

# FINANCIAL INFORMATION FORUM

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## **Via Electronic Delivery**

Mr. Robert W. Errett  
Deputy Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, D.C. 20549-1090

December 22, 2015

Re: SR-BATS-2015-102; Release No. 34-76524; Notice of Filing of a Proposed Rule Change to Adopt Rule 11.27 Regarding the Data Collection Requirements of the Tick Size Pilot Program

Dear Mr. Errett,

On behalf of Financial Information Forum (“FIF”)<sup>1</sup> members that do not represent an exchange, I am writing to provide comment on the BATS Exchange, Inc. (the “Exchange” or “BATS”) proposed rule filing SR-BATS-2015-102 (“BATS’ filing”), related to the Data Collection and Reporting requirements of the Tick Size Pilot.

We assume that this rule proposed by BATS will provide the template for other Tick Size Pilot Plan Participants to publish rules instituting policies and procedures for data collection and reporting to the Securities and Exchange Commission (“SEC”); and, to establish rules requiring their member organizations to comply with the data collection and reporting provisions of the Tick Size Pilot Plan<sup>2</sup>. The Financial Industry Regulatory Authority, Inc. (“FINRA”) has proposed related rule filing SR-FINRA-2015-048 (“FINRA’s filing”), in response to which FIF has submitted comments.<sup>3</sup> For organizations that are members of both FINRA and BATS (as well as other exchanges), particularly those member firms for whom FINRA is their DEA, it is imperative that Plan Participants’ rule filings related to data collection and reporting are harmonized to avoid conflicts in the requirements. BATS’ proposed Rule 11.27 (b), which includes details for the collection and/or transmission of data to meet the requirements of Appendix B.I, B.II, B.III, B.IV, C.I and C.II of the Plan, and related Interpretations and Policies, appear to be in alignment with FINRA’s filing.

FIF’s goals in submitting this comment letter are: a) to verify several key points specific to BATS’ filing, and b) to reinforce several points previously stated in our comment letter regarding SR-FINRA-2015-048, but are equally relevant to BATS’ filing.

FINRA has lifted much of the burden from Trading Centers and Market Makers who are FINRA members by leveraging its infrastructure to collect transactional data, analyze and format the data to

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<sup>1</sup> FIF ([www.fif.com](http://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.

<sup>2</sup> <http://www.sec.gov/rules/sro/nms/2015/34-74892-exa.pdf>

<sup>3</sup> See [FIF Comment Letter regarding SR-FINRA-2015-048](#).

meet Plan requirements, and report the data to the SEC and other Plan Participants. FINRA members will meet their Tick Size Pilot data collection and reporting obligations through expanded OATS reporting and monthly transmission of the Market Maker Transaction Data file to FINRA. There was no mention in this BATS filing of the fact that its members will have satisfied their Plan obligations and BATS' requirements under this proposed rule 11.27(b) for data collection and reporting of B.I, B.II, B.IV and C.I data, so long as FINRA's requirements for data submission (assuming FINRA is the members' DEA) have been met according to FINRA Rule 6191(b).<sup>4</sup>

Non-exchange FIF members seek written verification that there will be no additional requirements for data submission to BATS (or any other exchange) to meet Tick Size Pilot data collection and reporting rules, beyond that which will be reported through FINRA (or other DEA), to cover B.I, B.II, B.IV and C.I reporting requirements. Also, given that FINRA has not addressed B.III data in their rule filing (FINRA does not have an obligation to report B.III data to the SEC, as do BATS and other exchanges), non-exchange FIF members expect that the exchanges will compile their own statistics to meet B.III reporting requirements based on information from internal sources or provided to them by the DEAs, and no additional information will be required from the market makers for this purpose.

Furthermore, as discussed in FIF's comment letter regarding FINRA's filing<sup>5</sup>, non-exchange FIF members wish to stress that any additional data fields or reports requested that are not currently reflected in FINRA's draft specifications, could put implementation by April 4, 2016 at risk.

FIF originally requested in our comment letter of November 5, 2015<sup>6</sup> regarding SR-NYSE-2015-46, 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 Participants' rules are approved, and final specifications and complete FAQs are published to the industry. To date, the rule filings to which FINRA-members (and exchange members) will be subject have not been approved, and numerous questions remain unanswered.<sup>7</sup> With little more than three months to begin pre-Pilot data collection and reporting, resolution of these matters and all open issues is extremely urgent.

