operative delay so that the proposed rule change may become effective on June 27, 2017, permitting the proposed change to take effect for the compression forum scheduled to take place using the amended procedures prior to the end of the second quarter. In justifying its requested waiver, the Exchange noted that bank-imposed capital limits may impact certain TPHs on at least a quarterly basis, which can effectively limit the amount of liquidity that such TPHs, including some Market-Makers, are willing or able to provide in SPX options. The month of June is the end of a quarter, and the Exchange expressed concern that those bank capital requirements may have adverse consequences on investors if the impacted TPHs are not able to more effectively reduce their open interest in SPX. The Exchange therefore believes that it is in the best interest of investors and the general public to help ensure consistent continued depth of liquidity in the SPX options market by allowing TPHs to utilize the modified compression forum process set forth in this proposal on the final three days of trading of the second quarter.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because this waiver will enable the Exchange to hold a compression forum for SPX options under the proposed amended procedures prior to the end of the second quarter, thereby helping to facilitate transactions and remove impediments to quarter-end trading in SPX options. The Commission notes that CBOE's compression forum rule, as proposed to be amended, is limited in its application, involves no material changes to how trading is conducted on the Exchange, involves a process in which participation is voluntary and open to all, and is designed as a means to help Market Makers and other market participants, as well as their clearing brokers, to close positions in SPX options that they carry on their books and which may impact their available capital. For this reason, the Commission hereby waives the 30-day operative delay and designates the proposal effective on June 27, 2017.[25]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or 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 email to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2017–049 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–CBOE–2017–049. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2017–049 and should be submitted on or before July 20, 2017.

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

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–13585 Filed 6–28–17; 8:45 am]

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[25] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[26] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–81016; File No. SR–NYSEMKT–2017–23]

Self-Regulatory Organizations; NYSE MKT LLC; Order Granting Approval of Proposed Rule Change To Harmonize the Requirements of the NYSE MKT Company Guide With the Periodic and Semi-Annual Reporting Requirements of the NYSE

June 23, 2017.

I. Introduction

On April 25, 2017, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to harmonize the periodic reporting requirements of the NYSE MKT Company Guide (the ''Company Guide'') with those of the New York Stock Exchange LLC (''NYSE''). The proposed rule change was published for comment in the **Federal Register** on May 12, 2017.[3] The Commission received no comments regarding the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange has proposed to harmonize the requirements of the Company Guide with respect to (i) periodic reporting and (ii) semi-annual reporting by foreign private issuers, with those of the NYSE Listed Company Manual (''NYSE Manual'').

A. Amendment to Annual Report Requirements

Currently, under Section 610(a) of the Company Guide, listed companies must provide specific enumerated disclosures with regard to outstanding options.[4] The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 80619 (May 8, 2017), 82 FR 22170 (''Notice'').

[4] Specifically, Section 610(a) provides that a listed company must disclose in its annual report to security holders, for the year covered by the

Exchange proposes to remove these requirements because such companies are already required to include disclosures in their Form 10–K regarding options available under equity compensation plans, pursuant to Item 201(d) of Regulation S–K, and options issued as executive compensation, pursuant to Item 402 of Regulation S–K.[5] The Exchange believes that it is appropriate to defer to the Commission in determining what disclosures should be required of a listed company with respect to its outstanding options.[6]

Section 610(a) also currently specifies that a company that fails to file its annual report on Forms 10–K, 20–F, 40–F or N–CSR with the Commission in a timely manner would be subject to delisting pursuant to Section 1002(d).[7] The Exchange proposes to amend this provision to provide that companies delayed in making these filings would be subject to the compliance procedures set forth in proposed Section 1007 of the Company Guide, which establishes compliance procedures for companies that are delayed in filing their annual and quarterly reports with the Commission, as further discussed below.

