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February 12, 2016

Brent J. Fields  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549-1090

**Re: File No. SR-FINRA-2014-048 – Response to Comments**

Dear Mr. Fields:

This letter responds to comments received by the Securities and Exchange Commission (“SEC” or “Commission”) to the above-referenced rule filing, which relates to FINRA’s proposed rules to implement the data collection requirements of the National Market System Plan to Implement a Tick Size Pilot Program (“Plan” or “Pilot”).<sup>1</sup> Capitalized terms used herein, but not otherwise defined, shall have the meanings ascribed to them in the Plan.

Background

On August 25, 2014, the Participants filed with the Commission, pursuant to Section 11A of the Act<sup>2</sup> and Rule 608 of Regulation NMS thereunder,<sup>3</sup> the Plan to Implement a Tick Size Pilot Program.<sup>4</sup> The Participants filed the Plan to comply with an order issued by the Commission on June 24, 2014.<sup>5</sup> The Plan was published for

<sup>1</sup> See Securities Exchange Act Release No. 76484 (November 19, 2015), 80 FR 73858 (November 25, 2015) (File No. SR-FINRA-2015-048) (Notice of Filing of a Proposed Rule Change to Adopt FINRA Rule 6191(b) and Amend FINRA Rule 7440 to Implement the Data Collection Requirements of the Regulation NMS Plan to Implement A Tick Size Pilot Program) (“Proposal”).

<sup>2</sup> 15 U.S.C. 78k-1.

<sup>3</sup> 17 CFR 242.608.

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

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

comment in the Federal Register on November 7, 2014, and approved by the Commission, as modified, on May 6, 2015.<sup>6</sup>

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.

The Plan provides for the creation of a group of Pilot Securities, which shall be placed in a control group and three separate test groups, with each subject to varying quoting and trading increments. Pilot Securities in the control group will be quoted at the current tick size increment of \$0.01 per share and will trade at the currently permitted increments. Pilot Securities in the first test group will be quoted in \$0.05 minimum increments but will continue to trade at any price increment that is currently permitted.<sup>7</sup> Pilot Securities in the second test group (“Test Group Two”) will be quoted in \$0.05 minimum increments and will trade at \$0.05 minimum increments subject to a midpoint exception, a retail investor order exception, and a negotiated trade exception.<sup>8</sup> Pilot Securities in the third test group (“Test Group Three”) will be subject to the same quoting and trading increments as Test Group Two, and also will be subject to the “Trade-at” requirement to prevent price matching by a market participant that is not displaying at the price of a Trading Center’s “Best Protected Bid” or “Best Protected Offer,” unless an enumerated exception applies.<sup>9</sup> In addition to the exceptions provided under Test Group Two, an exception for Block Size orders and exceptions that mirror those under Rule 611 of Regulation NMS<sup>10</sup> will apply to the Trade-at requirement.

The Plan also requires a Trading Center<sup>11</sup> or a Market Maker<sup>12</sup> to collect and transmit certain data to its designated examining authority (“DEA”), and requires

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

<sup>7</sup> See Section VI(B) of the Plan.

<sup>8</sup> See Section VI(C) of the Plan.

<sup>9</sup> See Section VI(D) of the Plan.

<sup>10</sup> 17 CFR 242.611.

<sup>11</sup> The Plan incorporates the definition of a “Trading Center” from Rule 600(b)(78) of Regulation NMS. Regulation NMS defines a “Trading Center” as “a national securities exchange or national securities association that operates an SRO trading facility, an alternative trading system, an exchange market maker, an OTC market maker, or any other broker or dealer that executes orders internally by trading as principal or crossing orders as agent.” See 17 CFR 242.600(b).

DEAs to transmit this data to the Commission. Participants that operate a Trading Center also are required under the Plan to collect certain data, which is then transmitted directly to the Commission. With respect to Trading Centers, Appendix B.I to the Plan (Market Quality Statistics) requires a Trading Center to submit to the Participant that is its DEA a variety of market quality statistics. Appendix B.II to the Plan (Market and Marketable Limit Order Data) requires a Trading Center to submit information to its DEA relating to market orders and marketable limit orders, including the time of order receipt, order type, the order size, and the National Best Bid and National Best Offer quoted price.

With respect to Market Makers, Appendix B.III requires a Participant that is a national securities exchange to collect daily Market Maker Registration statistics. Appendix B.IV requires a Participant to collect data related to Market Maker participation with respect to each Market Maker engaging in trading activity on a Trading Center operated by the Participant. Appendix C.I requires a Participant to collect data related to Market Maker profitability from each Market Maker for which it is the DEA. Appendix C.II requires the Participant, as DEA, to aggregate the Appendix C.I data, and to transmit this data to the Commission.

