to Marcia E. Asquith, Senior Vice President and Corporate Secretary, FINRA, dated February 17, 2016.

FINRA is proposing amendments to Rule 6191(b)(2)(B) (regarding Appendix B.I and B.II data), Rule 6191(b)(3)(C) (regarding Appendix B.IV data), and Rule 6191(b)(4)(B) (regarding Appendix C data), to provide that data required to be made available on FINRA's website be published within 120 calendar days following month end. In addition, the proposed amendments to Rule 6191.12 would provide that, notwithstanding the provisions of paragraphs (b)(2)(B), (b)(3)(C) and (b)(4)(B), FINRA shall make data for the Pre-Pilot period publicly available on the FINRA website pursuant to Appendix B and C to the Plan by February 28, 2017.¹³

The proposed rule change also will provide that, with respect to Appendix C data, FINRA will aggregate and publish, categorized by Control Group and each Test Group: (1) Market Maker profitability statistics for Market Makers for which FINRA is the designated examining authority ("DEA"), (2) Market Maker profitability statistics collected from other Participants that are DEAs, and (3) Market Maker profitability statistics for Market Makers whose DEA is not a Participant.¹⁴ FINRA will make this

¹³ With respect to data for the Pilot Period, the requirement that FINRA make data publicly available on the FINRA website pursuant to Appendix B and C to the Plan shall continue to commence at the beginning of the Pilot Period. Thus, the first website publication date for Pilot Period data (covering October 2016) would be published on the FINRA website by February 28, 2017, which is 120 days following the end of October 2016.

¹⁴ FINRA understands that some Market Makers may utilize a DEA that is not a Participant to the Plan and that their DEA would not be subject to the Plan's data collection requirements. Prior to this proposal, the Participants implemented rules that required members that were Market Makers whose DEA is not a Participant to the Plan to transmit transaction data for Market Maker profitability calculations to FINRA. See, e.g., Securities Exchange Act Release No. 77456 (March 28, 2016), 81 FR 18925 (April 1, 2016) (Notice of Filing of File No. SR-NASDAQ-2016-043).

data publicly available on the FINRA website at no charge and will not identify the Market Makers that generated the data or the individual securities.

The purpose of delaying the publication of the website data is to address confidentiality concerns by providing for the passage of additional time between the market information reflected in the data and the public availability of such information.¹⁵ Likewise, the publication by FINRA of Market Maker profitability data on the FINRA website, including Market Makers for which FINRA is not the DEA, is intended to address confidentiality concerns with respect to the Appendix C data required to be made publicly available by the Participants. Although the Participants that are DEAs also would not have identified the Market Makers when publishing required Appendix C data, some of the Participants are DEAs for a very small number of Market Makers, and the published data from these DEAs raised concerns regarding the potential for identifying the Market Makers that correspond to those statistics.¹⁶

FINRA has filed the proposed rule change for immediate effectiveness and has requested that the Commission waive the 30-day operative delay. If the Commission waives the 30-day operative delay, the operative date of the proposed rule change will be the date of filing.

¹⁵ See, e.g., Accelerated Approval Order at 9049.

¹⁶ FINRA notes that FINRA is the DEA for the vast majority of Market Makers, and, therefore, FINRA already would have been responsible for publishing aggregated data covering the profitability of the vast majority of Market Makers. In fact, FINRA is the DEA for all but fifteen of 115 Market Makers; thus, the majority of the publicly available Appendix C data would already have been aggregated and provided on the FINRA website.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,¹⁷ which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, and Section 15A(b)(9) of the Act,¹⁸ which requires that FINRA rules not impose any burden on competition that is not necessary or appropriate.

FINRA believes that this proposal is consistent with the Act because it is designed to assist the Participants in meeting their regulatory obligations pursuant to the Plan and is in furtherance of the objectives of the Plan, as identified by the SEC. FINRA believes that the instant proposal is consistent with the Act in that it is designed to address confidentiality concerns by permitting FINRA to delay website publication to provide for passage of additional time between the market information reflected in the data and the public availability of such information.

In addition, in approving the Plan, the Commission recognized that requiring the publication of Market Maker data may raise confidentiality concerns, especially for Pilot Securities that may have a relatively small number of designated Market Makers.¹⁹ For this reason, the Commission modified the Plan so that the data that would be made publicly available would not contain profitability measures for each security, but would be aggregated by the Control Group and each Test Group. Thus, FINRA believes that the

¹⁷ 15 U.S.C. 78o-3(b)(6).

¹⁸ 15 U.S.C. 78o-3(b)(9).

¹⁹ See Approval Order at 27543 - 27544.

instant proposal is consistent with the Act in that it is designed to further address confidentiality concerns by permitting FINRA to aggregate and publish Market Maker profitability data for all Participant DEAs, including Market Makers for which FINRA is not the DEA.