An example of a key matter that has not been finalized is the fact that neither FINRA's filing, nor this BATS' filing, has provided information regarding how a listing exchange would inform industry members of pre-Pilot or Pilot securities for which data must be collected. The Plan explicitly states, "Each primary listing exchange will make publicly available for free on its website a list of those Pilot Securities listed on that exchange and included in the Control Group and each Test Group, adjusting for ticker symbol changes and relevant corporate actions." BATS included in Interpretations and Policies, Section .10, a discussion of the approach to selection of pre-Pilot securities, but did not mention how this information will be communicated. While we understand that BATS is not a primary

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<sup>4</sup> In undertaking this initiative, FINRA (and other DEAs and Plan Participants) will be producing the reports and statistics to be provided to the SEC and made publicly available on Plan Participants' websites. While it is the responsibility of Trading Centers and Market Makers to ensure their OATS reports and Market Maker Transaction Data Files are accurate and complete, industry members have no insight into or control over the accuracy of the data that FINRA or other Plan Participants ultimately submit to the SEC or produce for publication.

<sup>5</sup> See [FIF Comment Letter regarding SR-FINRA-2015-048](#). "FIF members' ability to comply with the data collection and reporting rules proposed in SR-FINRA-2015-048 and a primary concern rests on one overarching and critical assumption: the specifications for modifications to OATS and the Market Makers' Transaction files designed to meet requirements of the Tick Size Pilot, will include no fields other than those presented in the specs published on October 12, 2015. In order to meet the April 4, 2016 date, our members have begun analysis and programming. Additional changes, particularly if they require capturing new data fields that are not readily available in firms' current workflows and related systems, could put at risk many firms' ability to implement by April 4, 2016."

<sup>6</sup> See [FIF Comment Letter regarding SR-NYSE-2015-46](#).

<sup>7</sup> See Appendix 1, [FIF Comment Letter regarding SR-FINRA-2015-048](#).

listing exchange for issuers that are likely to be included in the list of pre-Pilot or Pilot securities, we bring this up only because we assume that BATS' filing is intended to be the template for the filings of other exchanges (e.g. NYSE and Nasdaq ) with respect to data collection and reporting; therefore, we would expect to be informed within the context of the rule as to how market participants will obtain the list of impacted securities for pre-Pilot and Pilot securities, which should include details regarding the location and format of the daily changes, Test Group assignments, etc. While there has been discussion that FINRA will provide the information in conjunction with the list of OATS-reportable securities, confirmation of the approach and specifications are needed to begin analysis and programming to enable members to consume and apply the daily list of Pilot securities and changes. This information was not referenced in the FINRA or the BATS filings.

As noted in our response to FINRA's filing, FIF comments regarding these proposed rules are largely focused on verifying our understanding of the requirements and seeking clarification on implementation-related issues. To ensure that non-exchange industry members are able to meet the requirements of Tick Size Pilot data collection and reporting, FIF requests written feedback and guidance on open questions, either in the form of expanded rules or FAQs.

The following points were also included in FIF members' comments to FINRA's proposed rules related to collection and reporting; and because they also apply to this BATS' filing, have been reinforced here.

### **Confidentiality Concerns**

Rule 11.27(b)(2) requires BATS to collect and transmit B.I and B.II data to the SEC in a pipe delimited format, disaggregated, within 30 calendar days following month end. BATS will also make this data publicly available on the BATS website at no charge, and will not identify the member that generated the data.

With respect to data made publicly available by BATS or other Participants, member firms have concerns regarding publication of *disaggregated* data. Because some of these securities trade infrequently and there may be a limited number of market participants and trading centers that provide liquidity, even if unattributed, the data may be reverse-engineered to identify the counterparties. FAQ 24 indicates that "anonymity will be established through *aggregation* of the data as described in the Plan".

The data collected and published will include daily market quality statistics as well as specific orders, as specified in Appendix B of the Plan. The scope of the data far exceeds that which is currently published to meet 605/606 requirements. As a practical matter, it is unclear how large amounts of order level information specified in Appendix B.II can be published in a disaggregated format. Furthermore, great care must be taken to ensure confidentiality is maintained as detailed information is disclosed. FIF members respectfully request 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. We consider it an obligation of the exchanges and all trading centers to protect the confidential nature of their counterparty relationships and transactions.

