

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-70676; File No. SR-FINRA-2013-042)

October 11, 2013

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change to Require Alternative Trading Systems to Report Volume Information to FINRA and Use Unique Market Participant Identifiers

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 30, 2013, the Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“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 (i) adopt FINRA Rule 4552 to require each alternative trading system (“ATS”) to report to FINRA weekly volume information and number of trades regarding securities transactions within the ATS; and (ii) amend FINRA Rules 6160, 6170, 6480, and 6720 to require each ATS to acquire and use a single, unique market participant identifier (“MPID”) when reporting information to FINRA. FINRA will make the reported volume and trade count information for equity securities publicly available on its web site.

The text of the proposed rule change is available on FINRA’s website at <http://www.finra.org>, at the principal office of FINRA and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 a rule change to adopt new FINRA Rule 4552, which requires each ATS³ to report to FINRA volume information regarding transactions within the ATS in securities (both equity and debt) subject to FINRA trade reporting obligations. As described below, each ATS will be required to report to FINRA the aggregate weekly volume of transactions and number of trades within the ATS by security, and FINRA will make the reported information for equity securities publicly available on a delayed basis. The proposed rule change also requires that each ATS use a single, unique MPID when reporting information to FINRA. The proposed rule change will enhance FINRA’s regulatory and automated surveillance efforts by enabling it to obtain more granular information regarding activity

³ Regulation ATS defines an alternative trading system as “any organization, association, person, group of persons, or system: (1) That constitutes, maintains, or provides a market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock exchange within the meaning of [Exchange Act Rule 3b-16]; and (2) That does not: (i) Set rules governing the conduct of subscribers other than the conduct of such subscribers’ trading on such organization, association, person, group of persons, or system; or (ii) Discipline subscribers other than by exclusion from trading.” 17 CFR 242.300(a). The proposed rule change applies to any alternative trading system, as that term is defined in Regulation ATS, that has filed a Form ATS with the Commission.

conducted on or through individual ATSS as well as FINRA’s ability to determine whether an ATS is subject to any provisions of Regulation ATS that are triggered by exceeding volume thresholds. The proposed rule change will also enhance transparency into the over-the-counter market.

(1) Background

Regulation ATS requires an ATS to provide to a national securities exchange or association for display the prices and sizes of orders at the ATS’s highest buy price and lowest sell price for any NMS stock, displayed to more than one person in the ATS, with respect to which the ATS has had an average daily trading volume of 5% or more of the aggregate average daily share volume for such NMS stock during at least four of the preceding six calendar months.⁴ Regulation ATS also requires any such ATS to provide broker-dealers with fair access to the ATS’s services to effect a transaction in any such NMS stock.⁵

Regulation ATS requires each ATS to report to the SEC on a quarterly basis, via Form ATS-R, its total unit volume of transactions and total dollar volume of transactions, not for each particular security issue, but only for each category of securities covered by the rule.⁶ Although the volume reporting is not on a security-by-security basis and is only based on quarterly volume, the Regulation ATS fair access requirement and the order display and execution access

⁴ 17 CFR 242.301(b)(3). For purposes of Regulation ATS, “NMS stock” is defined in Rule 300(g) of Regulation ATS and excludes a debt or convertible debt security. See 17 CFR 242.300(g). In 2009, the SEC proposed lowering the threshold from 5% to 0.25%; however, the SEC has not acted on this proposal. See Securities Exchange Act Release No. 60997 (November 13, 2009), 74 FR 61208 (November 23, 2009).

⁵ See 17 CFR 242.301(b)(5). The fair access requirement also applies to other types of securities, including certain unlisted equity securities, municipal securities, and corporate debt securities. See id. Certain ATSS are excluded from the fair access requirement. See 17 CFR 242.301(b)(5)(iii).

⁶ See 17 CFR 242.301(b)(9); SEC Form ATS-R.

requirements are triggered on a security-by-security basis for equity securities⁷ and are based on monthly volume numbers rather than quarterly volume numbers.⁸ Consequently, the current ATS reporting obligations do not provide sufficient information on which to determine whether an ATS has exceeded the volume thresholds in Regulation ATS.