Section 610(b) currently makes reference to providing notice of material news to the Exchange's StockWatch and Listing Qualifications Departments. The Exchange proposes to delete these outdated references and proposes to include a statement that companies should comply with the Exchange's material news policies set forth in Sections 401 and 402 of the Company Guide by providing notice to the Exchange's Market Watch Group pursuant to the material news notification requirements of Sections 401 and 402.[8]

Additionally, Section 610(b) of the Company Guide currently provides that a listed company that receives an audit opinion that contains a going concern ''qualification'' must make a public announcement through the news media disclosing the receipt of such qualified opinion. The Exchange proposes to replace the reference to a going concern ''qualification'' with a reference to a going concern ''emphasis'' as the Exchange states that this is a more accurate accounting characterization.[9] In addition, the Exchange proposes to provide that the public announcement of the existence of a going concern emphasis in an audit opinion must be made contemporaneously with the filing of such audit opinion with the Commission, rather than within seven calendar days of such filing as is currently the case. The Exchange believes a going concern emphasis is material to investors and should be immediately disclosed.[10]

The Exchange states that prior to an amendment in 2009,[11] Section 610 of the Company Guide required a listed company to physically deliver its annual report filed with the Commission to shareholders each year.[12] The Exchange states that, as a result of the 2009 amendment, Section 610 no longer requires companies to physically deliver their annual reports but may instead rely on the fact that listed company annual reports are required to be made available on or through the public Web site of the Commission or the applicable listed company.[13] Accordingly, the Exchange proposes to delete Sections 611 (Time of Publication), 612 (Request for Extension) and 613 (Good Cause for Delay) of the Company Guide in their entirety.[14]

Section 611 specifies timeframes within which a company's hard copy annual report must be filed with the Exchange and submitted to shareholders. The Exchange proposes to delete this provision as Section 610 no longer requires the delivery of hard copy annual reports and proposed Section 1007 will include detailed compliance requirements with respect to delayed annual report filings.[15] Similarly, Section 612 sets forth a process for companies to request an extension of time from the Exchange to distribute hard copy annual reports to their shareholders. The Exchange proposes to delete this requirement, as companies are not required to deliver hard copy annual reports under its current rules and proposed Section 1007 will establish a process for granting companies additional time when they are delayed in submitting their annual reports to the Commission.[16] Section 613 specifies circumstances under which good cause may exist for a company being delayed in the publication of its annual report. The Exchange proposes to delete this provision because all determinations as to the continued listing of companies that are delayed in their annual report filings will be made pursuant to the provisions of proposed Section 1007.[17]

B. Amendment to Timely Filing Criteria

Currently, the Exchange provides listed companies that are delinquent in submitting required periodic filings with a compliance plan under its general provisions for companies that are non-compliant with Exchange rules, as set forth in Section 1009 (Continued Listing Evaluation and Follow-Up) of the Company Guide. Section 1009(b) gives the Exchange the sole discretion to grant companies a time period of up to 18 months to regain compliance and does not provide specific guidance on how compliance periods should be administered for companies delinquent in submitting their periodic filings.[18] In contrast, Section 802.01E of the NYSE Manual limits companies to a maximum cure period of 12 months to submit all delayed filings and includes specific provisions for determining the period of time companies should be given to regain compliance within the context of that maximum 12 month period and what is required to be eligible for that additional time.[19] Accordingly, the Exchange believes that the NYSE's procedures for dealing with delinquent filings is more stringent and transparent than its own and believes that it is appropriate to harmonize its own process with Section 802.01E of the NYSE Manual to avoid confusion among investors, companies, and their service providers about the applicable rules.[20]

Specifically, the Exchange has proposed to adopt new Section 1007 (''Late Filer Rule'')[21] to explicitly state

report: (a) The number of unoptioned shares available at the beginning and at the close of the year for the granting of options under an option plan; and (b) any changes in the exercise price of outstanding options, through cancellation and reissuance or otherwise, except price changes resulting from the normal operation of anti-dilution provisions of the options.

[5] *See* Notice, *supra* note 3, at 22171.

[6] *Id.*

[7] Section 1002(d) of the Company Guide provides that the Exchange, as a matter of policy, will consider the suspension of trading in, or removal from listing or unlisted trading of, any security when, in the opinion of the Exchange, the issuer has failed to comply with its listing agreements with the Exchange.

