

*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](mailto:rule-comments@sec.gov). Please include File Number SR-BATS-2016-08 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-BATS-2016-08. 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 such filing also will be available for inspection and copying at the principal office of the Exchange. 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-BATS-2016-08, and should be submitted on or before March 17, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

**Brent J. Fields,**  
Secretary.

[FR Doc. 2016-03943 Filed 2-24-16; 8:45 am]

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-77180; File No. SR-FINRA-2016-006]

**Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change To Amend FINRA Rules 7410 (Definitions) and 7440 (Recording of Order Information)**

February 19, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) <sup>1</sup> and Rule 19b-4 thereunder, <sup>2</sup> notice is hereby given that on February 11, 2016, 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. 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 Rules 7410 and 7440 to require FINRA members to identify on their Order Audit Trail System (“OATS”) reports the identity of certain broker-dealers that are not FINRA members when the member has received an order from such a broker-dealer.

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

\* \* \* \* \*

**7000. CLEARING, TRANSACTION AND ORDER DATA REQUIREMENTS, AND FACILITY CHARGES**

\* \* \* \* \*

**7400. ORDER AUDIT TRAIL SYSTEM**

\* \* \* \* \*

**7410. Definitions**

- (a) through (o) No Change.
- (p) “SRO-assigned identifier” shall mean a unique identifier assigned to a broker or dealer by a national securities exchange or national securities association for use by such broker or dealer when accessing the exchange or a facility of the association.

\* \* \* \* \*

**7440. Recording of Order Information**

- (a) No Change.

- (b) Order Origination and Receipt  
Unless otherwise indicated, the following order information must be recorded under this Rule when an order is received or originated. For purposes of this Rule, the order origination or receipt time is the time the order is received from the customer.

- (1) through (17) No Change.

(18) the type of account, *i.e.*, retail, wholesale, employee, proprietary, or any other type of account designated by FINRA, for which the order is submitted; [and]

(19) *when the Reporting Member receives an order from a U.S.-registered broker-dealer that is not a member, or from a non-U.S.-registered broker-dealer that is not a member but has received an SRO-assigned identifier for purposes of accessing a FINRA facility pursuant to Rule 7220A or 7320, identification of such broker-dealer by providing an SRO-assigned identifier assigned to the broker-dealer or the number assigned to the broker-dealer in the Central Registration Depository system; and*

(20) if the member is relying on the exception provided in Rule 5320.02 with respect to the order, the unique identification of any appropriate information barriers in place at the department within the member where the order was received or originated.

- (c) through (d) No Change.

\* \* \* \* \*

**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

FINRA is proposing an amendment to Rule 7440 of the OATS rules to require FINRA members subject to the OATS rules (“Reporting Members”) to specifically identify two types of non-FINRA-member broker-dealers (“Non-Member Firms”) as part of the OATS report when they receive orders from

<sup>17</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

these firms.<sup>3</sup> Under the proposed rule change, Reporting Members receiving an order from either a U.S.-registered broker-dealer that is not a FINRA member or a broker-dealer that is not registered in the U.S. but has received an SRO-assigned identifier<sup>4</sup> in order to access certain FINRA trade reporting facilities (each a “Reportable Non-Member”) must identify the broker-dealer when reporting receipt of the order to OATS.<sup>5</sup> Pursuant to the proposed rule change, and as described below, Reporting Members receiving an order from or routing an order to a Non-Member Firm would therefore report one of the following: The Non-Member Firm’s Central Registration Depository (“CRD®”) number; an SRO-assigned identifier assigned to the Non-Member Firm; or, for a Non-Member Firm that does not have a CRD number or SRO-assigned identifier (e.g., a foreign broker-dealer), a value indicating that the Non-Member Firm has no CRD number or SRO-assigned identifier. Reporting this information will allow FINRA to obtain the identity of Reportable Non-Members directly from the OATS report.