The Commission approved the Pilot on a two-year basis, with implementation to begin no later than May 6, 2016.<sup>13</sup> On November 6, 2015, the SEC exempted the Participants from implementing the pilot until October 3, 2016.<sup>14</sup> As set forth in Appendices B and C to the Plan, data that is reported pursuant to the appendices shall be provided for dates starting six months prior to the Pilot Period through six months after the end of the Pilot Period. Under the revised Pilot implementation date, the Pre-Pilot data collection period commences April 4, 2016.

On November 13, 2015, FINRA filed with the Commission a proposed rule change to adopt FINRA Rule 6191(b) and amend FINRA Rule 7440 to implement the data collection requirements of the Plan.<sup>15</sup> On December 9, 2015, FINRA submitted an exemptive request to the Commission, seeking an exemption from certain data collection and reporting requirements set forth in the Plan.<sup>16</sup>

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<sup>12</sup> The Plan defines a Market Maker as “a dealer registered with any self-regulatory organization, in accordance with the rules thereof, as (i) a market maker or (ii) a liquidity provider with an obligation to maintain continuous, two-sided trading interest.”

<sup>13</sup> See Approval Order at 27533 and 27545.

<sup>14</sup> See Securities Exchange Act Release No. 76382 (November 6, 2015), 80 FR 70284 (November 13, 2015) (File No. 4-657).

<sup>15</sup> See Proposal, *supra* note 1.

<sup>16</sup> See letter from Marcia E. Asquith, Senior Vice President and Corporate Secretary, FINRA, to Robert W. Errett, Deputy Secretary, Commission, dated December 9, 2015 (“Exemptive Request”).

Items I and II of Appendix B require a Trading Center that is not operated by a Participant to submit the data set forth in those items to its DEA on a monthly basis, and the DEA to transmit the data on a disaggregated basis within 30 calendar days following month end to the SEC.<sup>17</sup> Item III of Appendix B requires a Participant that is a national securities exchange to collect daily Market Maker Registration statistics, which are reported to the Commission. Item IV of Appendix B requires a Participant that operates a Trading Center to collect daily Market Maker participation statistics relating to Market Makers engaging in trading activity on that Trading Center, which also are reported to the Commission. In the rule filing submitted to the SEC implementing the data collection rules, FINRA proposed that it shall transmit the data relating to Market Maker activity required by Item IV of Appendix B to the Plan, and collected pursuant to proposed Rule 6191(b)(3)(A), to the Participant operating the Trading Center on which such activity occurred on a disaggregated basis by Market Maker during the Pre-Pilot Period, and within 15 calendar days following month end during the Pilot Period.<sup>18</sup>

Appendix C requires a Market Maker to transmit Appendix C.I data to its DEA on a monthly basis, with the DEA providing this information to the SEC within 30 calendar days following month end. A DEA also is required to submit aggregated Market Maker profitability data to the SEC on an aggregated basis within 30 calendar days following month end.

In the interest of increasing the efficiency of the data collection process and the consistency of that data to be collected under the Plan, FINRA proposed to use the Order Audit Trail System (“OATS”) as the vehicle through which Trading Centers

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<sup>17</sup> For a Trading Center that is operated by a Participant, Appendices B.I and B.II require that Participant to gather data for the period beginning six months prior to the Pilot Period and submit this data to the SEC.

<sup>18</sup> See proposed Rule 6191(b)(3)(B). In its Exemptive Request, FINRA requested an exemption from the requirement that, prior to the start of the Pilot, certain data submission requirements commence within 30 calendar days following month-end of the initial data collection date. FINRA requested that the initial submission of pre-Pilot data occur on August 30, 2016, at which time it would submit pre-Pilot data to the Commission for the months of April, May, June and July. FINRA notes that, during the Pre-Pilot Period, it anticipates transmitting the data relating to Market Maker activity required by Item IV of Appendix B to the Plan, and collected pursuant to proposed Rule 6191(b)(3)(A), to the Participant operating the Trading Center where the trade was executed no later than 15 calendar days after month end, beginning no later than July 15, 2016. FINRA would therefore provide Participants with data from April through June no later than July 15, 2016, and July data on August 15, 2016.

must comply with their reporting obligations pursuant to Appendix B.I and B.II.<sup>19</sup> Accordingly, on October 12, 2015, FINRA published OATS Technical Specifications, which provided guidance as to how OATS reporting members that operate a Trading Center under the Plan, and whose Designated Examining Authority (“DEA”) is FINRA, will be required to submit data pursuant to Items I and II of Appendix B of the Plan.<sup>20</sup> On October 12, 2015, FINRA also published the Market Maker Transaction Data Technical Specification, which sets forth the format for collecting certain transaction data from Market Makers who are required to submit data pursuant to Appendix C under the Plan, and whose DEA is FINRA.<sup>21</sup> On October 9, 2015, FINRA also published a series of Frequently Asked Questions relating to the data collection requirements for broker-dealers that operate Trading Centers and for Market Makers.<sup>22</sup> On January 11, 2016, FINRA published updated OATS specifications, updated Market Maker reporting specifications, Market Maker reporting FAQs, and the Pre-Pilot Data Collection Securities Daily List format.