[8] The Exchange has proposed to delete the related contact information for the Exchange's StockWatch and Listing Qualifications Department in Section 610(b) of the Company Guide.

[9] *See* Notice, *supra* note 3, at 22171.

[10] *Id.*

[11] *See* Securities Exchange Act Release No. 59685 (April 1, 2009), 74 FR 16031 (April 8, 2009) (SR–NYSEAmex–2009–04).

[12] *See* Notice, *supra* note 3, at 22171.

[13] *Id.*

[14] The Exchange has proposed to mark each deleted section as ''Reserved.''

[15] *See* Notice, *supra* note 3, at 22171.

[16] *Id.*

[17] *Id.*

[18] *Id.* at 22170. While Commentary .01 to Section 1009 states that delinquencies of Commission filing obligations are among those that may warrant the imposition of a compliance time period shorter than 18 months, the Exchange's rules do not provide any guidance on how this is applied or administered.

[19] *Id.*

[20] *Id.*

[21] The Exchange states that any company that is delayed in making a filing that would be subject to

Continued

that, for purposes of remaining listed on the Exchange, a company would incur a filing delinquency and be subject to the procedures set forth in the amended rule on the date on which any of the following occurs:

• The company fails to file its annual report (Forms 10–K, 20–F, 40–F or N–CSR) or its quarterly report on Form 10–Q or semi-annual report on Form N–CSR (''Semi-Annual Form N–CSR'') with the Commission by the date such report was required to be filed by the applicable form, or if a Form 12b–25 was timely filed with the Commission, the extended filing due date for the annual report, Form 10–Q, or Semi-Annual Form N–CSR (for purposes of this Section 1007, the later of these two dates, along with any Semi-Annual Report Filing Due Date as defined below, will be referred to as the ''Filing Due Date'' and the failure to file a report by the applicable Filing Due Date, a ''Late Filing Delinquency'');[22]

• a listed foreign private issuer fails to file the Form 6–K containing semi-annual financial information required by proposed Section 110(e) (the ''Semi-Annual Report'') by the date specified in that rule (the ''Semi-Annual Report Filing Due Date'');

• the company files its annual report without a financial statement audit report from its independent auditor for any or all of the periods included in such annual report (a ''Required Audit Report'' and the absence of a Required Audit Report, a ''Required Audit Report Delinquency'');

• the company's independent auditor withdraws a Required Audit Report or the company files a Form 8–K with the Commission pursuant to Item 4.02(b) thereof disclosing that it has been notified by its independent auditor that a Required Audit Report or completed interim review should no longer be relied upon (a ''Required Audit Report Withdrawal Delinquency''); or

• the company files a Form 8–K with the Commission pursuant to Item 4.02(a) thereof to disclose that previously issued financial statements should no longer be relied upon because of an error in such financial statements or, in the case of a foreign private issuer, makes a similar disclosure in a Form 6–K filed with the Commission or by other means (a ''Non-Reliance Disclosure'') and, in either case, the company does not refile all required corrected financial statements within 60 days of the issuance of the Non-Reliance Disclosure (an ''Extended Non-Reliance Disclosure Event'' and, together with a Late Filing Delinquency, a Required Audit Report Delinquency and a Required Audit Report Withdrawal Delinquency, a ''Filing Delinquency'') (for purposes of the cure periods described below, an Extended Non-Reliance Disclosure Event would be deemed to have occurred on the date of original issuance of the Non-Reliance Disclosure); if the Exchange believes that a company is unlikely to refile all required corrected financial statements within 60 days after a Non-Reliance Disclosure or that the errors giving rise to such Non-Reliance Disclosure are particularly severe in nature, the Exchange may, in its sole discretion, determine earlier than 60 days that the applicable company has incurred a Filing Delinquency as a result of such Non-Reliance Disclosure.[23]

