All submissions should refer to File Number SR–CHX–2015–05. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission’s Internet Web site (http://www.sec.gov/rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission’s Public Reference Room, 100 F Street NE., Washington, DC 20549–1090. Copies of the filing will also be available for inspection and copying at the Exchange’s principal office. 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–CHX–2015–05 and should be submitted on or before November 23, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.25

Robert W. Errett,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change Deleting Rule 410B Governing Reporting Requirements for Off-Exchange Transactions

October 27, 2015.

Pursuant to Section 19(b)(1)1 of the Securities Exchange Act of 1934 (the “Act”)2 and Rule 19b–4 thereunder,3 notice is hereby given that, on October 16, 2015, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to delete Rule 410B governing reporting requirements for off-Exchange transactions. The text of the proposed rule change is available on the Exchange’s Web site at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

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

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

1. Purpose

The Exchange proposes to delete Rule 410B, which sets forth certain regulatory reporting requirements for member or member organizations effecting off-Exchange transactions in Exchange listed securities that are not reported to the Consolidated Tape, and to make conforming amendments to Rule 9217 to delete a reference to Rule 410B.

Background

Rule 410B

Currently, Rule 410B requires members or member organizations to report to the Exchange transactions in NYSE-listed securities effected for the account of a member or member organization, or for the account of a customer of a member or member organization, that are not reported to the Consolidated Tape. Reports prepared pursuant to the Rule must contain the following information:

- Time and date of the transaction;
- stock symbol of the listed security;
- number of shares;
- price;
- marketplace where the transaction was executed;
- an indication whether the transaction was a buy (B), sell (S) or cross (C);
- an indication whether the transaction was executed as principal or agent; and
- the name of the contra-side broker-dealer to the trade.4

Rule 410B was adopted in 1992. At the time, transactions in NYSE-listed stocks effected outside of business hours or in foreign markets were not reported to the Consolidated Tape and, with the exception of program trading information, were not reported to the Exchange. The Exchange (then the New York Stock Exchange, Inc.) believed that “all transactions in NYSE-listed stocks that are not reported to the Consolidated Tape should be reported to the Exchange in order to provide an accurate record of overall trading activity in NYSE-listed stocks.”5 The Rule 410B reporting requirement would thus “augment and enhance” the Exchange’s ability to “surveil for and investigate, among other matters, insider trading, frontrunning and manipulative activities” and “provide a more complete audit trail and depiction of member trading in each NYSE-listed stock, which should facilitate surveillance by the Exchange in NYSE-listed stocks.”6 Despite the significant changes to the marketplace and the regulatory landscape in the ensuing decades, Rule 410B has not been substantively amended since it was adopted.7

Changes to Regulatory Landscape

On July 30, 2007, the NASD, NYSE, and NYSE Regulation, Inc. (“NYSE Regulation”) consolidated their member firm regulation operations to create the Financial Industry Regulatory Authority, Inc. (“FINRA”), and entered into a plan to allocate to FINRA regulatory responsibility for common rules and common members (“17d–2

4 See Rule 410B.
6 See id., 57 FR at 1294.
Agreement”). In 2008, the parties also entered into a plan to allocate regulatory responsibility over common NYSE members to NYSE Regulation for surveillance, investigation, and enforcement of insider trading with respect to NYSE-listed stocks, among others, irrespective of where the relevant trading occurred (the “Insider Trading Plan”). On June 14, 2010, FINRA was retained to perform the residual market surveillance and enforcement functions that had, up to that point, been performed by NYSE Regulation. In January 2011, the SEC approved an amendment to the Insider Trading Plan whereby FINRA also assumed responsibility for performing the insider trading-related market surveillance and enforcement functions previously conducted by NYSE Regulation for its U.S. equities and options markets.

Changes in Trade Reporting and Regulatory Reporting

In 1998, FINRA (then the NASD) established the Order Audit Trail System (OATS), as an integrated audit trail of order, quote, and trade information for OTC equity securities and equity securities listed and traded on The Nasdaq Stock Market, Inc. (“Nasdaq”). In 2010, in order to enhance the scope of the order audit trail in the U.S. equity markets following the creation of FINRA, FINRA Rules 7410 through 7470 (the “OATS Rules”) were amended to extend the recording and reporting requirements to all NMS stocks, as that term is defined in Rule 600(b)(47) of Regulation NMS.


