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—Equities (“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 476A 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 by the Exchange’s affiliate the New York Stock Exchange LLC (“NYSE”) 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 NYSE’s ability to “surveil for and investigate, among other matters, insider trading, front-running 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, the Exchange adopted Rule 410B without amendment in 2008.7

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 responsibilities for common rules and common members (“17d-2 Agreement”).8 The Exchange was added as a party to the 17d-2 Agreement in 2009.9 In 2008, the Exchange, NASD, NYSE, and NYSE Regulation also entered into a plan to allocate to FINRA regulatory responsibility over common FINRA members for surveillance, investigation, and enforcement of insider trading with respect to NYSE–MKT listed stocks, among others, irrespective of where the relevant trading occurred (the “Insider Trading Plan”).10 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.11 In

4 See Rule 410B.
6 See id., 57 FR at 1294.
8 See Securities Exchange Act Release No. 56148 (July 26, 2007), 72 FR 42146 (August 1, 2007) (File No. 4–544) (Notice of Filing and Order Approving and Declaring Effective a Plan for the Allocation of Regulatory Responsibilities). In 2007, the NASD, NYSE, the Exchange, and NYSE Regulation also entered into a Regulatory Services Agreement (“RSA”), whereby FINRA was retained to perform certain regulatory services for non-common rules.
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), 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, including NYSE MKT-listed securities. The Exchange adopted the OATS Rules in 2011. FINRA may use 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 members to report transactions in NMS stocks 16 effected "otherwise than on or through a national securities exchange." 17 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. 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. 19 As 16 As defined in Rule 600(b)(47) of SEC Regulation NMS. 17 See FINRA Rule 6110. See generally FINRA Rule 6300A and 7200A Series (FINRA/Nasdaq TRF) and 6300B and 7200B Series (FINRA/NYSE TRF). Transactions in non-NMS stocks such as OTC Markets securities, ADRs, Canadian issues, foreign securities and non-exchange-listed IPP securities and transactions in Restricted Equity Securities pursuant to Securities Act Rule 144A are governed by the FINRA Rule 6620 and 7200 Series and must be reported to FINRA’s OTC Reporting Facility or ORF. FINRA’s rules expressly provide that certain types of securities transactions not to be reported for publication or regulatory purposes, including transactions in foreign equity securities executed on and reported to a foreign securities exchange or executed OTC in a country's securities regulator. See Trade Reporting Frequently Asked Questions, Section 509, Q/A5091 & Section 701, Q/A701.1, available at http://www.finra.org/industry/trade-reporting-faq. 18 See FINRA Rules 6300A & 6300B. 19 See Rule 7230B. Specifically, the following information must be submitted for each transaction: (1) Security Identification Symbol of the eligible security (SECID); (2) number of shares or bonds; (3) unit price, excluding commissions, mark-ups or mark-downs; (4) time of execution expressed in hours, minutes and seconds based on Eastern Time; (5) market or market report (in military format, unless another provision of FINRA, which conducts cross-market 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 nine exceptions, are members of FINRA and, as such, must report all off-exchange transactions to FINRA, including transactions away from the Exchange 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 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. Rule 410B is thus no longer necessary, and deleting it would eliminate essentially duplicative reporting of off-exchange transactions by Dual Members.” 20 See Trade Reporting Frequently Asked Questions, Section 701, Q/A701.1, available at http://www.finra.org/industry/trade-reporting-faq. See generally note 17, supra.

3 Rule 410B Weekly Reports submitted to the SEC in July and August 2015 reveal that only five firms, all also FINRA members, accounted for all of the Rule 410B trading activity. Further, the list of firms that have in the past submitted Rule 410B reports does not include any non-FINRA members.
The Exchange does not believe that eliminating the Rule 410B reporting requirement for the small number of NYSE MKT-only members 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. The Exchange believes that retaining a reporting requirement for firms that have never triggered the requirement serves no useful regulatory or other purpose. NYSE MKT-only members would remain subject to federal and Exchange books and records requirements. 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, in general, and furthers the objectives of Section 6(b)(5) of the Act, 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 [sic]-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–NYSEMKT–2015–80 on the subject line.

22 These nine non-FINRA member firms do not have any public customers and are also members of Nasdaq as well as NYSE.

23 See note 21, supra.