A Reporting Member receiving an order from a Reportable Non-Member would include on its OATS report either the SRO-assigned identifier (e.g., a market participant identifier (“MPID”) assigned by a national securities exchange) or the Reportable Non-Member’s CRD number.<sup>6</sup> The proposed rule change does not mandate which identifier Reporting Members must use; thus, Reporting Members may use either an existing SRO-assigned identifier or a CRD number on their OATS reports to identify the Reportable Non-Member. If a Reportable Non-Member does not have an SRO-assigned identifier that is

available to FINRA, the Reporting Member receiving the order would be required to report the CRD number of the Reportable Non-Member.<sup>7</sup> Similarly, for a non-U.S.-registered broker-dealer that has an SRO-assigned identifier in order to access a FINRA trade reporting facility pursuant to Rule 7220A or 7320 but does not have a CRD number, the Reporting Member receiving the order would be required to report the SRO-assigned identifier for the broker-dealer.

FINRA is filing the proposed rule change to enhance its market surveillance efforts, both under its own SRO license and pursuant to its Regulatory Service Agreements (“RSAs”) with multiple national securities exchanges, by being able to identify more Non-Member Firm trading activity across exchanges and in the over-the-counter market through trades that are reported to a FINRA trade reporting facility.<sup>8</sup> Through OATS, FINRA is currently able to identify in detail the order and trading activity of FINRA member broker-dealers across market centers. Using data provided by the exchanges as well as CRD numbers, FINRA is also able to identify in detail the trading activities of Non-Member Firms and aggregate these firms’ activities across RSA client exchanges.<sup>9</sup> Although Reporting Members report orders they receive from, or route to, Non-Member Firms, these reports do not always contain the identity of the Non-Member Firm from whom the order was received, or to whom it was routed.<sup>10</sup>

<sup>7</sup> Because non-U.S. broker-dealers generally do not have SRO-assigned identifiers or CRD numbers, the proposed rule change would not require specific identification of non-U.S. broker-dealers when those firms do not have SRO-assigned identifiers or CRD numbers. In these cases, FINRA intends to permit a value whereby the Reporting Member would indicate the order was received from a non-U.S. broker-dealer without a CRD number or SRO-assigned identifier.

<sup>8</sup> FINRA obtains exchange data pursuant to RSAs it has signed with certain client exchanges. Under the current RSAs with national securities exchanges, FINRA conducts comprehensive surveillance across more than 99% of the market for U.S. listed equities by share and trade volume.

<sup>9</sup> This is accomplished by using exchange-assigned identifiers that are mapped to the firm’s CRD number. FINRA has access to all SRO-assigned equity identifiers with the exception of those assigned by the Chicago Stock Exchange. Under the proposed rule change, FINRA would thus be able to use any of these SRO-assigned identifiers or a CRD number to obtain the identity of the Non-Member Firm on OATS reports. A FINRA member that provides sponsored access to a Non-Member Firm has an OATS reporting obligation for each order sent to a national securities exchange pursuant to any such agreement. In this scenario, the FINRA member must report a New Order and a Route Report to the applicable exchange reflecting that the order was received from a Non-Member Firm. See OATS FAQ C77.

<sup>10</sup> Although some Reporting Members voluntarily provide the MPID of a Non-Member Firm if one

FINRA cannot, therefore, currently identify in detail Non-Member Firm activity in the over-the-counter market, or Non-Member Firm sponsored access activity, since Reporting Members are not required to report to OATS the identity of Non-Member Firms. Consequently, FINRA is not able to consistently identify Non-Member Firm activity and does not have a complete view of such activities across all exchanges and over-the-counter market centers. As the Commission recently noted when it proposed amendments to SEA Rule 15b9–1,<sup>11</sup> “FINRA’s ability to perform comprehensive market surveillance, especially for violations of Commission rules, as well as its ability to understand and reconstruct activity in the off-exchange market generally, is limited because [Non-Member Firms] are not consistently identified in trade reports to the TRFs or the ADF, and their order activity is not captured by OATS.”<sup>12</sup>