To fulfill its obligations as a Plan Participant, Proposed Rule 11.27(b)(3) and 11.27(b)(4) require BATS to send Market Makers' Participation Statistics and other data received from FINRA (or other DEA) related to Market Maker Profitability to the SEC. FIF non-exchange members have concerns related to the exchanges' access to the disaggregated Market Makers' data as it is received from FINRA, before publication. We would expect to see reflected in the Participants' rule filings, clear assurances that the data supplied to them through the Tick Size Pilot Plan cannot be used for commercial or competitive purposes.

## **Questions and Comments Regarding Proposed Interpretations and Policies**

### *Interpretations and Policy .02*

- The “Retail Investor Flag” is required for B.II reporting such that the indicator should be set to “y” only in cases where the Retail Investor Order Exemption was *relied* on to trade stocks in increments other than those permitted in Test Group 2 or 3. BATS notes in its rule filing that a Retail Investor Order may only be indicated *where the exception may apply*, and this is consistent with the approved Plan.

FIF members highlighted in comments to FINRA the difficulties involved in applying the flag to OATS reports created prior to the execution, since the logical series of events would indicate that it may not be definitively known that the Retail Investor Order Exemption was *relied* on until the execution is complete. FIF recommends that the Retail Investor Flag should be required only on OATS Execution reports that reflect the final execution, and not on the New Order Type Reports including New Order, Combined Order/Route, Combined Order/Execution, or Cancel/ Replace.

### *Interpretations and Policy .03*

- This section discusses the Plan Participants’ new requirement to populate a field which indicates whether an order is affected by the bands in place to address Extraordinary Market Volatility (Limit Up/Limit Down).

FIF members are concerned by language included in FINRA’s and BATS’ proposed rules that this indicator must be set by the *Trading Center*<sup>8</sup>, as it is our understanding that this flag does not need to be set by FINRA members or exchange members, because FINRA will determine whether this is applicable by comparing SIP data to data provided by members in their OATS reports for purposes of B.I and B.II reporting. If our understanding is incorrect, please indicate how this flag will be accommodated, keeping in mind that any new fields to be added to the current specifications could jeopardize the April 4, 2016 implementation date.

- The language in .03 also requires Plan Participants to indicate whether the order was handled domestically or routed to a foreign venue. For B.I, Participants must indicate whether the order was fully executed domestically, or fully or partially executed on a foreign market. For B.II, Participants must classify all orders in dually listed Pilot stocks as: a) directed to a domestic venue for execution, b) may only be directed to a foreign venue for execution, or c) was fully or partially directed to the foreign venue at the discretion of the member.

It is our understanding that these are obligations of the Plan Participants, and Trading Centers will not be responsible for providing this information. If our understanding is incorrect, please indicate how this information will be accommodated, keeping in mind that any new fields to be added to the current specifications could jeopardize the April 4, 2016 implementation date.

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<sup>8</sup> Federal Register / Vol. 80, No. 227 / Wednesday, November 25, 2015 / Notices; pg. 73862. “FINRA and the other Participants have determined that it is appropriate to create a new flag for reporting orders that are affected by the Limit-Up Limit-Down bands. Accordingly, 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.”

#### *Interpretations and Policy .04*

- A series of changes and additions are being applied to the Plan to provide for more granular reporting of timeframes between order receipt and execution or cancellation. FAQ 29 clearly states that “the Plan does not change any timestamp granularity requirements for broker-dealers. The Plan does require timestamps to be reported using the finest granularity captured by the trading center.”

Trading Centers required to report via OATS do not have a vehicle to provide the information necessary to populate the new buckets (14A and 21A) being added by this amendment.

If there is any expectation that Trading Centers would be required to adapt their systems to capture and/or report in microseconds, we must stress that it would be a substantial build, extremely expensive, and not able to be completed within the project timeframe.<sup>9</sup>

#### *Interpretations and Policy .06*

- New Order Type categories are being added for purposes of B.I reporting including: “Not Held Orders”, “Clean Cross Orders”, “Auction Orders”, and “Orders that cannot otherwise be Classified”.

FIF members are interested in learning if any new Order Types will be introduced, or existing order types will be adjusted, by BATS for purposes of the Tick Size Pilot. We wish to confirm that no additional input beyond the new OATS fields included in the specs published on 10/12/2015 will be required of the Trading Center, and FINRA will be responsible for determining these order types based on the trade details provided by the Trading Centers in their OATS reports.

#### *Interpretations and Policy .07*

- This language provides a clear description of the type of internalization that does not qualify a firm as a Trading Center, and in doing so, allows FIF members to have a better understanding of the type of activity that does deem a firm to be a Trading Center. We thank BATS for this delineation, and we are in agreement with the criteria set forth.

