

FINANCIAL INFORMATION FORUM

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Via Electronic Delivery

Mr. Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090

November 5, 2015

Re: SR-NYSE-2015-46; Release No. 34-76229; Notice of Filing of Proposed Rule Change Establishing Rules to Comply with the Requirements of the Plan to Implement a Tick Size Pilot Plan Submitted to the Commission pursuant to Rule 608 of Regulation NMS under the Act

Dear Mr. Fields,

On behalf of Financial Information Forum¹ ("FIF") non-exchange industry members, I am writing to provide comment on the New York Stock Exchange (NYSE) rule filing SR-NYSE-2015-46 related to the Tick Size Pilot; and also to express our broader concerns regarding implementation of the Tick Size Pilot.

Our comments regarding Rule 67 include the following:

- It is unclear as to whether this Rule is written to govern the behavior of NYSE members for all aspects of the Plan, or whether its scope is limited to the exchange-related activities of NYSE members.
- This Rule filing does not address the data collection and reporting provisions of the Plan.
- Definitions of certain terms have been changed such that they are no longer consistent with the SEC Order or the approved Plan as modified.
- Addition of certain exemptions that apply to the Reg NMS trade-through rule should be added to the trade-at provision to ensure consistency and the ability to leverage existing procedures.

More generally, we are greatly concerned that the effective date for the Tick Size Pilot has not been postponed, despite the fact that critical information necessary to support implementation of the Pilot has not yet been made available to non-exchange industry members. For example:

- Specifications have not been provided for the publication of pilot securities as described in Appendix A of the Plan.
- Rule filings related to the implementation of the Plan, other than this NYSE filing, remain outstanding; most notably, FINRA's rule proposal to mandate use of OATS to fulfill certain data collection requirements, as well as other FINRA rules and those of other DEAs that will prescribe OTC trading centers' and market makers' behavior.²

¹ FIF (www.fif.com) was formed in 1996 to provide a centralized source of information on the implementation issues that impact financial services and technology firms. Our participants include trading and back office service bureaus, broker-dealers, market data vendors and exchanges. Through topic-oriented working groups, FIF participants focus on critical issues to arrive at productive solutions to meet the requirements of new regulations, technology developments, and other industry changes.

² <http://www.sec.gov/rules/sro/nms/2015/34-74892-exa.pdf>; Section III. E. pgs. 21-22. "Pursuant to the NMS plan, the Participants and members of Participants would be required to establish, maintain, and enforce written policies and

- Numerous questions posed by FIF relating to the mechanics of quoting and trading securities in each of the Test Groups ([FIF Questions](#)) are unanswered, and we are not aware of a process or forum in which our questions may be addressed.

We also wish to take this opportunity to impress on the Commission the effort required by the non-exchange trading centers and market makers to meet their obligations under the Plan. Please understand that the complexity of making changes to OATS requires months of development and testing. Furthermore, there is a general lack of clarity regarding quoting and trading for a variety of scenarios. Without the specifics of each of the SROs' order handling and execution rules for the Pilot, and without a clear understanding of the functional requirements for each of the Test Groups (particularly the details around the trade-at provisions), it is difficult for non-exchange members to determine exactly how long it will take to prepare for quoting and trading under the Tick Size Pilot Plan.

For these reasons, we ask that compliance with *pre-Pilot data collection and reporting requirements be delayed to allow a minimum of six months for development from the time that the Participants' rules are approved and final specifications and FAQs are published to the industry*. Additionally, we request that the Pilot itself be further delayed to allow sufficient time for development and testing. While we currently estimate the Pilot phase will require an additional six months following the pre-Pilot phase, until we receive more information from the SROs regarding the implementation details of quoting and trading for each Test Group, we are unable to commit to a specific timeframe.

Comments on SR-NYSE-2015-46

Language contained in SR-NYSE-2015-46 indicates the Operating Committee approved this rule filing to serve as the template for filings by each of the Plan Participants.³ FIF members' understanding is that the Plan requires Plan Participants to create rules that will require their members to comply with the provisions of the Plan. As such, we anticipate each of the Plan Participants will submit filings similar to this NYSE filing, with the exception of FINRA and other DEAs, which we believe should be materially different to reflect their supervisory roles over non-exchange trading centers including broker dealers and ATSS.