In addition to amending Rule 7440 to require the identification of Reportable Non-Members from which an order is received, FINRA is also planning to update the *OATS Reporting Technical Specifications* to require that OATS reports specifically identify a Reportable Non-Member to which an order is routed. Rule 7440(c)(6)(I) requires that, for orders routed from a member to a non-FINRA-member, including both non-FINRA-member broker-dealers and national securities exchanges, the identity of the non-FINRA member to which the order was routed be reported. Although the *OATS Reporting Technical Specifications* currently require that OATS reports include a specific identifier for each national securities exchange to which an order is routed, only a generic identifier for Non-Member Firms is required.<sup>13</sup> Consequently, the identity of the specific Non-Member Firm to which an order is routed is not required under the current *OATS Reporting Technical Specifications*. To address this gap and to conform the reporting of orders received from and orders routed to Non-Member Firms, in addition to the proposed rule change, FINRA intends to update the *OATS Reporting Technical Specifications* to require that Reporting Members provide either an SRO-assigned identifier or CRD number

exists, the OATS rules do not require that the identity of the Non-Member Firm be reported.

<sup>11</sup> 17 CFR 240.15b9–1.

<sup>12</sup> See Securities Exchange Act Release No. 74581 (March 25, 2015), 80 FR 18036, 18043 (April 2, 2015).

<sup>13</sup> See *OATS Reporting Technical Specifications*, at 4–4, and A–4 to A–5 (October 12, 2015 ed.).

<sup>3</sup> FINRA Rule 7410(o) defines a Reporting Member as “a member that receives or originates an order and has an obligation to report information under Rules 7440 and 7450.” The rule also contains exceptions from the rule. See FINRA Rule 7410(o)(1) and (2).

<sup>4</sup> FINRA is proposing to define an “SRO-assigned identifier” in Rule 7410 as “a unique identifier assigned to a broker or dealer by a national securities exchange or national securities association for use by such broker or dealer when accessing the exchange or a facility of the association.” For purposes of the definition, the identifier is “unique” provided the identifier assigned by the exchange or association is used to identify only a single broker-dealer.

<sup>5</sup> Certain broker-dealers registered in Canada, but not in the U.S., have SRO-assigned identifiers so that they can access FINRA trade reporting facilities pursuant to FINRA Rule 7220A or 7320.

<sup>6</sup> To register as a broker-dealer and have a CRD number, firms are required to file a Form BD with CRD. See 17 CFR 240.15b1–1(b). Consequently, all U.S.-registered broker-dealers have a CRD number. Currently, all U.S.-registered broker-dealers also have at least one SRO-assigned identifier that is available to FINRA.

when routing an order to a Reportable Non-Member.<sup>14</sup>

The proposed rule change, along with the changes to the *OATS Reporting Technical Specifications*, will significantly improve FINRA's ability to support cross-market surveillance and monitor over-the-counter trading activity. Reporting Members receive a substantial amount of order flow from Non-Member Firms, particularly in connection with alternative trading system ("ATS") activity, and this proposed rule change will enable FINRA to identify the activities of Reportable Non-Members, thereby increasing its cross-market surveillance capabilities.<sup>15</sup>

FINRA notes that although the data required by the proposed rule change may ultimately be captured as part of the Consolidated Audit Trail ("CAT"), the implementation of the CAT is likely several years away, as the national market system plan filed by the SROs still must be published by the Commission for public notice and comment, approved by the SEC, and, if approved, ultimately implemented pursuant to a multi-year timeline.<sup>16</sup> FINRA strongly believes that gaps in OATS data must be addressed in the near-term, after weighing the burdens to firms and the necessity of the change, to ensure an effective audit trail. FINRA believes the specific identification of Reportable Non-Members is critical to enhance FINRA's cross-market surveillance and monitoring of the over-the-counter market and believes these changes to the OATS requirements should not be delayed due to the

potential future implementation of the CAT.<sup>17</sup>

In addition to the CAT, the proposed rule change could also be affected by any amendments to SEA Rule 15b9-1.<sup>18</sup> Section 15(b)(8) of the Act requires that a registered broker-dealer be a member of a national securities association unless the broker-dealer effects transactions in securities solely on a national securities exchange of which it is a member.<sup>19</sup> SEA Rule 15b9-1 provides an exemption to the membership requirement in Section 15(b)(8) if a broker-dealer (i) is a member of a national securities exchange, (ii) carries no customer accounts, and (iii) has annual gross income derived from purchases and sales of securities otherwise than on a national securities exchange of which it is a member in an amount no greater than \$1,000.<sup>20</sup>