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

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. FINRA notes that the proposed rule change implements the provisions of the Plan, and is designed to assist the Participants in meeting their regulatory obligations pursuant to the Plan.

The proposal is intended to address confidentiality concerns that may adversely impact competition, especially for Pilot Securities that may have a relatively small number of designated Market Makers, by permitting FINRA to (1) delay website publication to provide for passage of additional time between the market information reflected in the data and the public availability of such information; and (2) aggregate and publish Market Maker profitability data for all Participant DEAs, including Market Makers for which FINRA is not the DEA. FINRA notes that the proposed change will not affect the data reporting requirements for members for which FINRA is the DEA.²⁰ The proposal also does not alter the information required to be submitted to the SEC.

²⁰ See supra note 16.

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

Written comments were neither solicited nor received.²¹

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act²² and Rule 19b-4(f)(6) thereunder.²³

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

²¹ Financial Information Forum (FIF) submitted a letter to the staff of the Commission, copying FINRA, raising concerns regarding the publication of certain Appendix B statistics on a disaggregated basis using a unique masked market participant identifier. See Letter from Mary Lou Von Kaenel, Managing Director, FIF, to David S. Shillman, Associate Director, Division of Trading and Markets, Commission, dated August 16, 2016, available at <https://www.fif.com/comment-letters>.

²² 15 U.S.C. 78s(b)(3)(A).

²³ 17 CFR 240.19b-4(f)(6).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-FINRA-2016-042 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Robert W. Errett, Deputy Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2016-042. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street,

NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FINRA-2016-042 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁴

Robert W. Errett
Deputy Secretary

²⁴ 17 CFR 200.30-3(a)(12).

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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6100. QUOTING AND TRADING IN NMS STOCKS

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

(a) No Change.

(b) Compliance with Data Collection Requirements

(1) No Change.

(2) Trading Center Data Requirements

(A) No Change.

(B) FINRA shall transmit the data required by Items I and II of Appendix B to the Plan, and collected pursuant to paragraph (b)(2)(A) above, to the SEC in a pipe delimited format on a disaggregated basis by Trading Center within 30 calendar days following month end. FINRA also shall make such data publicly available on the FINRA website [on a monthly basis] within 120 calendar days following month end at no charge and shall not identify the Trading Center that generated the data.

(3) Daily Market Maker Participation Statistics Requirement

(A) through (B) No Change.

(C) FINRA shall transmit the data relating to Market Maker activity conducted otherwise than on a national securities exchange required by Item IV of Appendix B to the Plan, and collected pursuant to

paragraph (b)(3)(A) above, to the SEC in a pipe delimited format on a disaggregated basis by Trading Center within 30 calendar days following month end. FINRA also shall make such data publicly available on the FINRA website [on a monthly basis] within 120 calendar days following month end at no charge and shall not identify the Trading Center that generated the data.

(4) Market Maker Profitability

(A) No Change.

(B) FINRA shall collect the data required by Item I of Appendix C to the Plan and paragraph (b)(4)(A) above and, on a monthly basis, transmit such data, categorized by the Control Group and each Test Group, to the SEC in a pipe delimited format. The data transmitted to the SEC shall include the profitability statistics categorized by Market Maker and by security. FINRA shall aggregate and publish, categorized by the Control Group and each Test Group: (i) Market Maker profitability statistics for Market Makers for which FINRA is the DEA, (ii) Market Maker profitability statistics collected from other Participants that are DEAs, and (iii) Market Maker profitability statistics for Market Makers whose DEA is not a Participant. [FINRA also shall make aggregated data required by Item I of Appendix C to the Plan, and collected pursuant to paragraph (b)(4)(A) above, categorized by the Control Group and each Test Group,] FINRA shall make this data publicly available on the FINRA web site [on a monthly basis] within 120 calendar days following month

end at no charge and shall not identify the Market Makers that generated the data or the individual securities.

(5) No Change.

••• **Supplementary Material:** -----

.01 through .11 No Change.

.12 A Trading Center shall begin the data collection required pursuant to Appendix B.I.a(1) through B.II.(y) to the Plan and Item I of Appendix C to the Plan on April 4, 2016. The requirement that FINRA provide information to the SEC within 30 days following month end [and make certain data publicly available on the FINRA website] pursuant to Appendix B and C to the Plan shall commence at the beginning of the Pilot Period. With respect to data for the Pilot Period, the requirement that FINRA make certain data publicly available on the FINRA website pursuant to Appendix B and C to the Plan shall commence at the beginning of the Pilot Period. Notwithstanding the provisions of paragraphs (b)(2)(B), (b)(3)(C) and (b)(4)(B) of this Rule, FINRA shall make data for the Pre-Pilot Period publicly available on the FINRA website pursuant to Appendix B and C to the Plan by February 28, 2017.

.13 through .15 No Change.

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