### Comment Letters

FINRA received three comment letters in response to the proposed rule change.<sup>23</sup> FINRA’s responses to those comments are set forth below.

#### 1. Retail Investor Flag

Under the proposed rules, a member that operates a Trading Center is required to submit certain OATS information when an order in a Pilot Security or a Pre-Pilot Data Collection Security is received or originated. Among the information to be included is whether the member is relying upon the Retail Investor Order exception

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<sup>19</sup> See Proposal, supra note 1.

<sup>20</sup> See OATS Reporting Technical Specifications, dated October 12, 2015, at <http://www.finra.org/industry/oats/oats-technical-specifications>.

<sup>21</sup> See Market Maker Transaction Data Technical Specification, dated October 12, 2015, at <http://www.finra.org/sites/default/files/market-maker-transaction-data-tech-specs-v1.pdf>.

<sup>22</sup> See FAQ: Data Collection Requirements for Broker-Dealers, at <http://www.finra.org/industry/faq-data-collection-requirements-broker-dealers>.

<sup>23</sup> See Letter from Mary Lou Von Kaenel, Managing Director, Financial Information Forum, to Robert W. Errett, Deputy Secretary, SEC, dated December 16, 2015 (“FIF Letter I”); letter from Mary Lou Von Kaenel, Managing Director, FIF, to Robert W. Errett, Deputy Secretary, SEC, dated January 25, 2016 (“FIF Letter II”); and letter from Manisha Kimmel, Chief Regulatory Officer, Wealth Management, Thomson Reuters, to Robert W. Errett, Deputy Secretary, SEC, dated December 16, 2015 (“Thomson Reuters Letter”).

with respect to the order.<sup>24</sup> Proposed Supplementary Material .02 clarifies that, for purposes of the reporting requirement in Appendix B.II.(n), a Trading Center shall report “Y” when it is relying upon the Retail Investor Order exception to Test Groups Two and Three, and “N” in all other instances.

Both Thomson Reuters and FIF commented that this flag should apply to OATS execution reports only, and not OATS new order reports, e.g., New Order, Combined Order/Route, or Cancel/ Replace reports, as the member would only know whether the Retail Investor Order exception had, in fact, been utilized at the time of order execution.<sup>25</sup> Thomson Reuters stated that it would be operationally complex to determine the eligibility of the Retail Investor Order flag on a new order, and that Trading Centers may choose not to avail themselves of the Retail Investor Order exception even if a new order meets the definition of a Retail Investor Order.<sup>26</sup> Similarly, FIF stated that it would be a difficult and time-consuming process to modify new order reports to indicate the exception has been relied upon, after the order has been internalized or after the order is routed to another Trading Center.<sup>27</sup>

While firms may determine if an order meets the definition of retail investor order at the time of order receipt, FINRA understands that the ultimate determination of whether an exception will be relied upon may not occur until the time of execution and, consequently, it may be operationally more efficient for firms to only reflect the Retail Investor Order exception flag in OATS execution reports. FINRA is therefore amending its proposed rule text to require members to provide the Retail Investor Order exception flag in a Pilot Security or Pre-Pilot Data Collection Security only in OATS execution-related reports.

## 2. Confidentiality Concerns

Appendix B.IV to the Plan (Daily Market Maker Participation Statistics) requires a Participant to collect data related to Market Maker participation from each Market Maker<sup>28</sup> engaging in trading activity on a Trading Center operated by the Participant. Proposed Rule 6191(b)(3) governs the collection and transmission of data about a Market Maker’s participation in Pilot Securities and Pre-Pilot Data Collection Securities.

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<sup>24</sup> See proposed Rule 6191(b)(2)(A)(ii)(d).

<sup>25</sup> See FIF Letter I at 6; Thomson Reuters Letter at 2.

<sup>26</sup> See Thomson Reuters Letter at 2.

<sup>27</sup> See FIF Letter I at 6.

<sup>28</sup> The Plan defines a Market Maker as “a dealer registered with any self-regulatory organization, in accordance with the rules thereof, as (i) a market maker or (ii) a liquidity provider with an obligation to maintain continuous, two-sided trading interest.”