On March 25, 2015, the SEC proposed amendments to SEA Rule 15b9-1 that would significantly narrow the exemption from association membership by replacing the \$1,000 gross income provision in the rule with a provision that exempts from association membership exchange member broker-dealers that operate on the floor of an exchange to the extent they effect transactions off-exchange solely for the purpose of hedging the risks of their floor-based activities.<sup>21</sup> If adopted, the amendments generally would require a proprietary trading firm (*i.e.*, a firm that carries no customer accounts and, instead, trades solely for its own account(s)) relying on the current exemption to become a FINRA member if the firm continues to engage in over-the-counter trading or trading on an exchange of which it is not a member.

If this, or a substantially similar, amendment to SEA Rule 15b9-1 were adopted by the SEC, it is likely that many firms that are not currently FINRA members would become FINRA

members and, as a result, would be identified on OATS reports in addition to submitting OATS reports themselves. Even if amendments to SEA Rule 15b9-1 are adopted, there would likely still be some firms that do not become FINRA members, and the timeline for compliance with any potential amendments to SEA Rule 15b9-1, could be substantial. Consequently, FINRA believes that the proposed rule change is necessary regardless of the pending proposed amendments to SEA Rule 15b9-1 and would remain necessary even if amendments are subsequently adopted by the SEC.

Although this proposed rule change will require Reporting Members to submit an additional data field when submitting an OATS report for an order received from a Reportable Non-Member, FINRA does not believe that the proposed rule change will have a significant operational impact on Reporting Members or their reporting practices.<sup>22</sup> Because identifiers already have been assigned to Reportable Non-Members, are generally readily ascertainable by Reporting Members, and OATS will accept submission of any of these identifiers already in use, FINRA anticipates that the expense associated with reporting this additional data will be minimal. FINRA also notes that some Reporting Members already provide identifiers on their OATS reports for orders received from Non-Member Firms.<sup>23</sup> Finally, if a Reportable Non-Member is a member of multiple SROs or has multiple SRO-assigned identifiers, the Reporting Member could use any of those identifiers to fulfill its reporting obligation in addition to a CRD number. As noted below, FINRA also intends to provide a list of Reportable Non-Members' CRD numbers for Reporting Members to use to aid in implementing the proposed rule change.

As noted in Item 2 of this filing, if the Commission approves the proposed rule change, FINRA will announce the effective date of the proposed rule no later than 60 days following Commission approval. The effective date will be no later than 120 days following Commission approval.

<sup>14</sup> As noted above, in the case of a non-U.S. broker-dealer that does not have a CRD number or an SRO-assigned identifier, FINRA will provide an indicator for "non-U.S. broker-dealer" for use in the destination code field (for routes to a non-member broker-dealer) and as a member type code (for orders received from a non-member broker-dealer).

<sup>15</sup> For example, in the fourth quarter of 2014, over 33% of orders reported to OATS were reported as being received from a Non-Member Firm. Of particular note, over 45% of ATS orders were received from a Non-Member Firm. In addition, during that quarter approximately 13% of sponsored access orders were received from a Non-Member Firm.

<sup>16</sup> SEC Rule 613, which sets forth the requirements for the CAT, does not require all broker-dealers to report order information to the CAT until three years after the CAT plan is approved. See 17 CFR 242.613(a)(vi). The SROs charged with submitting the CAT plan filed an initial plan with the Commission on September 30, 2014, an amended and restated plan on February 27, 2015, and further amendments on December 23, 2015; however, the Commission has not yet published the CAT plan in the *Federal Register* for public comment. Pursuant to the plan submitted by the SROs, once the CAT is fully implemented, FINRA intends to sunset the OATS rules.