Current trade reporting data also does not provide a definitive way to assess whether an ATS has reached the volume thresholds in Regulation ATS. Although each over-the-counter securities transaction in which an ATS is involved must be reported under FINRA rules, a broker-dealer that operates an ATS may report trades executed within a particular ATS using the same MPID it uses for transactions it executes in other areas of its business (including other ATSs it operates). Current trade reporting data, therefore, is not dispositive in determining which trades were executed within an ATS as opposed to other areas of a broker-dealer's business, and FINRA is unable to rely solely on existing trade reporting data to surveil for compliance with the display obligations and the fair access requirements in Regulation ATS.

(2) Reporting Requirement

The proposed rule change creates a reporting obligation requiring each ATS that has filed a Form ATS with the SEC to report to FINRA its aggregate weekly volume information and number of trades, by security, in securities subject to FINRA trade reporting requirements. The reporting requirement would thus apply to any NMS stock,⁹ OTC Equity Security,¹⁰ or any debt security subject to FINRA's Trade Reporting and Compliance Engine ("TRACE") rules

⁷ See Securities Exchange Act Release No. 40760 (December 8, 1998), 63 FR 70844, 70866, 70873 (December 22, 1998).

⁸ See 17 CFR 242.301(b)(3)(i), (b)(5)(i).

⁹ See FINRA Rule 6110.

¹⁰ See FINRA Rule 6410.

(“TRACE-Eligible Securities”).¹¹ These reports would provide FINRA with information necessary to surveil for compliance with the display obligations and the fair access requirements in Regulation ATS for these securities.¹² The proposed rule change would require this information to be reported to FINRA on a security-by-security basis within seven business days after the end of each calendar week. Although the proposed rule change would impose new weekly reporting obligations, ATSs are already required to maintain this information pursuant to Regulation ATS.¹³ Consequently, FINRA believes that seven business days provides sufficient time for ATSs to consolidate, review, and report the information.

The proposed rule change also specifies how ATSs should calculate their volumes to ensure consistency and to avoid potential over-counting of volume. Proposed Rule 4552 provides that, “[w]hen calculating and reporting the volume of securities traded and the number of trades, an alternative trading system shall include only those trades executed within the alternative trading system. If two orders are crossed by the alternative trading system, the volume shall include only the number of shares or par value of bonds crossed as a single trade (e.g., crossing a buy order of 1,000 shares with a sell order of 1,000 shares would be calculated as a single trade of 1,000 shares of volume).” Thus, for example, an ATS would only report trades executed within the ATS (not orders routed out of the ATS) and would only report the

¹¹ See FINRA Rules 6710, 6730(a).

¹² Although the order display and execution access requirements apply only to NMS stocks, the fair access requirements of Regulation ATS apply to multiple types of securities, including certain debt securities. See 17 CFR 242.301(b)(5)(i).

¹³ Regulation ATS requires each ATS to maintain daily summaries of its trading activities, including (1) the identity of each security for which transactions have been executed; (2) transaction volumes (with respect to equity securities, this includes the total number of trades, the number of shares traded, and the total settlement value in U.S. dollars); and (3) time-sequenced records of order information. See 17 CFR 242.301(b)(8); 17 CFR 242.302.

volume of each executed trade once (not separate or double counting for the buy and sell side of the trade).

In addition to benefitting FINRA's regulatory and surveillance efforts for compliance with Regulation ATS, the proposed rule change would also enhance the transparency of trading activity in the over-the-counter market.¹⁴ As noted above, each individual ATS would be required to report to FINRA its aggregate weekly volumes and number of trades on a security-by-security basis.¹⁵ Under the proposed rule change, FINRA would publish on its web site the reported information in each equity security for each ATS, with appropriate disclosures that the information is based on ATS-submitted reports and not on reports produced or validated by FINRA. Based on feedback from firms and FINRA committees, FINRA is proposing to initially publish the aggregate reported information regarding NMS stocks in Tier 1 of the NMS Plan to

¹⁴ In 2009, the Commission noted that “[t]he lack of information concerning the ATS on which trades are executed makes it difficult, if not impossible, for the public to assess ATS trading in real-time, and to reliably identify the volume of executions in particular stocks on individual ATSs.” See Securities Exchange Act Release No. 60997 (November 13, 2009), 74 FR 61208 (November 23, 2009). This lack of transparency is still true. Although the proposed rule change would not affect real-time trade transparency, it will provide increased transparency into the volume of executions in particular stocks on individual ATSs.