Additionally, under the proposed rule, the Exchange would deem a company to have incurred a Filing Delinquency if the company submits an annual report, Form 10–Q, or Semi-Annual Form N–CSR to the Commission by the applicable Filing Due Date, but such filing fails to include an element required by the applicable form and the Exchange determines in the Exchange's sole discretion that such deficiency is material in nature.[24]

A company that has an uncured Filing Delinquency will not incur an additional Filing Delinquency if it fails to file a subsequent annual report, Form 10–Q, Semi-Annual Form N–CSR or Semi-Annual Report (a ''Subsequent Report'') by the applicable Filing Due Date for such Subsequent Report.[25] However, in order for the company to cure its initial Filing Delinquency, no Subsequent Report may be delinquent or deficient on the date by which the initial Filing Delinquency is required to be cured.[26]

Upon the occurrence of a Filing Delinquency, the Exchange would promptly send written notification to a company of the procedures relating to late filings (the ''Filing Delinquency Notification''). Within five days of the date of the Filing Delinquency Notification, the company would be required to contact the Exchange to discuss the status of the Delinquent Report and issue a press release disclosing the occurrence of the Filing Delinquency, the reason therefor, and (if known) the anticipated date such Filing Delinquency will be cured via the filing or refiling of the applicable report, as the case may be.[27]

During the six-month period from the date of the Filing Delinquency (the ''Initial Cure Period''), the Exchange would monitor the company and the status of the Delinquent Report and any Subsequent Reports, including through contact with the company, until the Filing Delinquency is cured.[28] If the company fails to cure the Filing Delinquency within the Initial Cure Period, the Exchange may, in its sole discretion, allow the company's securities to be traded for up to an additional six-month period (the ''Additional Cure Period'') depending on the company's specific circumstances.[29] If the Exchange determines that an Additional Cure Period is not appropriate, suspension and delisting procedures would commence in accordance with the procedures set out in Section 1010 (Procedures for Delisting and Removal) of the Company Guide.[30] A company would not be eligible to follow the procedures outlined in Section 1009

proposed Section 1007 will continue to be subject to the compliance plan provisions of Section 1009 in relation to that delayed filing, but will be subject to proposed Section 1007 in relation to any subsequent delayed filings. *See* Notice, *supra* note 3, at 22173.

[22] The proposed rule states that the annual report, Form 10–Q, Semi-Annual Form N–CSR or Semi-Annual Report that gives rise to a Filing Delinquency shall be referred to therein as the ''Delinquent Report.''

[23] *See* proposed Section 1007 of the Company Guide. *Id.*

[24] *Id.* The Exchange states that the following is a non-exclusive list of scenarios involving material filing elements that would cause the Exchange to deem the company to have incurred a Late Filing Delinquency: The filing does not include required financial statements or a required audit opinion; a required financial statement audit opinion includes qualifying or disclaiming language or the auditor provides an adverse financial statement audit opinion; a required financial statement audit opinion is unsigned or undated; there is a discrepancy between the period end date for required financial statements and the date cited in the related audit report; the company's auditor has not conducted a SAS 100 review with respect to the company's Form 10–Q; required chief executive officer or chief financial officer certifications are missing; a Sarbanes-Oxley Act Section 404 required internal control report or auditor certification is missing; the filing does not comply with the applicable SEC XBRL requirements; or the filing does not include signatures of officers or directors required by the applicable form. *See* Notice, *supra* note 3, at 22172, n.8.

[25] *See id.*

[26] *See id.*

[27] *See* proposed Section 1007 of the Company Guide. If the company has not issued the required press release within five days of the date of the Filing Delinquency Notification, the Exchange will issue a press release stating that the company has incurred a Filing Delinquency and providing a description thereof. *Id.*

[28] *Id.* Under the proposed rule, a company that has an uncured Filing Delinquency would not incur an additional Filing Delinquency if it fails to file a Subsequent Report by the applicable Filing Due Date. However, in order for the company to cure its initial Filing Delinquency, no Subsequent Report may be delinquent or deficient on the date by which the initial Filing Delinquency is required to be cured. *Id.*