<sup>17</sup> FINRA notes that, under SEC Rule 613, all U.S.-registered broker-dealers are subject to the CAT reporting requirements. See 17 CFR 242.613(c)(2). Consequently, if the CAT plan submitted by the SROs is approved, firms will need to specifically identify each broker-dealer from which an order is received or to which an order is routed.

<sup>18</sup> 17 CFR 240.15b9-1.

<sup>19</sup> 15 U.S.C. 78o(b)(8). FINRA is currently the only registered national securities association.

<sup>20</sup> 17 CFR 240.15b9-1. The \$1,000 gross income limitation does not apply to income derived from transactions for the dealer's own account with or through another registered broker or dealer. Thus, for example, income derived from over-the-counter trades through an alternative trading system does not count toward the \$1,000 threshold.

<sup>21</sup> See Securities Exchange Act Release No. 74581 (March 25, 2015), 80 FR 18036, 18045-46 (April 2, 2015).

<sup>22</sup> FINRA also does not anticipate that the change to the *OATS Reporting Technical Specifications* to require that Reporting Members report a unique identifier when routing an order to a Non-Member Firm will significantly impact Reporting Members' reporting practices, as only a relatively small amount of order flow is typically routed from members to Non-Member Firms. In the fourth quarter of 2014, only 1.16% of all routes reported to OATS were reported as being routed to a Non-Member Firm.

<sup>23</sup> In the fourth quarter of 2014, ATSs reported the SRO-assigned identifiers of seventeen Non-Member Firms that submitted approximately 12.45 billion orders to those ATSs.

## 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>24</sup> 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. FINRA believes that the proposed rule change will enable FINRA to better identify a Reportable Non-Member's trading activity across exchanges and in the over-the-counter market through trades that are reported to a FINRA facility, which will significantly enhance FINRA's cross-market surveillance efforts pursuant to its RSAs with multiple national securities exchanges and carry out its surveillance obligations for the over-the-counter market under its own SRO license. As noted above, FINRA members receive a substantial amount of order flow from Non-Member Firms, particularly in connection with ATS and sponsored access activity, and the proposed rule change will enable FINRA to identify the activities of Reportable Non-Members, thereby increasing its cross-market surveillance capabilities. Improved surveillance capabilities help detect and deter fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and protect investors and the public interest.

### *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.

### *Economic Impact Assessment*

#### 1. Regulatory Need

As discussed above, under the current rules, Reporting Members report orders they receive from, or route to, Non-Member Firms but these reports do not always contain the identity of the Non-Member Firm. As a result, FINRA cannot consistently identify Non-Member Firm activity and cannot see a complete view of such activities across all exchanges and over-the-counter market centers. The proposed rule change will address these current gaps in order reporting by requiring Reporting Members to identify Reportable Non-Members in their OATS reports. Reporting this information will allow FINRA to obtain the identity of

the Reportable Non-Member directly from the OATS data, thereby improving FINRA's ability to perform comprehensive market surveillance and increasing investor protection.

#### 2. Economic Impacts

The proposed rule change would impact Reporting Members that report orders received from, or routed to, Reportable Non-Members. As a baseline, FINRA estimates that, in the fourth quarter of 2014, approximately 175 Reporting Members received orders from Non-Member Firms and approximately 215 Reporting Members routed orders to Non-Member Firms. As discussed above, FINRA estimates that over 33% of the total OATS orders in the fourth quarter of 2014 were reported as being received from a Non-Member Firm. Non-Member Firm orders accounted for a higher proportion (over 45%) of ATS orders. In addition, during that quarter approximately 13% of sponsored access orders were received from a Non-Member Firm. Reporting Members currently report orders received from or routed to Non-Member Firms but are not required to specifically identify these firms in their OATS reports. The proposed rule change would require the Reporting Members to identify Reportable Non-Members and submit an SRO-assigned identifier or the CRD number of these firms.