¹⁵ Under the proposed rule, every ATS, even one that has received an exemption from FINRA to permit its subscribers to report trades to FINRA, must submit a weekly volume report. An ATS is also required to submit a weekly report for weeks where the ATS has no volume. In these instances, the ATS would affirmatively indicate no volume on the report.

Address Extraordinary Market Volatility¹⁶ on a two-week delayed basis.¹⁷ FINRA is proposing to publish the information on all other NMS stocks and OTC Equity Securities subject to FINRA trade reporting requirements on a four-week delayed basis.¹⁸ FINRA believes these delays are appropriate and are adequate to prevent any potential information leakage regarding sensitive trading activity, particularly in more illiquid securities.

¹⁶ Tier 1 NMS stocks include those NMS stocks in the S&P 500 Index or the Russell 1000 Index and certain ETPs. See NMS Plan to Address Extraordinary Market Volatility. FINRA will make changes to the Tier 1 NMS stocks in accordance with the Indices. Changes to the S&P 500 are made on an as needed basis and are not subject to an annual or semi-annual reconstitution. S&P typically does not add new issues until they have been seasoned for six to twelve months. Russell 1000 rebalancing typically takes place in June.

¹⁷ Thus, for example, a typical reporting scenario (i.e., no federal holidays) would require ATSS to report the information for a given week by the second Tuesday following the week. FINRA would publish the information regarding Tier 1 NMS stocks no earlier than the following Monday. Information on all other equity securities subject to FINRA trade reporting requirements would be published two weeks following the publication of information for the Tier 1 NMS stocks.

¹⁸ FINRA intends to establish a fee to recover costs that may be incurred in providing the information to professional users of the data; however, non-professional users could receive the data free of charge. At this time, FINRA intends to use substantially the same definitions for professionals and non-professionals as used under the TRACE data dissemination rules. See FINRA Rule 7730 (defining a “Non-Professional” as a natural person who uses TRACE transaction data solely for his or her personal, non-commercial use). It is anticipated that Non-Professional subscribers would be required to agree to certain terms of use of the data, including that he or she receives and uses the data solely for his or her personal, non-commercial use. FINRA anticipates establishing a flat, monthly subscription fee (with a yearly commitment term) for professional subscribers to access the published reports on an enterprise license basis. The entity would not be permitted to redistribute this information outside of the enterprise. In addition, FINRA is considering offering a monthly vendor enterprise license (with a yearly commitment term) to permit the redistribution of the reports. As with TRACE data, data vendors would be responsible for reporting entity usage as a result of their re-dissemination of the data and remitting payment for such usage. Vendors similarly would be subject to regular audits to ensure accurate and timely compliance with re-dissemination reporting and payment. The amount of the fees will be established pursuant to a separate proposed rule change filed with the Commission.

The reporting obligations in the proposed rule change apply to transactions in NMS stocks, OTC Equity Securities, and TRACE-Eligible Securities. Although ATSS that trade TRACE-Eligible Securities would be subject to the self-reporting obligations, FINRA does not intend to begin publishing self-reported data for TRACE-Eligible Securities until it has had the opportunity to evaluate the data received from such ATSS and the differences between the existing trade reporting regimes applicable to equity and debt securities. Following implementation of Rule 4552, FINRA intends periodically to assess the reporting and publication of information to consider whether modifications to the scope of securities covered, the delay between the activity and publication, or the frequency of publication of the information are appropriate.

FINRA discussed the proposed rule change with several of its industry committees and a number of ATS operators. The consulted firms generally supported the proposed reporting requirements and publication of the transaction information. As noted above, following discussions with firms, FINRA is proposing a two-week delay before publishing the reported data on Tier 1 NMS stocks on FINRA's web site and a four-week delay for all other NMS stocks and OTC Equity Securities. The firms also generally supported FINRA's decision to initially publish only data on equity securities.

Some consulted firms also indicated support for expanding the scope of the proposed rule change to include other, non-ATS over-the-counter trading information of broker-dealers. The proposed rule change does not currently contemplate applying the proposed rule change beyond ATSS, but FINRA requests comment on the benefits and burdens of future expansion of the proposal to require trading information for other over-the-counter executions of FINRA broker-dealers separate from ATS trade information, and making this information public in the same

manner as is proposed for ATS trade information. This other over-the-counter execution information could include broker-dealer internalized executions, trades executed in the over-the-counter market by wholesale market makers trading with order entry brokers, and executions on broker crossing systems that have not filed a Form ATS with the Commission.