Proposed Rule 6191(b)(3)(A) provides that a member that is a Market Maker for which FINRA is the DEA shall collect and transmit to FINRA data relating to Item IV of Appendix B to the Plan with respect to activity conducted on any Trading Center in Pilot Securities and Pre-Pilot Data Collection Securities in furtherance of its status as a registered Market Maker. Proposed Rule 6191(b)(3)(B) provides that FINRA shall transmit the data collected pursuant to proposed paragraph (b)(3)(A) to the Participant operating the Trading Center on which such activity occurred in a pipe delimited format on a disaggregated basis by Market Maker during the Pre-Pilot Period and within 15 calendar days following month end during the Pilot Period. Proposed Rule 6191(b)(3)(C) provides that FINRA, within 30 calendar days following month end, shall make disaggregated data relating to Market Maker activity conducted otherwise than on a national securities exchange required by Item IV of Appendix B to the Plan (Daily Market Maker Participation Statistics) publicly available on the FINRA website on a monthly basis. The Proposal further provides that FINRA shall make this information available at no charge and will not identify the Trading Center that generated the data.

FINRA is also proposing rules relating to the collection and transmission of data pursuant to Appendix C.I to the Plan (Market Maker Profitability). Proposed Rule 6191(b)(4)(B) provides that FINRA shall make this aggregated data, categorized by the control group and each Test Group, publicly available on the FINRA website on a monthly basis at no charge and will not identify the Market Makers that generated the data or the individual securities.

In its letter, FIF expressed concern about the data that will be made publicly available by FINRA and the other Participants, especially with respect to publication of disaggregated data. According to the FIF, because some of these securities trade infrequently and there may be a limited number of market participants and Trading Centers that provide liquidity, such data, even if unattributed, may be reverse-engineered to identify the counterparties.<sup>29</sup> FIF requests that the industry be invited to assist in defining the form and content of the data that will be made publicly available on the Participants websites.<sup>30</sup>

FINRA notes that the Plan, as approved by the Commission, sets forth the requirements for the data that is to be made publicly available by the Participants, and the format in which such data shall be made publicly available. At the same time, FINRA appreciates members' concerns about maintaining the confidentiality of this data, and intends to work diligently to ensure that the data is made available consistent with the requirements of the Plan.

FIF also expressed concern about the exchanges' access to the disaggregated Market Makers' data as it is received from FINRA before publication. FIF indicated

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<sup>29</sup> See FIF Letter I at 3.

<sup>30</sup> Id.

that it expected the other Participants, in their rule filings implementing the data collection requirements, to include clear assurances that the data supplied to them through the Tick Size Pilot Plan cannot be used for commercial or competitive purposes.<sup>31</sup> FINRA confirms that it does not intend to use the data collected pursuant to the Plan for commercial or competitive purposes. Concerns regarding the use of the data by other Participants are more properly directed at the rule filings to be submitted by such Participants.

### 3. OATS Reporting Requirements

#### a. Executions on Away Markets

Proposed Rule 6191(b)(2)(A)(iv) requires OATS Reporting Members that operate Trading Centers and for which FINRA is the DEA to report executions in Pre-Pilot Data Collection Securities and Pilot Securities when the order, or any part of the order, is executed on a venue that does not provide execution information to FINRA. FIF states that very few trades in Pilot Securities will be “away trades”; some executions may take place in US markets where the execution venue is not a FINRA member, and others may take place in foreign markets.<sup>32</sup> According to FIF, the largest majority of “away trades” on a US venue that is not a FINRA member are those executed on the Chicago Stock Exchange (“CHX”). FIF therefore recommends that as a Participant subject to the requirements of the Plan, CHX work with FINRA to provide an OATS-like execution report that can be tied to Trading Centers’ OATS Route reports.<sup>33</sup> According to FIF, this will enable FINRA to match the routed orders to the executions.<sup>34</sup> This would allow all OATS reporters to continue to submit only route reports for the trades they send to the CHX, without having to also produce execution reports.<sup>35</sup>

FINRA has engaged in discussions with the CHX to obtain data for executions in Pre-Pilot Data Collection Securities and Pilot Securities that occur on CHX, and has reached an agreement to obtain such data from CHX. FINRA is therefore amending its rule so that members will not be required to submit data related to executions in in Pre-Pilot Data Collection Securities and Pilot Securities that occur on CHX.

With respect to executions that occur on foreign venues, FIF states that there is no compelling reason to capture foreign trades other than to track the volumes of orders that are being routed to foreign markets and to measure any change in the

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<sup>31</sup> See FIF Letter I at 3.

<sup>32</sup> See FIF Letter I at 4.

<sup>33</sup> See FIF Letter I at 4.

<sup>34</sup> See FIF Letter I at 4.