[29] *Id.*

[30] *Id.*

with respect to these criteria.[31] Notwithstanding the foregoing, however, under the proposed rule the Exchange may in its sole discretion decide: (i) Not to afford a company any Initial Cure Period or Additional Cure Period, as the case may be, at all; or (ii) at any time during the Initial Cure Period or Additional Cure Period, as the case may be, to truncate the Initial Cure Period or Additional Cure Period and immediately commence suspension and delisting procedures if the company is subject to delisting pursuant to any other provision of the Company Guide, including if the Exchange believes, in the Exchange's sole discretion, that continued listing and trading of a company's securities on the Exchange is inadvisable or unwarranted in accordance with Sections 1001–1006 of the Company Guide.[32]

The Exchange may also commence suspension and delisting procedures if it believes, in its sole discretion, that it is advisable to do so based on an analysis of all relevant factors, including, but not limited to:

- Whether there are allegations of financial fraud or other illegality in relation to the company's financial reporting;
- the resignation or termination by the company of the company's independent auditor due to a disagreement;
- any extended delay in appointing a new independent auditor after a prior auditor's resignation or termination;
- the resignation of members of the company's audit committee or other directors;
- the resignation or termination of the company's chief executive officer, chief financial officer or other key senior executives;
- any evidence that it may be impossible for the company to cure its Filing Delinquency within the cure periods otherwise available under the Late Filer Rule; and
- any past history of late filings.[33]

In determining whether an Additional Cure Period after the expiration of the Initial Cure Period is appropriate, the Exchange would consider the likelihood that the Delinquent Report and all Subsequent Reports can be filed or refiled, as applicable, during the Additional Cure Period, as well as the company's general financial status, based on information provided by a variety of sources, including the company, its audit committee, its outside auditors, the staff of the Commission and any other regulatory body.[34] Further, the Exchange would strongly encourage companies to provide ongoing disclosure on the status of the Delinquent Report and any Subsequent Reports to the market through press releases, and would also take the frequency and detail of such information into account in determining whether an Additional Cure Period is appropriate.[35]

As proposed, if the Exchange determines that an Additional Cure Period is appropriate and the company fails to file the Delinquent Report and all Subsequent Reports by the end of such additional period, suspension and delisting procedures would commence immediately in accordance with the procedures set out in Section 1010.[36] In no event would the Exchange continue to trade a company's securities if: (i) It has failed to cure its Filing Delinquency; or (ii) it is not current with all Subsequent Reports, on the date that is twelve months after its initial Filing Delinquency.[37]

The Exchange also proposed to include a cross-reference to proposed Section 1007 in Section 1101 of the Company Guide, which discusses general Commission filing obligations of listed companies. In addition, the Exchange proposed to remove a reference to a company's Listing Qualifications analyst in Section 1101 and replace it with a reference to Exchange staff, as the Exchange no longer has a department under the Listings Qualification title.

C. Amendment to Semi-Annual Reporting by Foreign Private Issuers

The Exchange has proposed to amend Section 110 (Securities of Foreign Companies) by adding new paragraph (e), which provides that each listed foreign private issuer will be required, at a minimum, to submit to the Commission a Form 6–K that includes (i) an interim balance sheet as of the end of its second fiscal quarter and (ii) a semi-annual income statement that covers its first two fiscal quarters.[38] This Form 6–K must be submitted no later than six months following the end of the company's second fiscal quarter.[39] Additionally, the financial information included in the Form 6–K must be presented in English, but does not have to be reconciled to U.S. GAAP.[40] The Exchange has stated that new Section 110(e) would provide a more specific interim reporting requirement for listed foreign private issuers and harmonize such rules with Section 203.03 of the NYSE Manual.[41]