See Securities Exchange Act Release No. 63311 (November 12, 2010), 75 FR 70757 (November 18, 2010) (SR–FINRA–2010–044) (“OATS Extension Approval Order”). By capturing OATS information for all NMS stocks, FINRA noted that it would be able to expand its existing surveillance patterns to including NYSE-listed securities. The Exchange adopted the OATS Rules in 2011. FINRA may utilize the information it collects pursuant to the OATS Rules to perform its regulatory functions.

Rule 410B also predates the establishment of a FINRA Trade Reporting Facility (“TRF”). FINRA Rule 6110 requires FINRA members to report transactions in NMS stocks 15 effected “otherwise than on or through a national securities exchange.” Pursuant to FINRA Rules 6310A and 6310B, FINRA members may use either the FINRA/NYSE TRF or FINRA/Nasdaq TRF to report such off-Exchange transactions.17 FINRA members using these TRFs to report off-Exchange transactions are in turn subject to FINRA Rule 7230B, which imposes transaction information reporting requirements similar to Rule 410B. As a result, Dual Members must report off-Exchange transactions to a TRF and submit substantially similar reports to the NYSE and FINRA.

Proposed Rule Change

The Exchange proposes to delete Rule 410B in its entirety. Rule 410B is a regulatory rule intended to enhance audit trail quality and improve surveillance and investigation of viable activities such as market manipulation and insider trading. As noted above, since 2008, surveillance and enforcement responsibilities across markets have been consolidated at FINRA, which conducts cross-market surveillances on the Exchange’s behalf utilizing various data sources, including extensive trade and other information that FINRA collects pursuant to its rules. This trade information includes reports of off-exchange transactions. All of the Exchange’s member organizations, with only minor exceptions, are members of FINRA and, as such, must report all off-exchange transactions to FINRA, including transactions away from the NYSE that are not reported to the Consolidated Tape. This information is essentially duplicative of the Rule 410B reports the Exchange currently supplies to FINRA. The one exception would be transactions in dually listed securities executed on and reported to a foreign securities exchange, which is not required to be reported because such trades are executed “on or through an exchange.” The Exchange believes

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unit price, excluding commissions, mark-ups or mark-downs; (4) time of execution expressed in hours, minutes and seconds based on Eastern Time in military format, unless otherwise prescribed by FINRA rules that require a different time be included on the report; (5) a symbol indicating whether the party submitting the trade report is the Reporting Member, the Clearing Broker (if other than normal Clearing Broker), the Contra Side Clearing Broker (if other than normal Clearing Broker). The Exchange proposes to delete Rule 410B in its entirety. Rule 410B is a regulatory rule intended to enhance audit trail quality and improve surveillance and investigation of viable activities such as market manipulation and insider trading. As noted above, since 2008, surveillance and enforcement responsibilities across markets have been consolidated at FINRA, which conducts cross-market surveillances on the Exchange’s behalf utilizing various data sources, including extensive trade and other information that FINRA collects pursuant to its rules. This trade information includes reports of off-exchange transactions. All of the Exchange’s member organizations, with only minor exceptions, are members of FINRA and, as such, must report all off-exchange transactions to FINRA, including transactions away from the NYSE that are not reported to the Consolidated Tape. This information is essentially duplicative of the Rule 410B reports the Exchange currently supplies to FINRA. The one exception would be transactions in dually listed securities executed on and reported to a foreign securities exchange, which is not required to be reported because such trades are executed “on or through an exchange.” The Exchange believes
such trades pose little regulatory risk and, given that no other exchange has a rule comparable to Rule 410B, notes that such trades are also not being reported to other equities exchanges. The Exchange therefore believes that the rationale underlying the exclusion of these foreign on-exchange trades in dually listed securities from its reporting requirements should apply equally to NYSE-listed securities in the absence of Rule 410B. Finally, only a handful of firms currently account for all of the Rule 410B activity, all of whom are also FINRA members.20 Rule 410B is thus no longer necessary, and deleting it would eliminate essentially duplicative reporting of off-Exchange transactions by Dual Members.

The Exchange does not believe that eliminating the Rule 410B reporting requirement for the small number of NYSE-only members 21 would pose any significant regulatory risk. None of these firms has ever submitted a Rule 410B report. As noted above, a smaller number of Dual Member firms (five) account for all of the recent Rule 410B trading activity.22 The Exchange believes that retaining a reporting requirement for firms that have never triggered the requirement serves no useful regulatory or other purpose. NYSE-only members would remain subject to federal and Exchange books and records requirements.23 Information about any trades away from the Exchange by these firms should thus be available for regulatory review if needed.