(3) MPID Requirement

In addition to the reporting requirements described above, the proposed rule change also requires that a member operating an ATS obtain for each such ATS a single, unique MPID that is designated for exclusive use for reporting each ATS's transactions. Members that operate multiple ATSs or engage in other lines of business requiring the use of MPIDs would therefore be required to obtain and use multiple MPIDs. FINRA currently has three rules permitting the use of multiple MPIDs on FINRA facilities: Rule 6160 (Multiple MPIDs for Trade Reporting Facility Participants), Rule 6170 (Primary and Additional MPIDs for Alternative Display Facility Participants), and Rule 6480 (Multiple MPIDs for Quoting and Trading in OTC Equity Securities). All three rules are permissive, and none of the rules currently requires the use of multiple MPIDs.

Rule 6160 provides that any Trade Reporting Facility Participant that wishes to use more than one MPID for purposes of reporting trades to a FINRA Trade Reporting Facility ("TRF") must submit a written request, in the form required by FINRA, to, and obtain approval from, FINRA Market Operations for such additional MPIDs. In addition, Supplementary Material to the rule states that FINRA considers the issuance of, and trade reporting with, multiple MPIDs to be a privilege and not a right. A Trade Reporting Facility Participant must identify the purpose(s) and system(s) for which the multiple MPIDs will be used. If FINRA determines that the use of multiple MPIDs is detrimental to the marketplace, or that a Trade Reporting Facility

Participant is using one or more additional MPIDs improperly or for other than the purpose(s) identified by the Participant, FINRA staff retains full discretion to limit or withdraw its grant of the additional MPID(s) to such Trade Reporting Facility Participant for purposes of reporting trades to a TRF.

Like Rule 6160, Rule 6480 provides that any member that wishes to use more than one MPID for purposes of quoting an OTC Equity Security or reporting trades to the OTC Reporting Facility (“ORF”) must submit a written request, in the form required by FINRA, to, and obtain approval from, FINRA Market Operations for such additional MPIDs. The rule also states that a member that posts a quotation in an OTC Equity Security and reports to a FINRA system a trade resulting from such posted quotation must utilize the same MPID for reporting purposes. In addition, Supplementary Material to the rule states that FINRA considers the issuance of, and trade reporting with, multiple MPIDs to be a privilege and not a right. When requesting an additional MPID(s), a member must identify the purpose(s) and system(s) for which the multiple MPIDs will be used. If FINRA determines that the use of multiple MPIDs is detrimental to the marketplace, or that a member is using one or more additional MPIDs improperly or for purposes other than the purpose(s) identified by the member, FINRA staff retains full discretion to limit or withdraw its grant of the additional MPID(s) to such member.

Rule 6170 governs the use of MPIDs on FINRA’s Alternative Display Facility (“ADF”) and provides that a Registered Reporting ADF ECN may request additional MPIDs for displaying quotes and orders and reporting trades through the ADF for any ADF-Eligible Security. Among other things, Registered Reporting ADF ECNs are prohibited from using an additional MPID to accomplish indirectly what they are prohibited from doing directly through their Primary MPID. In addition, FINRA staff retains full discretion to determine whether a

bona fide regulatory or business need exists for being granted an additional MPID privilege and to limit or withdraw the additional MPID display privilege at any time. The procedures for requesting, and the restrictions surrounding the use of, multiple MPIDs are set forth in supplementary material to the rule.

In 2010, FINRA also adopted amendments to Rule 6160 establishing a voluntary program to allow members operating an ATS dark pool to have their daily aggregate trading data published by the TRFs.¹⁹ Under Rule 6160(c), members voluntarily participating in the program are required to obtain and use a separate MPID designated exclusively for the reporting of transactions executed within the ATS dark pool.²⁰ Because the proposed rule change would require the use of single, unique MPIDs for all ATSs, FINRA is proposing amendments to Rule 6160(c) to expand the MPID requirement to all ATSs but is maintaining the provisions specific to the ATS dark pool program in Supplementary Material .02 to Rule 6160 with some minor changes to incorporate defined terms and to adjust cross-references.