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange.[42] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Exchange Act,[43] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission believes that the goal of ensuring that listed companies have filed accurate, up-to-date reports under the Exchange Act is of critical importance so that investors have reliable information upon which they can make informed investment decisions. For the same reason, it is also important that companies with stale or defective publicly filed financial information do not remain listed on a national securities exchange if such information is not brought up-to-date or the deficiency cured in a timely manner. As noted above, under the existing provisions of the Company Guide, a delinquent filer of Commission required periodic reports could receive up to 18 months to become up to date in its filings. While the Company Guide suggests a time period of less than 18 months to achieve compliance may be appropriate for late filers, there is no specific guidance in the Company Guide on how such a determination is made and for what time period. The Commission has also previously noted the importance of ensuring that companies listed on a national securities exchange are up to date in

[31] *Id.*

[32] *Id.*

[33] *Id.*

[34] *Id.*

[35] *Id.*

[36] *Id.*

[37] *Id.*

[38] The Exchange proposes to renumber existing Section 110(e) to Section 110(f).

[39] *See* proposed Section 110(e) of the Company Guide.

[40] *See* proposed Section 110(e) of the Company Guide.

[41] *See* Notice, *supra* note 3, at 22170.

[42] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[43] 15 U.S.C. 78f(b)(5).

their filings so accurate and timely information is available to investors.[44] The Commission believes that the proposed rule change should help to prevent an undue amount of time from passing without the company's annual, quarterly or semi-annual reports, as applicable,[45] being provided to the marketplace. In addition, the Commission believes that harmonizing the requirements of the Company Guide with respect to periodic reporting with those of the NYSE Manual are reasonably designed to help investors and companies avoid confusion and achieve consistent results for the applicable rules.

The Commission also believes that proposed Section 1007 should help to ensure that companies cannot continue to trade for extended periods of time without making their annual and interim reports publicly available. In this regard, the Commission notes that the proposed rule change should help reduce those situations in which investors continuously have outdated or stale financial information upon which to base their investment decisions. As is discussed above, a company that has an uncured Filing Delinquency would not be able to cure the Filing Delinquency until all subsequent annual or interim reports that are delinquent have been filed.[46] In other words, once it is a delinquent filer, a company can only become current in its filings if all of its annual and interim filings have been submitted to the Commission within 12 months of the first Filing Delinquency. Furthermore, a listed company that demonstrates a history of delinquent filings could still be subject to delisting under the proposed rule change without the Exchange affording it any cure period at all (or at any time during an initial or additional cure period) as a result of the Exchange's ability to commence suspension and delisting procedures based on a company's ''past history of late filings.'' [47] The Commission believes these provisions will enable the Exchange to delist those companies that have demonstrated a history of providing outdated or stale financial information to investors and help the Exchange address the situation where a company becomes current within 12 months and then a short while later, such as by the next Commission filing date, incurs another Filing Delinquency. In such a case, the Commission would be concerned that investors continue to rely on outdated information and do not have current financial information on a timely basis in which to make their trading and investment decisions. The Commission believes that the proposal is reasonably designed to further these goals of investor protection and therefore is consistent with the Exchange Act and Section 6(b)(5) thereunder.

Additionally, by clearly stating that the Exchange's Late Filer Rule applies to companies that file late or defective annual and interim reports, the Commission believes that the proposal should benefit the public interest and protect investors by helping to assure that a larger segment of the financial information investors may rely upon when deciding whether to invest in a company listed on the Exchange is up-do-date and accurate. Further, by detailing what the Exchange considers to be a defective annual or interim report and how the Exchange treats listed companies whose filed reports suffer from a deficiency, the Commission believes that the proposed rule change promotes just and equitable principles of trade by providing additional transparency to listed companies as to what could cause them to become subject to proposed Section 1007 for a late or deficient filing. For example, as noted above, Exchange rules will be clear that a company that files a Form 8–K pursuant to Item 4.02(b) thereof and has a Required Audit Report Withdrawal Delinquency will be subject to the procedures in proposed Section 1007 and can only be extended a maximum of 12 months to cure the delinquency. Moreover, and importantly, this additional transparency, as well as the more stringent requirements set forth in the proposed rule, could encourage listed companies to take extra care to ensure that their filed reports are timely and accurate, which would protect investors and the public interest. To the extent this occurs, the Commission believes that the proposal also has the potential to enhance the reliability of reports filed by companies listed on the Exchange as well as investor confidence in such reports, which should help to perfect the mechanism of a free and open market.