##### (i) Anticipated Benefits

The proposed rule change would enhance FINRA's cross-market and over-the-counter surveillance efforts by allowing FINRA to identify more Non-Member Firm trading activity across exchanges and the over-the-counter market. As discussed above, FINRA members receive a substantial amount of order flow from Non-Member Firms, particularly in connection with ATS activity. The proposed rule change will enable FINRA to identify these activities from Reportable Non-Members, thereby significantly improving FINRA's ability to support cross-market surveillance and monitor over-the-counter trading activity.

##### (ii) Anticipated Costs

As a result of the proposed rule change, Reporting Members that are not already identifying Reportable Non-Members in their OATS reports will incur certain implementation costs and on-going compliance costs associated with identifying Reportable Non-Members and submitting identifiers on their OATS reports.

FINRA anticipates that the costs associated with identifying Reportable

Non-Members will likely be minimal because identifiers have already been assigned to Reportable Non-Members and these identifiers are generally readily available to the Reporting Member that is receiving orders from or routing orders to Reportable Non-Members. In addition, the proposed rule change would provide Reporting Members with the option to report either the CRD number or the SRO assigned identifier, thereby allowing them to submit the identifiers that are already in use.<sup>25</sup> Moreover, FINRA intends to provide a list of CRD numbers to assist further in implementing the new requirements for those firms that are not already identifying Reportable Non-Members on their OATS reports, thereby further reducing the burden to ascertain appropriate identifiers for Reportable Non-Members.

FINRA recognizes that some Reporting Members may need to update their reporting systems and would incur certain costs associated with system analysis, coding, and testing in order to submit the required identifiers on their OATS reports. However, based on the provision of the list of identifiers by FINRA, the current volume of OATS Reports already submitted with Non-Member Firm information, and the Staff's experience with previous changes to the OATS requirements requiring similar modification to OATS reporting (*i.e.*, modifications requiring new values for existing fields), FINRA believes that significant coding and development would not be required and that the costs referenced above would likely be minimal. Based on OATS data for the fourth quarter of 2014, FINRA estimates that approximately 23% of Reporting Members that receive orders from Non-Member Firms already identify these firms on their OATS reports and approximately 12% of Reporting Members that route orders to Non-Member Firms identify these firms on their OATS reports.<sup>26</sup>

#### 3. Alternatives

In considering the best way to meet its regulatory objectives, FINRA considered certain alternatives to particular features

<sup>25</sup> Reporting Members would, therefore, have flexibility in determining which identifiers to submit, which is intended to reduce costs for these firms by allowing them to choose the most cost effective option.

<sup>26</sup> FINRA notes that a number of these Reporting Members identify Non-Member Firms on some, but not all, orders whereas others do so on all orders. For example, in the fourth quarter of 2014, of the 39 Reporting Members that receive orders from Non-Member Firms and identify them on their OATS report, 28 identify Non-Member Firms on some and 11 identify them on all orders.

<sup>24</sup> 15 U.S.C. 78o-3(b)(6).

of this proposal, including alternative identifiers that could be used to identify Reportable Non-Members. For example, one FINRA committee member suggested that FINRA consider leveraging use of a Legal Entity Identifier (“LEI”) for identifying Reportable Non-Members. FINRA does not believe that use of a LEI would be feasible at this time considering that the LEI is not universally in use. As a result, FINRA did not propose the use of LEI in the OATS reports for identifying Reportable Non-Members.

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

The proposed rule change, in addition to another proposal involving ATS order reporting, was published for comment in *Regulatory Notice* 14–51 (November 2014).<sup>27</sup> Five comments were received in response to the *Regulatory Notice*;<sup>28</sup> however, only four of the comment letters addressed the proposed rule change.<sup>29</sup> A copy of *Regulatory Notice* 14–51 is attached as Exhibit 2a.<sup>30</sup> A list of comment letters received in response to *Regulatory Notice* 14–51 is attached as Exhibit 2b, and copies of the four comment letters that addressed the proposed rule change are attached as Exhibit 2c. Of the four comment letters received that addressed the proposed rule change, KCG and SIFMA were in favor of the proposed rule change, Liquidnet did not support or oppose the proposed rule change but asked for interpretive guidance on the application of the proposed rule change to non-U.S. broker-dealers, and FIF was generally opposed.