As noted above, the proposed rule change requires that a member that operates an ATS obtain for each such ATS a single, unique MPID that is designated for exclusive use for reporting each ATS's transactions. A firm would not be permitted to use multiple MPIDs for a single ATS, and if a firm operates multiple ATSs, each ATS would be required to have its own MPID. Firms are also required to notify FINRA before changing the usage of the MPID in any way (e.g., repurposing an MPID from reflecting ATS activity to other trading activity at the firm). After an ATS is provided its MPID, any reporting by the ATS (either reporting trades to a

¹⁹ See Securities Exchange Act Release No. 61658 (March 5, 2010), 75 FR 11972 (March 12, 2010). To date, no member has voluntarily taken part in the program.

²⁰ The rule defines an "ATS dark pool" as "an ATS that does not display quotations or subscribers' orders to any person or entity either internally within the ATS dark pool or externally beyond the ATS dark pool (other than employees of the ATS)." See FINRA Rule 6160(c).

FINRA TRF, the ADF, the ORF, TRACE, or reporting orders to the Order Audit Trail System (“OATS”)) would need to include the MPID assigned to the particular ATS, and the member must use such separate MPID to report all transactions executed within the ATS to the appropriate reporting facility.²¹

The proposed rules prohibit a member from using a separate MPID assigned to an ATS to report any transaction that is not executed within the ATS and require members to have policies and procedures in place to ensure that trades reported with a separate MPID obtained under the rules are restricted to trades executed within the ATS. ATSs are already required “to have in place safeguards and procedures to . . . separate alternative trading system functions from other broker-dealer functions, including proprietary and customer trading.”²² Consistent with this existing obligation, FINRA believes it is appropriate to require firms to address the use of unique MPIDs pursuant to the proposed rule in these procedures and that such a requirement should impose minimal burdens or costs on firms.

The proposed rule change, once implemented, would enable FINRA to rely on trade reports to determine whether an ATS has reached any of the volume thresholds in Regulation ATS by requiring each ATS to acquire and use a unique MPID for reporting to FINRA.²³

²¹ OATS Reporting Members are required to include MPIDs on OATS reports. See, e.g., FINRA Rule 7440(b)(3), (c)(1)(B), (c)(2)(A)(ii), (c)(2)(A)(iii). The proposed rule change does not include any changes to OATS rules; however, current OATS guidance provides that “[a]n order that is transferred between two valid MPIDs within the same firm is also considered routed.” See OATS Reporting Technical Specifications, at 4-3 (ed. December 11, 2012). Consequently, after the proposed rule change is implemented, an order routed to an ATS would require the submission of a Route Report, which must reflect the unique MPID of the ATS to which the order was routed. See FINRA Rule 7440(c).

²² See Securities Exchange Act Release No. 40760 (December 8, 1998), 63 FR 70844, 70879 (December 22, 1998).

²³ After the MPID requirement is implemented, FINRA will be able to compare the trade reporting data to the data self-reported to FINRA by the ATSs to verify the consistency and accuracy of both. Once FINRA confirms the unique MPID requirement is

Because the proposed rule change would require the use of multiple MPIDs by some members, FINRA also is proposing that the current rules described above permitting multiple MPIDs, which currently operate on a pilot basis, be made permanent.²⁴ In addition to the surveillance benefits for Regulation ATS, a unique MPID requirement will also enable FINRA to surveil generally with far greater clarity and granularity the flow of orders and executions on ATSS. Moreover, requiring each ATS to use a single, unique MPID will allow FINRA to better surveil activity by ATSS on a more uniform basis, beginning at order receipt through execution or cancellation.

FINRA discussed the proposed requirement for ATSS to use single, unique MPIDs with several of its industry committees and a number of ATS operators. The consulted firms generally supported the proposed MPID requirement; however, several firms noted that requiring unique MPIDs could impose costs on some firms resulting from systems changes needed to incorporate multiple MPIDs. Other firms indicated that they already use a separate MPID for their ATS reporting and, therefore, such a requirement would not be burdensome. Finally, some firms suggested that FINRA consider alternative methods for identifying trading activity occurring on ATSS through, for example, the use of a trade report modifier or ATS “flag.”