<sup>35</sup> See FIF Letter I at 4.



volumes as a result of the Pilot.<sup>36</sup> FIF further states that the information required for this analysis is already available on the OATS Route reports that are currently produced for these trades.<sup>37</sup> According to FIF, limiting the foreign data analysis to routing would allow Trading Centers to avoid the technical build-out and increased expense of reporting those executions to OATS. FIF therefore requested that the requirement to produce OATS Execution reports for Pilot Securities executed in foreign markets be eliminated.<sup>38</sup>

FINRA believes that the information that can be obtained through existing OATS data on orders routed to a foreign market will be sufficient to analyze the impact of the Pilot on the number of orders routed to foreign markets and that the benefits of capturing detailed information on foreign executions is outweighed by the costs of capturing such information. Accordingly, FINRA is amending proposed Rule 6191(b)(2)(A)(iv) to eliminate the requirement to provide information on foreign executions.

b. Market Maker Reporting Requirements

FINRA is also proposing a rule setting forth the manner in which Market Maker participation and profitability will be calculated. Proposed Rule 6191(b)(5) provides that a member that is a Market Maker subject to the requirements of proposed Rule 6191(b)(3)(A) and (b)(4)(A) in a Pre-Pilot Data Collection Security or a Pilot Security, and for which FINRA is the DEA, shall be deemed to have satisfied the requirements of proposed Rule 6191(b)(3)(A) and (b)(4)(A), in addition to the requirements of Appendix B.IV and Item I of Appendix C, if such Market Maker submits to FINRA the specified data for any principal trade, not including riskless principal trades, in a Pre-Pilot Data Collection Security or a Pilot Security executed in furtherance of its status as a Market Maker on any Trading Center. The proposed rule requires Market Makers to submit (1) Ticker Symbol; (2) Trading Center where the trade was executed, or if not known, the destination where the order originally was routed for further handling and execution; (3) Time of execution; (4) Price; (5) Size; (6) Buy / sell; (7) for trades executed away from the Market Maker, a unique identifier, as specified by the Market Maker's DEA, that will allow the trade to be associated with the Trading Center where the trade was executed; and (8) for trades cancelled or corrected beyond T+3, whether the trade represents a cancellation or correction.

Prior to filing its proposed rule in November 2015, FINRA published Market Maker Transaction Data Technical Specifications on October 12, 2015 in an effort to provide members with increased detail about the specific data formats that would be

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<sup>36</sup> See FIF Letter I at 5.

<sup>37</sup> See FIF Letter I at 5.

<sup>38</sup> See FIF Letter I at 5.

required to comply with the Market Maker participation and profitability reporting requirements. In those Market Maker Transaction Data Technical Specifications, FINRA included fields to obtain the data necessary to calculate Market Maker Participation statistics, including “Exchange Provided Execution Identifier” and “Exchange Provided Order Identifier.” These identifiers were designed to allow Participants to identify the specific Trading Center on which a transaction was executed, but required that the Market Maker always know the ultimate execution venue where the trade occurred. Based upon industry feedback, FINRA and the other Participants understand that there were various trading scenarios, such as the use of a smart order router, where the Market Maker may not know where a trade ultimately was executed, and therefore would not have either an “Exchange Provided Execution Identifier” or an “Exchange Provided Order Identifier.” As reflected in FINRA’s November rule filing, the “Exchange Provided Execution Identifier” and “Exchange Provided Order Identifier” were replaced with an identifier, as specified by the Market Maker’s DEA, that will allow the trade to be associated with the Trading Center where the trade was executed.

In its December 16, 2015 letter, FIF expressed concern that, to facilitate linkages to establish the ultimate execution venue, FINRA will require Market Makers to capture new data, or that new fields or reports must be created beyond that which has been published in the Market Maker Transaction Data Technical Specification. FIF stated that the specifications set forth in the Market Maker Transaction Data Technical Specification are complex to develop, and the linkages are difficult for FINRA to code.<sup>39</sup> According to FIF, members may not be able to submit the required information by April if any new fields or report formats not already included in Market Maker Transaction Data Technical Specification are added to establish the ultimate execution venue.<sup>40</sup> FIF therefore suggested that this portion of the Rule and associated requirements be temporarily waived or eliminated from the pre-Pilot data collection and reporting phase, until all other components are complete, and until the details on how the linkages can be established are further developed.<sup>41</sup>

On January 11, 2016, FINRA published updated Market Maker Transaction Reporting Specifications that included identifiers that will allow FINRA to determine the ultimate execution venue for each trade, even if not known by the Market Maker. Specifically, FINRA will use these identifiers to link the Market Maker’s trade to the final destination where the trade was executed using exchange data and OATS data reported to FINRA. To ensure the linkage process results in complete and accurate Market Maker participation statistics, as required by Appendix B.IV of the Plan, FINRA included in these specifications a requirement that Market Makers correct any

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<sup>39</sup> See FIF Letter I at 5-6.