Liquidnet and SIFMA requested that FINRA provide guidance on the

application of the proposed rule change to non-U.S. broker-dealers that do not have either SRO-assigned identifiers or CRD numbers.

As noted above, FINRA has amended the proposed rule language from that in *Regulatory Notice* 14–51 to clarify that the specific identification of Non-Member Firms applies only to U.S.-registered broker-dealers that have SRO-assigned identifiers or CRD numbers as well as Canadian broker-dealers who have been assigned SRO identifiers for purposes of accessing a FINRA trade reporting facility pursuant to Rule 7220A or 7320. FINRA will provide an indicator for “non-U.S. broker-dealer” for use in the destination code field (for routes to a non-member broker-dealer) and as a member type code (for orders received from a non-member broker-dealer) so that Reporting Members can reflect routes to or from a non-U.S. broker-dealer that does not have a CRD number or an SRO-assigned identifier.

FIF noted that using SRO-assigned identifiers would be preferable to using CRD numbers and suggested that FINRA provide a list of allowable identifiers. KCG requested that FINRA develop a list of identifiers that OATS reporting firms could rely upon to identify non-member broker-dealers and suggested that only those identifiers appearing on the list be required to be reported when dealing with non-member broker-dealers.

In response to these comments, FINRA intends to develop and publish on its Web site a list of acceptable CRD numbers for Reporting Members to use to meet their OATS reporting obligations. FINRA does not, however, intend that only those identifiers appearing on the list would be acceptable values. For example, Canadian broker-dealers that have been issued MPIDs to access FINRA trade reporting facilities pursuant to Rule 7220A or Rule 7320 do not have CRD numbers; thus, Reporting Members receiving orders from or routing orders to such firms would be required to use the Canadian firm’s MPID on their OATS reports. Finally, FIF noted that the issue of identifying Non-Member Firms will be addressed upon the implementation of the CAT and suggested that FINRA not take interim measures to improve OATS but “work diligently with the other SROs towards driving CAT forward.”

FINRA does not view these undertakings as mutually exclusive. While FINRA is working diligently with other SROs to develop and implement the CAT, FINRA also believes that reasonable changes to OATS should still be made to ensure existing audit trails

can be enhanced. As noted above, the full implementation of the CAT is likely still years away. FINRA strongly believes that gaps in OATS data must be addressed in the near-term, after weighing the burdens to firms and the necessity of the change, to ensure an effective audit trail. As set forth above, FINRA has concluded that the identification of Reportable Non-Members is important to enhance FINRA’s cross-market surveillance and believes these modest changes to the OATS requirements should not be delayed due to the potential future implementation of the CAT. Although this proposed rule change will require some Reporting Members to submit more specific data when submitting an OATS report for an order received from a Reportable Non-Member, FINRA does not believe that this change will have a significant operational impact on Reporting Members or their reporting practices because identifiers already have been assigned to the Reportable Non-Members, are generally readily ascertainable by the Reporting Member that is receiving orders from or routing orders to the Reportable Non-Member, and OATS will accept submission of any of these identifiers already in use. As noted above, FINRA intends to provide a list of CRD numbers to assist further in implementing the new requirements for those Reporting Members that are not already identifying Reportable Non-Members on their OATS reports.

**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 within such longer period (i) as the Commission may designate up to 90 days of such date 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 such 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:

<sup>27</sup> The ATS order reporting proposal described in *Regulatory Notice* 14–51 is not reflected in the current proposed rule change; consequently, comments on that proposal are not addressed.