Although FINRA recognizes that some firms may incur costs associated with acquiring and using multiple MPIDs, FINRA believes that using a separate MPID for each ATS is feasible on an ongoing basis, and that the primary costs result from initial changeover costs. In fact, many members already voluntarily use separate MPIDs to report ATS transactions. However,

functioning as intended, FINRA will determine whether to continue to require ATSS to self-report volume information.

²⁴ See FINRA Rules 6160, 6170, 6480.

given the potential systems changes required by the MPID requirement, FINRA will provide additional time for firms to implement the MPID requirement.

FINRA has also considered whether alternative methods exist that could achieve the benefits of unique MPIDs. After consideration, FINRA believes that alternative methods of identifying ATS transactions on an automated basis (e.g., using an ATS “flag” or other modifier on trade reports) will not provide FINRA with the same degree of comprehensive, reliable information as requiring unique MPIDs because MPIDs can be used consistently across multiple trade reporting systems as well as OATS and can immediately reflect the particular ATS associated with the order event or trade. Consequently, the proposed rule change continues to require that each ATS obtain and use a single, unique MPID for reporting to FINRA.

FINRA will announce the effective date of the proposed rule change in a Regulatory Notice to be published no later than 30 days following Commission approval. The effective date for the ATS reporting requirement will be no later than 90 days following publication of the Regulatory Notice announcing Commission approval. The effective date for the MPID requirement will be no later than 270 days following publication of the Regulatory Notice announcing Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,²⁵ 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 weekly volume statistics reported by each ATS will significantly enhance FINRA’s

²⁵ 15 U.S.C. 78o-3(b)(6).

ability to surveil for compliance with the requirements of Regulation ATS, and publicly disseminating the ATS trading data for equity securities will provide enhanced transparency and understanding into trading activity by ATSs in the over-the-counter market. FINRA believes that requiring each ATS to use a single, unique MPID for reporting information to FINRA will significantly enhance FINRA's ability to surveil for compliance with the requirements of Regulation ATS as well as other SEC rules, the federal securities laws, and FINRA rules. In addition, the use of unique MPIDs by ATSs could eventually obviate the need for self-reporting of trading information to FINRA.

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.

As noted above, although the proposed rule change imposes a new weekly reporting obligation on ATSs, they are already required to maintain this information pursuant to Regulation ATS. Because of the existing recordkeeping obligations in Regulation ATS, FINRA does not believe that the weekly reporting requirements in the proposed rule change will impose significant costs on firms or will require firms to expend significant resources.

By standardizing the calculation of transaction volumes on ATSs, and mandating public reporting, the proposal will help ensure that ATSs are publishing standardized transaction statistics. This will support competition among ATSs by replacing the incomplete, inconsistent, or inaccurate ATS statistics currently made available with more reliable and standard statistics of market share in a security.

Although some members may incur costs associated with systems changes needed to incorporate a separate MPID for their ATS activity, following discussions with multiple firms

and FINRA committees, FINRA believes that other members will incur relatively low costs in implementing the proposed rule change. In fact, many members already use unique MPIDs to report ATS transactions separately. FINRA also believes that, as noted above, alternative methods of identifying ATS transactions on an automated basis (e.g., using an ATS “flag” or other modifier on trade reports) will not provide FINRA with the same degree of comprehensive, reliable information as requiring unique MPIDs since MPIDs are used across FINRA trade reporting facilities and are used to report order information to OATS.

FINRA also believes that the proposal increases competition on a fair basis by enabling FINRA itself, in time, to calculate and disseminate trading statistics for ATSS on a standard, reliable basis. It also enables FINRA to monitor more closely order entry and execution on ATSS, which will promote consistent compliance with Regulation ATS and trading requirements by ATSS and their participants.

Some firms consulted said that the information reporting requirements could place ATSS at a competitive disadvantage to broker crossing systems that are not registered as ATSS. While FINRA asks for comment above regarding whether FINRA should require similar trading information to be provided by FINRA broker-dealers’ securities trades in the over-the-counter market, FINRA does not view any potential disadvantage to ATSS from the proposed disclosures as sufficient to outweigh the value of presently making available for public information and regulatory analysis the trading information of regulated ATSS.

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

Written comments were neither solicited nor received.