<sup>40</sup> See FIF Letter I at 6.

<sup>41</sup> See FIF Letter I at 6.

unlinked trades. The specifications require that unlinked trades be corrected within three business days of being notified of an unlinked trade.

In its January 25, 2016 letter, FIF questioned the benefit of using linkages to identify orders that were executed on venues to which the Market Maker had not directed its order, and the benefit of repairing “unlinked” trades to validate the ultimate trading venue.<sup>42</sup> FIF stated that these requirements added significantly to the complexity and ongoing costs of the Pilot, and would have a minimal impact on Market Maker participation statistics.<sup>43</sup> FIF therefore requested that the Participants eliminate the requirement to link to the ultimate execution venue in cases where the order was not directed by a Market Maker.<sup>44</sup> FIF also requested that the Participants eliminate the requirement to repair unlinked trades; if the Participants retained this requirement, FIF requested that the Participants establish a “grace period” of 1-2 months during which time Market Makers would not be obligated to repair unlinked trades.<sup>45</sup> FIF also requested that, once a Market Maker has reached a 90% match rate, correction of unlinked records should not be required.<sup>46</sup>

FINRA believes it is necessary to include a correction process for unlinked trades given that linkage rates may not initially be high enough to ensure statistically valid data for the SEC and the public to use in evaluating the Pilot. If error rates are sufficiently low enough as to not impact the usability of the data, FINRA may determine at that point that unlinked trades no longer need to be corrected. FINRA will work with the SEC and the other Participants to evaluate the error rate and make any determination as to whether corrections continue to be necessary. FINRA believes a three-day correction timeframe is necessary given the T+4 reporting deadline for Market Maker transactions, and the requirement that the Participants provide the Market Maker participation statistics to the SEC and publish that data on each Plan Participant’s website by the 30<sup>th</sup> calendar day of the following month.<sup>47</sup>

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<sup>42</sup> See FIF Letter II at 4.

<sup>43</sup> See FIF Letter II at

<sup>44</sup> See FIF Letter II at 4.

<sup>45</sup> See FIF Letter II at 5.

<sup>46</sup> See FIF Letter II at 5.

<sup>47</sup> Further, FINRA is required under the SRO data collection rules to provide linked data to each Plan Participant by the 15<sup>th</sup> calendar day of the following month so that such Plan Participants may perform the necessary calculations to produce the required Market Maker participation statistics by the 30<sup>th</sup> calendar day of the following month. A correction window longer than three business days is not possible given the 15 and 30 calendar day reporting requirements contained in the SRO rules and the Plan. For example, a trade executed on April 29, 2016 would be due to FINRA on May 5, 2016. FINRA would provide feedback to the market maker on May 6, 2016. If the trade could not

In its supplemental letter, FIF also discussed the requirement that riskless principal trades be excluded from the transaction file that will be submitted by Market Makers that contains participation and profitability statistics. FIF noted that, in cases where both legs of a riskless principal transaction is systematically processed and linked in an automated fashion, there should be no issues in removing these trades from the statistics.<sup>48</sup> However, FIF stated there are certain transactions that cannot be systematically paired. For example, where a Market Maker accumulates shares over the trading day on a principal basis, and later sells those shares to one or more customers at an average price on a riskless basis, FIF stated that it is difficult for a Market Maker to link the riskless legs to the principal trades.<sup>49</sup> FIF therefore proposed that, where riskless and principal legs can be linked, they should be removed from the market maker transaction file; however, where they cannot be definitively linked, both the principal legs and the riskless legs should remain in the market maker transaction file.<sup>50</sup>

While FINRA acknowledges that additional work may be required to identify riskless trades that are not systematically linked to the related customer fill, FINRA understands that riskless principal trades must be eliminated from the Market Maker participation statistics for such data to be useful in evaluating the Plan.

FINRA believes that the proposed provisions relating to Market Maker participation and profitability data collection, including the linkages between Market Maker transaction data and the ultimate execution venue, the repair of unlinked trades, and the exclusion of riskless principal trades, are all necessary to comply with the Plan, and is therefore not proposing any amendments to these provisions. FINRA notes that it worked closely with industry participants to identify data elements that generally are readily available to Market Makers and that would allow FINRA and the other Plan Participants to determine the executing venue for all Market Maker trades, and that the linkage methodology included in the January 11, 2016 Market Maker Transaction Data Reporting Specifications is substantially similar to the linkage methodology used in existing OATS reporting. FINRA has attempted to provide industry participants with as much advance notice as possible to comply with the proposed requirements, and will continue to work with members to ensure they have the information and clarity needed to implement the new reporting requirements.