#### *Interpretations and Policy .08*

- FIF wishes to point out differences in language presented within this rule filing. The language on Pages 17 and 38 of BATS’ filing states: “The Exchange is proposing Interpretations and Policy .08 to clarify that, for purposes of the Plan, Trading Centers must begin the data collection required pursuant to Appendix B.I.a(1) through B.II.(y) of the Plan and Item I of Appendix C of the Plan on April 4, 2016. While the Exchange or the Member’s DEA will provide the information required by Appendix B and C of the Plan during the Pilot Period, the requirement that the Exchange or their DEA provide information to the SEC within 30 days following month end and make such data publicly available on its website pursuant to Appendix B and C shall *commence six months prior to the beginning of the Pilot Period.*”

The language on Page 49 states: “A Trading Center shall begin the data collection required pursuant to Appendix B.I.a(1) through B.II.(y) of the Plan and Item I of Appendix C of the Plan on April 4, 2016. The requirement that the Exchange or their DEA provide information to the SEC within 30 days following month end and make certain data publicly available on the Exchange’s

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<sup>9</sup> See Appendix 2, [FIF Comment Letter regarding SR-FINRA-2015-048](#).

or DEA's web site pursuant to Appendix B and C of the Plan shall *commence at the beginning of the Pilot Period.*"

- We do wish to confirm a point that has not been made clear in any of the Plan materials, the FAQs, or the proposed rules. FIF recommends that 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, that firm must begin reporting the additional OATS fields and provide Market Maker Transaction Data only from that point forward, and there is no obligation to collect and report B.I and B.II data or market making activity, retroactively. We believe one of the goals of the Pilot is to stimulate additional market making activity. To require retroactive reporting could discourage a firm from becoming a Market Maker after the pre-Pilot or Pilot phase has begun.

#### *Interpretations and Policy .09*

- The Exchange is proposing Interpretations and Policy .09 to address the requirement in Appendix C.I (b) of the Plan that the calculation of raw Market Maker realized trading profits utilize a last in, first out ("LIFO")-like method to determine which share prices shall be used in that calculation.

Appendix C.I of the Plan requires a *Market Maker* to provide specific profitability statistics to its DEA.<sup>10</sup> FIF members who are market makers greatly appreciate the fact that FINRA will assume responsibility for market makers' obligations under C.I by leveraging the data that will be provided to FINRA in the Market Maker Transaction Data file. We wish to confirm that BATS' Exchange Members will not be required to provide any additional information to have met the Trading Centers' or Market Makers' requirements of BATS' proposed rules 11.27(b)(1), 11.27(b)(3), 11.27(b)(4); nor will additional information be required of Exchange members and Exchange-Registered Market Makers to support the Exchange's obligations under 11.27(b)(2), 11.27(b)(5).

In summary, we recognize and appreciate that BATS' filing is harmonized with FINRA's filing, and we expect this filing will provide a template for the other exchange Participants to follow as they submit rule changes to conform to Tick Size Pilot Plan requirements. As such, we have identified areas where FIF non-exchange members believe added clarity in the form of expanded rules or guidance in other forms such as FAQs would be helpful. We also reiterate our grave concern that any significant changes or additions of new fields or reports to the data collection and reporting requirements will seriously impact FIF members' ability to meet the requirements by April 4, 2016.

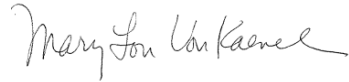
It is likely that as FIF members progress in their analysis and coding to meet these data collection and reporting requirements, we expect additional questions to arise. We look forward to continuing the open dialog we have had with the Plan Participants' Data Collection and Reporting Working Group, as it is important that these questions be addressed in a timely manner for the industry to be ready for pre-Pilot data collection and reporting.

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<sup>10</sup> Appendix C.I currently requires Market Maker profitability statistics to include (1) the total number of shares of orders executed by the Market Maker; (2) raw Market Maker realized trading profits, which is the difference between the market value of Market Maker shares and the market value of Market Maker purchases, using a LIFO-like method; and (3) raw Market Maker unrealized trading profits, which is the difference between the purchase or sale price of the end-of-day inventory position of the Market Maker and the Closing Price. In the case of a short position, the Closing Price from the sale will be subtracted; in the case of a long position, the purchase price will be subtracted from the Closing Price.

Thank you again for the opportunity to provide comments and ask questions regarding this important initiative and related rule makings. Please do not hesitate to contact me at (212) 652-4483 to arrange for follow up discussions.

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  
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