When considering SR-NYSE-2015-46 from the broader perspective of the Plan, it remains unclear as to whether this Rule 67 (and similar rules to be subsequently submitted by the other SROs) is written to govern the behavior of its members for all aspects of the Plan, or whether its scope is limited to the exchange-related activities of its members. For example, the rule cites brokered cross trades, retail investor orders and negotiated trades.⁴ It is difficult to discern if these references and other

procedures that are reasonably designed to comply with the quoting and trading increments for the Pilot Securities. Each Participant would develop appropriate policies and procedures that provide for collecting and reporting to the Commission the Trading Center Data. Each Participant that is the DEA of a member of a Participant operating a trading center would require such member to develop appropriate policies and procedures for collecting and reporting the Trading Center Data to the DEA. Each Participant that is the DEA of a member of a Participant operating a trading center would develop appropriate policies and procedures for collecting and reporting the Trading Center Data to the Commission. Further, each Participant that is the DEA of a market maker would require such market maker to develop policies and procedures for collecting the Market Maker Profitability Data and report it to the DEA."

³ While the scope of the NYSE filing may include the critical aspects needed to serve as a template for the other exchange filings, FIF would expect the rule filings from FINRA and other DEAs to deviate significantly from this NYSE model. In addition to mandating requirements including form and format for data collection and reporting, we would expect DEAs' filings to address more specifically the expected quoting and trading behaviors of OTC trading centers and market makers.

⁴ <http://www.sec.gov/rules/sro/nyse/2015/34-76229.pdf> pg.9 "proposed Rule 67 (d) (2) would provide that ... no member organization may execute orders in any Pilot Security in Test Group Two in price increments other than \$0.05. The \$0.05

descriptions of quoting and trading requirements for Test Groups One, Two and Three apply strictly to NYSE members' on-exchange activities, or their off-exchange behaviors as well. To eliminate this confusion, we ask that these aspects of the SRO filings be clarified.

Data Collection and Reporting Requirements are not addressed by this filing

This NYSE filing represents the first Plan Participant rule filing to address the requirements of the Tick Size Pilot; however, proposed Rule 67 includes only sections (a), (c), (d), and (e) which apply generally to the Plan and specifically to the quoting and trading aspects of the Plan. The filing indicates that Section (b) is reserved to address data collection and reporting, with no additional details provided. As published, the filing is silent on the length of the pre-Pilot data collection period as well as the start date. That said, the implementation date for data collection and reporting was originally set for November 6, 2015 by the Commission at the time the Participants' Plan was approved, yet rule filings from the various Plan Participants instructing trading centers and market makers to meet these requirements have not been published or approved.

FIF's non-exchange members contend that until such time that specific filings have been proposed and, after a public comment period, the filings are finally approved by the Commission, there are no rules in place that would require non-exchange industry members to operate under the Tick Size Pilot Plan. Without a definitive rule filing, completed FAQs, final specifications for data collection and reporting from all DEAs, a list of pre-Pilot securities, and other instructions and guidance from the SROs and DEAs describing how Plan requirements are to be met, FIF's non-exchange members do not have all the tools, nor do they believe they have the obligation, to meet the initial target date of November 6, 2015 for data collection and reporting.

Quoting and Trading Requirements under Rule 67

FIF's comments regarding NYSE's proposed Rule 67 and the application of quoting and trading restrictions described in this filing are centered around two themes:

- 1) Definitions of certain terms have been changed such that they are no longer consistent with the SEC Order or the approved Plan as modified; resulting in further restrictions on trading centers' activities.
- 2) Certain exemptions that apply to the Reg NMS trade-through rule were omitted from the trade-at provision, which we prefer be retained to ensure consistency and the ability to leverage existing procedures.

Trading Centers' Behaviors are Limited Based on Changed Definition of Terms

Several definitions within Rule 67 differ from those cited in the Tick Size Pilot Plan submitted by Plan Participants on August 25, 2014, which was approved with modifications by the Commission on May 6, 2015. Examples of those differences discussed below include quoting exceptions and trade-at exemptions related to a retail investor order, displayed quotations and block size.

trading increment would apply to all trades, including Brokered Cross Trades." "Paragraph (d)(3) would set forth further requirements ... Specifically, member organizations trading Pilot Securities in Test Group Two would be allowed to trade in increments less than \$0.05 under the following circumstances ..."