Proposed Section 1007 also gives the Exchange discretion in certain areas when a filing fails to include an element required by the applicable Commission form and the Exchange determines in its sole discretion that such deficiency is material in nature. Proposed Section 1007 provides a non-exclusive list of elements that, if missing from a filing, would cause the Exchange to deem the company to have incurred a Filing Delinquency. The Commission notes that any determination by the Exchange that a missing element is not material for purposes of a Filing Delinquency has no effect on the company's compliance with Commission rules. The Commission further notes that while there is a provision in the new rules concerning a listed company that files a Form 8–K or Form 6–K announcing a Non-Reliance Disclosure having 60 days to correct its financial statements, the proposal makes clear that the Filing Delinquency will date from the original announcement of the Non-Reliance Disclosure if it is not cured within 60 days. This will ensure that the period for curing a Non-Reliance Disclosure will not extend past the 12 month period given to listed companies that have had another type of Filing Delinquency.

The Commission notes that the time periods allowed to cure a Filing Delinquency are maximums for purposes of continued listing. The new provisions being adopted provide additional transparency to investors and the marketplace but also give the Exchange discretion to analyze the particular case and consider whether it is appropriate to commence suspension and delisting procedures immediately based on the particular facts, as well giving the Exchange discretion to grant an additional six month cure period, or shorten any time periods previously given. The new rules provide additional transparency by setting forth certain factors that may cause immediate delisting or shortened periods, such as resignation of a company's chief executive officer, financial officer or members of the audit committee; allegations of fraud or other illegality in relation to financial reporting; and past history of late filings. We expect the Exchange to carefully review each Filing Deficiency and ensure that the public interest is being served by continued trading. As noted above, the importance of timely and complete Commission filings to ensure that investors and the marketplace have accurate and up-to-date information about publicly traded companies is of extreme importance for confidence in our public markets.[48]

[44] *See, e.g.,* Securities and Exchange Act Release No. 51777 (June 2, 2005), 70 FR 33573 (June 8, 2005).

[45] Hereinafter, quarterly and semi-annual reports shall be referred to as ''interim reports.''

[46] *See supra* note 28.

[47] *See supra* note 33 and accompanying text.

[48] As noted above, the Exchange strongly encourages companies to provide ongoing disclosure on the status of the Delinquent Report and any Subsequent Reports to the market through press releases, and would also take the frequency and detail of such information into account in determining whether an Additional Cure Period is appropriate. The Commission believes such disclosures are very important to the marketplace during the delinquency period.

The Commission believes that the amendments to Chapter Six of the Company Guide will add clarity to the periodic reporting requirements in connection with proposed Section 1007. For example, as noted above, the deletion and replacement in Section 610(a) of a reference to Section 1002(d) regarding delisting procedures with proposed Section 1007 will avoid confusion among investors and companies about the applicable rules for failure to timely file an annual report with the Commission. In addition, the Commission believes the proposed modifications to delete Sections 611 through 613 of the Company Guide are reasonably designed to protect investors and the public interest by removing obsolete language that will be replaced with a more detailed compliance regime in proposed Section 1007.

The Commission further believes the Exchange's deletion of the specific enumerated disclosures with regard to outstanding options in Section 610(a) of the Company Guide is consistent with the Exchange Act since listed companies are already required to comply with the Commission's disclosure regime for options in the companies' Form 10–K. In this regard the Commission believes it is reasonable for the Exchange to determine it will defer to Commission disclosure requirements as to options, some of which are similar to the NYSE requirements.[49] Similarly, the deletion of outdated references to the Exchange's StockWatch and Listing Qualifications Departments in Section 610(b) of the Company Guide and their replacement with a statement that companies should comply with the Exchange's material news policies set forth in Sections 401 and 402 would provide additional transparency to a listed company on the disclosure steps that it must take when it receives an audit opinion that contains a going concern emphasis.[50]

Additionally, the Commission believes that the amendment to require the public announcement of the existence of a going concern in an audit opinion be made contemporaneously with the filing of such audit opinion with the Commission furthers investor protection by ensuring that investors are made aware, as soon as possible, of material information that may impact their investment decisions. The Commission also notes that eliminating the possibility that a company can delay the public announcement of a going concern opinion for up to seven days, as currently permitted under the Company Guide, will help to further investor protection consistent with Section 6(b)(5) of the Exchange Act.