<sup>28</sup> See Letter from Manisha Kimmel, Managing Director, Financial Information Forum, to Marcia E. Asquith, Secretary, FINRA, dated February 20, 2015 (“FIF”); Letter from John A. McCarthy, General Counsel, KCG Holdings, Inc., to Marcia E. Asquith, Secretary, FINRA, dated February 20, 2015 (“KCG”); Letter from Howard Meyerson, General Counsel, Liquidnet Inc., to Marcia E. Asquith, Secretary, FINRA, dated February 20, 2015 (“Liquidnet”); Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, to Marcia E. Asquith, Secretary, FINRA, dated February 24, 2015 (“SIFMA”); and Letter from Mark Holder, Managing Director, UBS Securities LLC, to Marcia E. Asquith, Secretary, FINRA, dated February 26, 2015 (“UBS”).

<sup>29</sup> The UBS Letter addressed only the ATS order reporting proposal in the *Regulatory Notice* and did not address the proposed rule change.

<sup>30</sup> The Commission notes that the exhibits referred to (2a, 2b, and 2c) are exhibits to the proposed rule change, not to this Notice.

*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](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2016-006 on the subject line.

*Paper Comments*

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

All submissions should refer to File Number SR-FINRA-2016-006. 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 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-2016-006 and should be submitted on or before March 17, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>31</sup>

**Brent J. Fields,**

*Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-77196; File No. SR-FINRA-2016-005]

**Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change To Reduce the Synchronization Tolerance for Computer Clocks That Are Used To Record Events in NMS Securities and OTC Equity Securities**

February 19, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 9, 2016, 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. 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 reduce the synchronization tolerance for members' computer clocks that are used to record events in NMS securities, including standardized options, and OTC Equity Securities. This proposal would not change the current clock synchronization requirement for members' mechanical time stamping devices or computer clocks that are used to record events for securities other than NMS securities or OTC Equity Securities.

The text of the proposed rule change is available on FINRA's Web site at <http://www.finra.org>, at the principal office of FINRA, on the Commission's Web site at <http://www.sec.gov>, 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

Current FINRA rules require that firms synchronize their business clocks in conformity with procedures prescribed by FINRA. Specifically, FINRA Rule 7430 requires that firms synchronize their business clocks that are used for purposes of recording the date and time of any event that must be recorded pursuant to the FINRA By-Laws or other FINRA rules (*e.g.*, the time a trade was executed or the time an order was received or routed), with reference to a time source as designated by FINRA. As specified in the current OATS technical specifications, all computer system clocks and mechanical time stamping devices must be synchronized to within one second of the NIST atomic clock.<sup>3</sup> To maintain clock synchronization, clocks should be checked against the NIST atomic clock and re-synchronized, if necessary, at pre-determined intervals throughout the day.<sup>4</sup> FINRA understands that currently, some firms synchronize their clocks continuously throughout the day, while others do so at various times during the day and still others do so only once a day.<sup>5</sup>

Given the increasing speed of trading in today's automated markets, FINRA believes the current one second tolerance is no longer appropriate for computer system clocks recording

<sup>3</sup> Any time provider may be used for synchronization; however, all clocks and time stamping devices must remain accurate within a one-second tolerance of the NIST clock. This tolerance includes (1) the difference between the NIST standard and a time provider's clock, (2) transmission delay from the source and (3) the amount of drift of the member firm's clock. The OATS technical specifications further specify that computer system and mechanical clocks must be synchronized every business day before market open to ensure that recorded order event timestamps are accurate.

<sup>4</sup> The OATS technical specifications also provide that member firms must document and maintain their clock synchronization procedures. In addition, the technical specifications state that member firms should keep a log of the times when they synchronize their clocks and the results of the synchronization process, including notice of any time a member's clock drifts more than the one second standard. The technical specifications further provide that such logs should be maintained for the period of time and accessibility specified in SEC Rule 17a-4(b), and maintained and preserved for the required time period in paper format or in a format permitted under SEC Rule 17a-4(f).

<sup>5</sup> FINRA generally believes that the firms that synchronize once daily are firms that accept manual orders.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>31</sup> 17 CFR 200.30-3(a)(12).