Retail Investor Order

Although the definition of “Retail Investor Order” provided in the Plan⁵ is somewhat ambiguous, it is FIF’s understanding that the trade-at exemption may be applied by a broker-dealer’s trading center as well as by an exchange. The approved Plan describes Trade-at Prohibition Exceptions in Section VI. D., stating:

“Trading centers will be permitted to execute an order for a Pilot Security at a price equal to a protected bid or protected offer under the following circumstances: ... (3) The order is a Retail Investor Order executed with at least \$0.005 price improvement.”

This statement does not stipulate that the Retail Investor Order must be executed under an exchange program, but that “Trading centers will be permitted to execute” While proposed paragraph (a)(1) of Rule 67 is similar to that specified by the Plan, it adds the proviso that the order is submitted to the Exchange.⁶

Paragraph (d)(3) of Rule 67 sets forth further requirements for Pilot Securities in Test Group Two. The proposal indicates that member organizations trading Pilot Securities in Test Group Two would be allowed to trade in increments less than \$0.05 under the following circumstances:

“(B) Retail Investor Orders may be provided with price improvement that is at least \$0.005 better than the Best Protected Bid or the Best Protected Offer;”⁷

Based on the definition of “Retail Investor Orders” included in Rule 67, paragraphs (a)(1) and (d)(3) infer that broker-dealers cannot principally fill an order other than in price increments of \$0.05 if received from a natural person that would otherwise meet the definition of a retail investor order, because it is not being submitted to the exchange.

FIF’s understanding is that the retail investor order exemption is meant to be applicable to clients of both broker-dealers and Participants. While we recognize that this NYSE filing, and those of the other exchanges may not be required to address OTC trading, we do expect that FINRA’s rule filing or the FAQs will reflect the broader behavior. As an alternative, the Plan could be amended to make clear that the Retail Investor Order exemption may be applied by a trading center to OTC trades. FIF suggests the following language: “Retail Investor Order” would mean an agency order or a riskless principal order that meets the criteria of FINRA Rule 5320.03 that originates from a natural person and is submitted to the Exchange by a retail member organization (a member organization, or a division thereof, that has been approved by the Exchange under the Exchange’s retail liquidity program rule (Rule 107C) to submit Retail Investor Orders), provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology.

⁵ “(DD) ‘Retail Investor Order’ means an agency order or a riskless principal order originating from a natural person, provided that, prior to submission, no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology. The Participant that is the Designated Examining Authority of a member of a Participant operating a trading center executing a Retail Investor Order will require such trading center to sign an attestation that substantially all orders to be executed as Retail Investor Orders will qualify as such under the Plan.”

⁶ “‘Retail Investor Order’ would mean an agency order or a riskless principal order that meets the criteria of FINRA Rule 5320.03 that originates from a natural person and is submitted to the Exchange by a retail member organization (a member organization, or a division thereof, that has been approved by the Exchange under the Exchange’s retail liquidity program rule (Rule 107C) to submit Retail Investor Orders), provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology.”

⁷ <http://www.sec.gov/rules/sro/nyse/2015/34-76229.pdf> pg. 9.

Displayed Quotations

The NYSE filing states:

“Proposed Rule 67(e)(4)(C) would allow member organizations to execute a sell order for a Pilot Security in Test Group Three at the price of a Protected Bid or execute a buy order for a Pilot Security in Test Group Three at the price of a Protected Offer if any of the following circumstances exist: (A) The order is executed by a Trading Center within a member organization that has a displayed quotation for the account of that Trading Center *on a principal basis*, [emphasis added] via either a processor or an SRO Quotation Feed, at a price equal to the traded-at Protected Quotation, that was displayed before the order was received, but only up to the full displayed size of the Trading Center’s previously displayed quote”

Footnote 28⁸ of the NYSE filing clearly articulates the intent of inserting the requirement that a displayed quotation be for a principal account, for purposes of the trade-at exemption. This will preclude all displayed quotes representing customer orders, whether they are on or off-Exchange, from eligibility for the “displayed quote” exemption to the trade-at provision. The stipulation that only a displayed *principal* quotation may be considered when exempting a trade from the trade-at provision is not contemplated in either the SEC Order or the approved Plan. In addition, it would present problems complying with customer limit order protection obligations. FIF members are opposed to this restriction on the displayed quote exemption, and therefore request that this reference and the related footnote be entirely removed from the NYSE filing.