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:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-FINRA-2013-042 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR- FINRA-2013-042. This file number should be included on the subject line if e-mail 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 website (<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 website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at 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 publicly available. All submissions should refer to File Number SR-FINRA-2013-042 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁶

Kevin M. O'Neill
Deputy Secretary

²⁶ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

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

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4000. FINANCIAL AND OPERATIONAL RULES

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4500. BOOKS, RECORDS AND REPORTS

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4550. ATS Reporting

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4552. Alternative Trading Systems – Trading Information for Securities Executed

Within the Alternative Trading System

(a) Within seven business days after the end of each week, each member that operates an ATS that has filed a Form ATS with the SEC shall report to FINRA, in such format as FINRA may require, the aggregate weekly Trading Information for each NMS stock, OTC Equity Security and TRACE-Eligible Security executed within each such ATS operated by the member during the previous week.

(b) FINRA will publish on its public web site the Trading Information for equity securities as reported by each ATS on the following timeframes:

(1) no earlier than two weeks following the end of the Trading Information week, Trading Information regarding NMS stocks in Tier 1 of the NMS Plan to Address Extraordinary Market Volatility; and

(2) no earlier than four weeks following the end of the Trading Information week, Trading Information regarding (A) NMS stocks that are

subject to FINRA trade reporting requirements and are not in Tier 1 of the NMS Plan to Address Extraordinary Market Volatility and (B) OTC Equity Securities.

(c) When calculating and reporting the volume of securities traded and the number of trades, an ATS shall include only those trades executed within the ATS. If two orders are crossed by the ATS, the volume shall include only the number of shares or par value of bonds crossed as a single trade (e.g., crossing a buy order of 1,000 shares with a sell order of 1,000 shares would be calculated as a single trade of 1,000 shares of volume).

(d) Definitions

For purposes of this Rule, the term:

(1) “ATS” has the same meaning as the term “alternative trading system” as that term is defined in SEA Rule 300;

(2) “NMS stock” has the same meaning as that term is defined in SEA Rule 600(b)(47);

(3) “OTC Equity Security” has the same meaning as that term is defined in Rule 6420;

(4) “TRACE-Eligible Security” has the same meaning as that term is defined in Rule 6710; and

(5) “Trading Information” includes:

(A) the number of shares of each NMS stock or OTC Equity Security executed within an alternative trading system;

(B) the par value of each TRACE-Eligible Security executed within an alternative trading system; and

(C) the number of trades in a security executed within an alternative trading system.

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6000. QUOTATION AND TRANSACTION REPORTING FACILITIES

6100. QUOTING AND TRADING IN NMS STOCKS

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6160. Multiple MPIDs for Trade Reporting Facility Participants

(a) [For a pilot period ending on January 31, 2014, a]Any Trade Reporting Facility Participant that is required to obtain, or otherwise wishes to use, more than one Market Participant Symbol (“MPID”) for purposes of reporting trades to a Trade Reporting Facility must submit a written request, in the form required by FINRA, to, and obtain approval from, FINRA Market Operations for such additional MPID(s).

(b) No Change.

(c) A Trade Reporting Facility Participant that operates an alternative trading system (“ATS”), as that term is defined in SEA Rule 300, [“dark pool” (defined for purposes of this Rule as an ATS that does not display quotations or subscribers' orders to any person or entity either internally within the ATS dark pool or externally beyond the ATS dark pool (other than employees of the ATS)) and opts to have its data included in published aggregate trading volume data] must obtain a single, separate MPID for each such ATS designated for exclusive use for reporting [its] each ATS’s [dark pool] transactions. The member must use such separate MPID to report all transactions executed within the ATS [dark pool] to a Trade Reporting Facility (or Facilities). The member shall not use such separate MPID to report any transaction that is not executed

within the ATS [dark pool]. Any member that operates multiple ATSs [dark pools and opts to have the data for each ATS dark pool included in the published data] must obtain a separate MPID for each ATS [dark pool]. Members must have policies and procedures in place to ensure that trades reported with a separate MPID obtained under this paragraph are restricted to trades executed within the ATS [dark pool].

• • • **Supplementary Material:** -----

.01 No Change.

.02 Any FINRA Trade Reporting Facility Business Member that chooses to publish aggregate daily trading volume for transactions executed within an ATS “dark pool” (defined for purposes of this Rule as an ATS that does not display quotations or subscribers' orders to any person or entity either internally within the ATS dark pool or externally beyond the ATS dark pool (other than employees of the ATS)) and reported to the Trade Reporting Facility will base such volume solely on transactions reported by the ATS dark pool for purposes of publication. The Business Member will prominently disclose that its web site may not reflect 100% of the volume for any given ATS dark pool and interested parties must consult all Business Members' web sites for purposes of obtaining an ATS dark pool's total volume.