For the foregoing reasons, the Exchange believes that Rule 410B should be deleted in its entirety.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,24 in general, and furthers the objectives of Section 6(b)(5) of the Act,25 in particular, because it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

In particular, the Exchange believes that eliminating Rule 410B would remove impediments to and perfect the mechanism of a free and open market and a national market system by eliminating duplicative reporting by Dual Members of information those firms already provide to FINRA. The Exchange believes that eliminating Rule 410B reporting would not be inconsistent with the public interest and the protection of investors because FINRA would continue to receive information from Dual Members about off-Exchange transactions for incorporation in its cross-market surveillances. Further, the Exchange believes that eliminating Rule 410B reporting would not be inconsistent with the public interest and the protection of investors because the small number of NYSE-only firms that would no longer be subject to the reporting requirement have never submitted a report under the Rule.

The Exchange further believes that deleting corresponding references to Rule 410B in another rule would remove impediments to and perfects the mechanism of a free and open market by reducing potential confusion and adding transparency and clarity to the Exchange’s rules, thereby ensuring that members, regulators and the public can more easily navigate and understand the Exchange’s rulebook.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address competitive issues, but rather it is designed to eliminate obsolete and duplicative regulatory reporting.

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

No written comments were solicited or received with respect to the proposed rule change.

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

Within 45 days of the date of publication of this notice in the Federal Register or up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or
(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

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

Electronic Comments

• Use the Commission’s Internet comment form (http://www.sec.gov/rules/sro.shtml); or
• Send an email to rule-comments@sec.gov. Please include File Number SR–NYSE–2015–48 on the subject line.

Paper Comments

• Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090. All submissions should refer to File Number SR–NYSE–2015–48. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission’s Internet Web site (http://www.sec.gov/rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission’s Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the NYSE’s principal office and on its Internet Web site at www.nyse.com. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only
The exchange proposes amendments that include changing the rules for complex orders. The proposals would amend Rule 6.13 to allow complex orders to be automatically processed through complex order auctions (COAs) under certain conditions. The amendments aim to streamline the processing of complex orders and reduce delays during auction periods.

The exchange has prepared summaries, which can be found in Item IV below, to explain the purpose, impact, and rationale behind the proposals. These summaries are available for public review and comment.

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

The exchange proposed changes to Rule 6.13. The text of the proposed rule change is available on the exchange's website at http://www.c2exchange.com/Legal/, at the exchange's office, or at the commission's public reference room.

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

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

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

1. Purpose

The exchange proposes to amend Rule 6.13 regarding complex orders. The proposed rule change would allow complex orders to be automatically processed through COAs if certain conditions are met. The exchange believes that this change will improve the handling of complex orders and reduce delays for participants.

The exchange also made nonsubstantive changes to the rule, including deleting the lettering for Interpretation and Policy .02(a) in order to include all information in the proposed rule change. Additionally, the proposed rule change made an error correcting to move the Interpretation and Policy .02(a) and other headings and deletion of an extra space.

The exchange maintains that the proposed rule change should not burden participants because they still have flexibility to have their COA-eligible orders not COA. The exchange also states that it is not necessary to do this change.

2. Statutory Basis for, the Proposed Rule Change

The exchange refers to section 19(b)(1) of the Securities Exchange Act of 1934 and Rule 19b–4 thereunder. The exchange notes that it has elected to receive RFR messages. The exchange also makes technical and other nonsubstantive changes. The proposed rule change also makes a nonsubstantive change to move the proposal's provision related to the size of COA responses.

3. Impact of Certain Incoming Orders and Changes in the Leg Markets on an Ongoing COA

The proposed rule change makes nonsubstantive changes to the COA process, and it also adds rule provisions regarding the initiation of a complex order auction. The exchange believes that this change will better allow them to make decisions regarding the handling of their orders based on market conditions at the time they submit their orders. Additionally, the proposed rule change provides that participants may include a do-not-CAO request on complex orders, and it also indicates that the proposed rule change is publishing this notice to solicit comments on the proposed rule change from interested persons.

4. Other Considerations

The exchange also notes that the proposed rule change applies to all COA-eligible orders in all classes. Furthermore, the exchange mentions that the proposed rule change does not change the allocation or priority provisions of complex orders. The proposed rule change also makes a nonsubstantive change to move language regarding the system sending RFR messages to the beginning of the provision.

5. Conclusion

The exchange discusses the potential impact of the proposed rule change and the benefits it hopes to achieve for participants. The exchange states that it will maintain flexibility for participants to have their COA-eligible orders not COA. The exchange believes that the proposed rule change will not burden participants because they have not requested this change in the past. Additionally, the exchange notes that the proposed rule change will better allow them to make decisions regarding the handling of their orders based on market conditions at the time they submit their orders.