Block Size Exemptions

The NYSE filing has introduced qualifiers to the trade-at exemption for block size orders that do not exist in either the SEC Order or the approved Plan. Specifically, in order to utilize the trade-at exemption:

“(C) The order is of Block Size at the time of origin and may not be:

- (i) an aggregation of non-block orders;
- (ii) broken into orders smaller than Block Size prior to submitting the order to a Trading Center for execution; or
- (iii) executed on multiple Trading Centers”⁹

We understand this has been added to ensure the purpose of the trade-at prohibition is not undermined; however, this will prevent a trading center from facilitating a block cross that includes smaller orders. We suggest that aggregation of non-block orders be permitted as long as at least one component of the block in itself would constitute a “block size order” by the definition stipulated in the approved Plan; that is, “an order (1) of at least 5,000 shares or (2) with a market value of at least \$100,000 will be considered a block size for purposes of the Tick Size Pilot.”¹⁰

Other Reg NMS Exemptions

FIF members had understood that the exceptions to the trade-at provision under the Tick Size Pilot were meant to be closely aligned to the exemptions available for Rule 611 (the trade-through rule) of

⁸ Ibid. pg. 10. “By requiring the displayed quotation to be for the account of “that Trading Center,” the Trading Center cannot rely on any quotations it may put up on an agency basis, including a riskless principal basis. A Trading Center that is a broker-dealer also cannot rely on any quotation that is not a displayed quotation for its own account, such as the quotation of another broker-dealer, or customer of such broker-dealer.”

⁹ <http://www.sec.gov/rules/sro/nyse/2015/34-76229.pdf> pg.11.

¹⁰ <http://www.sec.gov/rules/sro/nms/2015/34-74892-exa.pdf> pg.104.

Regulation NMS.¹¹ In that spirit, there are certain exemptions that should be included in the NYSE filing. Specifically, while not originally in Rule 611, the Commission issued several orders to add Reg NMS trade-through exemptions and provided guidance in the form of FAQs. FIF members believe that the Tick Size Pilot should allow the following exemptions to the Tick Size Pilot trade-at provision and that prior guidance should apply:

- Order Exempting Certain Error Correction Transactions from Rule 611 of Regulation NMS under the Securities Exchange Act of 1934 <http://www.sec.gov/rules/exorders/2007/34-55884.pdf>
- Order Exempting Certain Print Protection Transactions from Rule 611 <http://www.sec.gov/rules/exorders/2007/34-55883.pdf>
- SEC guidance on Regulation NMS, FAQ 3.04 related to the second leg of a riskless principal transaction (<https://www.sec.gov/divisions/marketreg/nmsfaq610-11.htm>)

Timeline for Implementation

It is our understanding that FINRA intends to include in its rulemaking the requirement that all FINRA members (where FINRA is their DEA) fulfill certain Tick Size Pilot data collection and reporting responsibilities through their OATS submissions, using an expanded OATS format to cover B.I and B.II reporting, and an alternate format for market making transactions to support B.IV and Appendix C reporting obligations. FINRA has provided draft specifications, and FIF members have posed questions which remain outstanding. FINRA's rule filing has not yet been published for comment.¹²

Many FIF members appreciate FINRA's offer to provide services to meet data collection and reporting requirements. In the absence of a rule filing, we will assume that FINRA's approach to facilitate B.I and B.II pre-Pilot data collection and reporting for a period of six months, and continued throughout the Pilot period, will fully leverage OATS files with the addition of several fields as described in the draft specifications. Based on the information published to date, and given the industry's experience with comparable regulatory initiatives, particularly where implementation requires changes to OATS, we believe a minimum of six months will be required to ensure the industry can comply with these data collection and reporting requirements without introducing undue risk. FIF members will either confirm or revise this estimate and provide additional detail when FINRA files its rule proposal for comment.

Based on past experience¹³, it is generally agreed that changes to OATS require at least six months from the final specs to production. Regardless of how insignificant or extensive OATS changes may seem, changes to OATS are risky, costly, and time-intensive. Many firms, including service bureaus that process for numerous trading centers, have requested eight to nine months' lead time for changes where OATS is involved. The following presents FIF members' challenges regarding OATS in support of our request for six months for development and testing for the Pre-Pilot Data Collection

¹¹ Ibid. pgs. 94, 106. "the Commission expects that market participants would be able to leverage existing Rule 611 systems for implementing and complying with the Tick Size Pilot"

¹² Although there have been no formal filings, FINRA has provided draft specifications and discussed their intentions. It is not possible to comment on FIF members' ability to comply with requirements for data collection and reporting where the DEA is other than FINRA, as no information has been provided to date. Our expectation is that other DEAs will file similar rules and provide similar services to those that have been discussed by FINRA.