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be linked, the market maker would be required to correct and resubmit the trade to FINRA by May 11, 2016. The linked trade files must be submitted by FINRA to the other Plan Participants by May 13, 2016 since May 15, 2016 falls on a Sunday. Allowing repairs to be submitted beyond May 11, 2016 would not allow enough processing time to meet the required timeframes in the SRO data collection rules and the Plan.

<sup>48</sup> See FIF Letter II at 5.

<sup>49</sup> See FIF Letter II at 5.

<sup>50</sup> See FIF II Letter at 7.

4. Requests for Clarification

a. Limit up-Limit-Down Flag

Proposed Supplementary Material .03 requires that members populate a field to identify whether an order is affected by the bands in place pursuant to the National Market System Plan to Address Extraordinary Market Volatility.<sup>51</sup> Accordingly, FINRA proposes that a Trading Center shall report a value of “Y” when the ability of an order to execute has been affected by the Limit-Up Limit-Down bands in effect at the time of order receipt. A Trading Center shall report a value of “N” when the ability of an order to execute has not been affected by the Limit-Up Limit-Down bands in effect at the time of order receipt.

In its comment letter, FIF stated that, as it understood the proposed requirement, FINRA will determine whether the Limit-Up Limit-Down flag is applicable by comparing the Time of Order Receipt on the OATS report to the information available on the SIP feed. FIF therefore requested that FINRA clarify that members that operate Trading Centers would not be required to report any additional information and no additional input beyond the new OATS fields included in the OATS Reporting Technical Specifications published on October 12, 2015 will be required of the Trading Center.<sup>52</sup> FINRA clarifies that no additional reporting will be required by members that operate Trading Centers to populate this field beyond what has already been set forth in those OATS Reporting Technical Specifications.

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<sup>51</sup> See National Market System Plan to Address Extraordinary Market Volatility, Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (File No. 4-631) (“Limit-Up Limit-Down Plan”). Pursuant to the Limit-Up Limit-Down Plan, between 9:30 a.m. and 4:00 p.m., the Securities Information Processor (“SIP”) calculates a lower price band and an upper price band for each NMS stock. These price bands represent a specified percentage above or below the stock’s reference price, which generally is calculated based on reported transactions in that stock over the preceding five minutes. When one side of the market for an individual security is outside the applicable price band, the SIP identifies that quotation as non-executable. When the other side of the market reaches the applicable price band (e.g., the offer reaches the lower price band), the security enters a Limit State. The stock exits a Limit State if, within 15 seconds of entering the Limit State, all Limit State Quotations are executed or canceled in their entirety. If the security does not exit a Limit State within 15 seconds, then the primary listing exchange declares a five-minute trading pause, which would be applicable to all markets trading the security.

<sup>52</sup> See FIF Letter I at 7.

b. Time Range Reporting

Supplementary Material .04 relates to the time ranges specified in Appendix B.I.a(14), B.I.a(15), B.I.a(21) and B.I.a(22).<sup>53</sup> FINRA and the other Participants determined that it is appropriate to change the reporting times in these provisions to require more granular reporting for these categories, and amended those reporting requirements accordingly.<sup>54</sup> As noted above, FINRA also issued a series of Frequently Asked Questions (FAQs) that address the granularity of reporting.<sup>55</sup>

In its comment letter, FIF cites FAQ 29, which states that the Plan requires timestamps to be reported using the finest granularity captured by the Trading Center.<sup>56</sup> FIF also notes that OATS formats do not allow for reporting in microseconds.<sup>57</sup> To the extent that a member that operates a Trading Center maintains its internal timestamps in microseconds, but is only able to report via OATS in milliseconds, FIF requests clarification that the Trading Center would not be out of compliance with FAQ 29 in this scenario. FINRA clarifies that a member is not required to report in an increment of time that is not accepted or permitted by FINRA

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<sup>53</sup> Specifically, Appendix B.I.a(14) requires reporting of the cumulative number of shares of orders executed from 0 to less than 100 microseconds after the time of order receipt; Appendix B.I.a(15) requires reporting of the cumulative number of shares of orders executed from 100 microseconds to less than 100 milliseconds after the time of order receipt; Appendix B.I.a(21) requires reporting of the cumulative number of shares of orders cancelled from 0 to less than 100 microseconds after the time of order receipt; and Appendix B.I.a(22) requires reporting of the cumulative number of shares of orders cancelled from 100 microseconds to less than 100 milliseconds after the time of order receipt.