Finally, the Commission believes the proposed amendment to harmonize the semi-annual reporting requirement by foreign private issuers in new Section 110(e) with the applicable rule in the NYSE Manual would provide a more precise compliance guideline and establish a minimum interim reporting regime applicable to all listed foreign private issuers.[51] Additionally, the Commission believes the proposed amendment is consistent with the investor protection objectives of Section 6(b)(5) because it is reasonably designed to ensure that foreign private issuers provide timely financial information that is necessary to enable investors to make informed investment decisions.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,[52] that the proposed rule change (SR–NYSEMKT–2017–23) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[53]

Eduardo A. Aleman,

Assistant Secretary.

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[49] *See supra* note 5 and accompanying text.

[50] The Commission further believes that the Exchange's proposal to update the reference to a going concern ''qualification'' with a reference to a going concern ''emphasis'' would align the Exchange's rules more accurately with general accounting characterizations.

[51] *See, e.g.,* Section 203.03 of the NYSE Manual.

[52] 15 U.S.C. 78f(b)(2).

[53] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–81011; File No. SR–FINRA–2017–012]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Granting Approval of Proposed Rule Change To Reduce the Delay Period for Transactions Included in the Historic TRACE Data Sets Relating to Corporate and Agency Debt Securities

June 23, 2017.

I. Introduction

On May 12, 2017, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend FINRA Rule 7730 (Trade Reporting and Compliance Engine (TRACE)) to reduce the minimum delay from 18 months to six months for transactions included in the Historic TRACE Data Sets relating to corporate and agency debt securities. The proposed rule change was published for comment in the **Federal Register** on May 22, 2017.[3] The Commission did not receive any comments on the proposal.[4] For the reasons discussed below, the Commission approving the proposed rule change.

II. Description of the Proposal

FINRA Rule 7730, among other things, sets forth the TRACE data products offered by FINRA and the fees applicable to such products. In addition to a real-time data feed, FINRA offers a Historic Corporate Bond Data Set, Agency Data Set, Securitized Product Data Set, and Rule 144A Data Set (collectively, the ''Historic TRACE Data'').[5] The Historic TRACE Data includes information such as the price, date, time of execution, yield, and uncapped volume for each transaction occurring at least 18 months ago.[6] FINRA originally established this 18-month delay to address the possibility that the Historic TRACE Data might be used to identify positions or strategies of market participants.[7] FINRA has proposed to reduce the delay applicable to transactions included in the Historic Corporate Bond Data Set and the Historic Agency Data Set—and Rule 144A transactions in corresponding securities (together, the ''Corporate and Agency Historic TRACE Data'')—from a

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 80685 (May 16, 2017), 82 FR 23385 (May 22, 2017) (''Notice'').

[4] FINRA previously solicited comments on the proposal as *Regulatory Notice* 15–24 (June 2015) and received four comments. *Regulatory Notice* 15–24 and the related comment letters are available as Exhibit 2 to the Notice on both FINRA and the SEC's Web sites.

[5] The Historic TRACE Data originally included only the Corporate Bond and Agency Data Sets. The Securitized Product Data Set and the Rule 144A Data Set were added later as information about transactions in those securities became subject to public dissemination. FINRA has stated that additional securities may be included in Historic TRACE Data as they become subject to public dissemination.

[6] Historic TRACE Data also may include transactions or items of information that were not previously disseminated, such as exact trade volumes, where the real-time disseminated amount was capped.

[7] *See* Securities Exchange Act Release No. 56327 (August 28, 2007), 72 FR 51689, 51690 (September 10, 2007).