¹³ The most recent changes to OATS which involved repurposing of fields were considered so minor they did not require a rule change. The specs were released on May 18 for a September 28, 2015 effective date. This 4 month timeframe was extremely short and firms may have been unable to implement the "optimal" solution in order to meet the deadline. More substantive technical specifications to support the new ORF platform did require a rule change. The initiative took 6 months as specs were released on May 9, 2014 for implementation by November 17, 2014.

and Reporting phase of the Plan, from the time the final rules are approved and final specifications are published.

- Firms have adapted their systems and processes through the years to meet each new requirement introduced by FINRA. At most firms, numerous systems may be involved in provisioning the data to an integrated system that ultimately processes the complete data set required to generate the OATS reports. Changes made to any aspect of OATS could have serious impact in other areas involved in OATS reporting. Due to the critical nature of the OATS reporting process, and the significant penalties associated with reporting errors, etc., firms typically take great caution when making any changes to OATS, and insist on rigorous regression testing.
- OATS implementations are complex, particularly when a new field is being added. In addition to format adjustments to outgoing OATS reports, there are code changes and testing that will impact: a) multiple upstream systems where changes must be made to create/capture data that did not previously exist (e.g. Routable Flag, Retail Investor Order Flag), b) client interfaces to provide new data fields for input, c) database schemas to accommodate the new fields, d) database search screens, e) modules to review and correct OATS submissions.
- For the hundreds of firms that utilize vendors for OATS reporting, ample time for implementation is critically important. In many cases, service providers must implement and test internally before deploying the new software to their users, who in turn must integrate the changes within their systems, which could include making changes to their customer interfaces.
- “Away” executions have not previously been included in OATS reporting. At some firms, this may require pulling data from multiple systems and formatting into OATS reports, which represents additional scope and could be a significant build. One member firm has determined that there are at least 30 flows (between domestic and international) that would be impacted across their systems in addition to the OATS data repository.

With regard to the implementation for the full Pilot, it is extremely important that the implementation date be delayed in parallel with data collection for three reasons:

- A reduced data collection period would degrade the quantity and richness of data for analysis, and thereby dilute the value and effectiveness of the data collection effort.
- A compressed period for development and testing of quotes and trades is not feasible, as FAQs or other forms of guidance necessary to begin analysis and development has not been provided. Based on current assumptions, development and testing will require a bare minimum of six months; however, that could be expanded depending on complexities that may become evident with the final SRO rule filings and as additional details become available.
- The changes required to implement this Pilot program will impact a multitude of order management and trading systems throughout the industry. A hurried implementation would introduce undue risk for all trading centers, and be contrary to the policies and procedures established by many of our member firms, particularly those required to operate under guidelines set forth by the SEC under Regulation SCI, which became effective November 3.

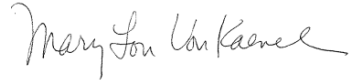
At this time, FIF respectfully requests that the Commission formally suspend the November 6, 2015 target date for pre-Pilot data collection and reporting, as well as the May 6, 2016 effective date for the start of the Pilot. We strongly recommend that the Commission refrain from establishing revised implementation dates for data collection and reporting and for the full Pilot until all proposed rule filings have been published and the industry has had an opportunity to comment. In addition, FAQs or other forms of guidance regarding both the pre-Pilot and Pilot phases, as well as complete and final specifications should be made available in order for industry members to more accurately estimate implementation timeframes based on a clear understanding of the requirements. As all SRO rules,

business and technology requirements are finalized, after our comments have been submitted, we are hopeful that our recommendations for a reasonable timeframe will be considered and incorporated in the approved Plan.

Please do not hesitate to contact me at [REDACTED] with questions or to arrange for follow up discussions.

Thank you for your consideration of these important industry issues.

Regards,



Mary Lou Von Kaenel
Managing Director
Financial Information Forum

cc: The Honorable Mary Jo White, Chair
The Honorable Luis A. Aguilar, Commissioner
The Honorable Michael S. Piwowar, Commissioner
The Honorable Kara M. Stein, Commissioner
Stephen Luparello, Director, Division of Trading and Markets
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