<sup>54</sup> Specifically, in Supplementary Material .04, FINRA proposes to add Appendix B.I.a(14A), which will require Trading Centers to report the cumulative number of shares of orders executed from 100 microseconds to less than 1 millisecond after the time of order receipt. Appendix B.I.a(15) will be changed to require the cumulative number of shares of orders executed from 1 millisecond to less than 100 milliseconds after the time of order receipt. FINRA also proposes to add Appendix B.I.a(21A), which will require Trading Centers to report the cumulative number of shares of orders canceled from 100 microseconds to less than 1 millisecond after the time of order receipt. Appendix B.I.a(22) will be changed to require the cumulative number of shares of orders canceled from 1 millisecond to less than 100 milliseconds after the time of order receipt.

<sup>55</sup> See FAQ: Data Collection Requirements for Broker-Dealers, at <http://www.finra.org/industry/faq-data-collection-requirements-broker-dealers>.

<sup>56</sup> See id.

<sup>57</sup> See FIF Letter I at 7.

systems; for example, if a member maintains its internal timestamps in microseconds, it would not be required to report to OATS in microseconds because OATS currently does not support microseconds.

c. New Order Types

Proposed Supplementary Material .08 addresses the status of not-held and auction orders for purposes of Appendix B.I reporting. Currently, Appendix B.I sets forth eight categories of orders, including market orders, marketable limit orders, and inside-the-quote resting limit orders, for which daily market quality statistics must be reported. Currently, Appendix B.I does not provide a category for not held orders, clean cross orders, auction orders, or orders received when the NBBO is crossed. FINRA therefore proposed Supplementary Material .07 to provide that not held orders, clean cross orders, auction orders, and orders that cannot otherwise be classified, including, for example, orders received when the NBBO is crossed, shall be included as an order type for purposes of Appendix B reporting. All of these orders already are included in the scope of Appendix B; however, without this proposed change, these order types would be categorized with other orders, such as regular held orders, that should be able to be fully executed upon receipt, which would compromise the value of this data.

In its comment letter, FIF sought clarification that members that operate Trading Centers would not be required to provide any additional input beyond the new OATS fields that were included in the OATS Reporting Technical Specifications that were published on October 12, 2015, and FINRA will be responsible for determining these order types based on the trade details provided by the Trading Centers in their OATS reports. FINRA clarifies that members that operate Trading Centers will not be required to provide additional data to complete these fields beyond what has already been required in the OATS Reporting Technical Specifications.

d. Reporting of Market Maker Transaction Data

In its comment letter, FIF sought clarification on the status of firms that become Market Makers during the Pre-Pilot Period or Pilot Period. If a firm is neither a Trading Center or a Market Maker during the Pre-Pilot Period, and becomes a Market Maker in a Pilot Stock during either the Pre-Pilot or the Pilot Period, FIF recommended that a firm must begin reporting the additional OATS fields and provide Market Maker Transaction Data only from that point forward, and is under no obligation to collect and report data or market making activity pursuant to Appendix B.I and B.II retroactively.<sup>58</sup> Similarly, if a Market Maker becomes registered, withdraws, and again becomes registered, FIF recommended that the Trading Center be required to report Market Maker Transaction Data only on those days where the

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<sup>58</sup> See FIF Letter I at 8.

Trading Center has conducted principal trading as a Registered Market Maker.<sup>59</sup> Any principal trading conducted on days other than when the Trading Center is a Registered Market Maker will be included in OATS reports. FINRA clarifies that there is no retroactive reporting requirement for Trading Centers that become Market Makers during the Pre-Pilot or Pilot Period, and that Market Makers only need to report data on those days in which they are trading as a Registered Market Maker.

e. Composition of the Pre-Pilot and Pilot Securities

In its comment letter, FIF also sought clarification on the procedure by which the Participants will communicate to market participants the list of Pre-Pilot and Pilot Securities and the test group assignments, and the manner in which changes to those lists will be communicated.<sup>60</sup> FINRA notes that it has published detailed guidance on the format and content of the Pre-Pilot Data Collection Security List and Pilot Security List, including the daily change lists. This guidance includes information on how firms may retrieve these lists in an automated format. On February 10, 2016, FINRA and the primary listing markets published a Tick Size Sample Security List that may be used for testing until the actual Pre-Pilot Data Collection Securities List is determined on March 4, 2016. The Pre-Pilot Data Securities List will be published on or about March 7, 2016. The Pilot Securities list will be determined 30 days prior to the start of the Pilot and will be published as soon as the list has been determined.

FINRA believes that the foregoing responds to the issues raised by the commenters.<sup>61</sup> If you have any questions, please contact me at [REDACTED].

Very truly yours,



Andrew Madar  
Associate General Counsel

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<sup>59</sup> See FIF Letter I at 8.

<sup>60</sup> See FIF Letter at 2.

<sup>61</sup> FINRA notes that the initial FIF Letter also included an appendix that contained additional “questions outstanding with FINRA.” FINRA is engaged in a continuing discussion with FIF and with other industry participants on the issues raised in the appendix.