A member's dark pool transaction data will not be included in the published volume unless the member affirmatively opts in to have its data included. A member operating an ATS dark pool must certify in writing to FINRA that (1) the member is affirmatively opting in for purposes of having its dark pool transaction data included in the published data and acknowledges that its data may be presented as an overall percentage volume

only or may be broken down by security; (2) the member meets the definition of ATS dark pool above [in paragraph (c) of this Rule]; and (3) the member has obtained a separate MPID that will be used exclusively for reporting all transactions executed within the ATS dark pool as required by paragraph (c) of this Rule.

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6170. Primary and Additional MPIDs for Alternative Display Facility Participants

(a) No Change.

(b) The first Market Participant Identifier (“MPID”) issued to a FINRA Market Participant shall be referred to as the FINRA Market Participant's “Primary MPID.” [For a pilot period ending January 31, 2014, a] A Registered Reporting ADF ECN may request the use of Additional MPIDs for displaying quotes/orders and reporting trades through TRACS for any ADF-Eligible Security. Any ADF Participant that is required to obtain, or otherwise wishes to use, more than one MPID must submit a written request, in the form required by FINRA, to, and obtain approval from, FINRA Market Operations for such Additional MPID(s). A Registered Reporting ADF ECN that ceases to meet the obligations appurtenant to its Primary MPID in any security shall not be permitted to use Additional MPIDs for any purpose in that security.

(c) No Change.

(d) A member reporting trades to the ADF that operates an alternative trading system (“ATS”), as that term is defined in SEA Rule 300, must obtain a single, separate MPID for each such ATS designated for exclusive use for reporting each ATS’s transactions. The member must use such separate MPID to report all transactions executed within the ATS to the ADF. The member shall not use such separate MPID to

report any transaction that is not executed within the ATS. Any member that operates multiple ATSS must obtain a separate MPID for each ATS. Members must have policies and procedures in place to ensure that trades reported with a separate MPID obtained under this paragraph are restricted to trades executed within the ATS.

• • • **Supplementary Material:** -----

.01 through .05 No Change.

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6400. QUOTING AND TRADING IN OTC EQUITY SECURITIES

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6480. Multiple MPIDs for Quoting and Trading in OTC Equity Securities

(a) [For a pilot period ending on January 31, 2014, a]Any member that is required to obtain, or otherwise wishes to use, more than one Market Participant Symbol (“MPID”) for purposes of quoting and trading OTC Equity Securities or for reporting trades to the OTC Reporting Facility must submit a written request, in the form required by FINRA, to, and obtain approval from, FINRA Market Operations for such additional MPID(s).

(b) No Change.

(c) An OTC Reporting Facility Participant that operates an alternative trading system (“ATS”), as that term is defined in SEA Rule 300, must obtain a single, separate MPID for each such ATS designated for exclusive use for reporting each ATS’s transactions. The member must use such separate MPID to report all transactions executed within the ATS to the OTC Reporting Facility. The member shall not use such separate MPID to report any transaction that is not executed within the ATS. Any

member that operates multiple ATSS must obtain a separate MPID for each ATS.

Members must have policies and procedures in place to ensure that trades reported with a separate MPID obtained under this paragraph are restricted to trades executed within the ATS.

• • • **Supplementary Material:** -----

.01 No Change.

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6700. TRADE REPORTING AND COMPLIANCE ENGINE (TRACE)

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6720. Participation in TRACE

(a) through (b) No Change.

(c) Alternative Trading Systems

A TRACE Participant that operates an alternative trading system (“ATS”), as that term is defined in SEA Rule 300, must obtain a single, separate MPID for each such ATS designated for exclusive use for reporting each ATS’s transactions. The member must use such separate MPID to report all transactions executed within the ATS to TRACE. The member shall not use such separate MPID to report any transaction that is not executed within the ATS. Any member that operates multiple ATSS must obtain a separate MPID for each ATS. Members must have policies and procedures in place to ensure that trades reported with a separate MPID obtained under this paragraph are restricted to trades executed within the ATS.

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