2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, 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. 7 FINRA believes that the proposed rule change will provide greater clarity to members and the public regarding its rules, as well as ensure a more efficient reporting process for the SSOI.

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.

G. 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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act 8 and Rule 19b–4(f)(6) thereof. 9

FINRA has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. In accordance with Rule 19b–4(f)(6), 10 FINRA submitted written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing, or such shorter time as the Commission may designate, as specified in Rule 19b–4(f)(6)(iii) under the Act. 11 The first reporting period covered by the initial SSOI commences on July 1, 2012. FINRA has stated that it wishes to waive the operative delay so that FINRA may give as much time as possible for member firms to prepare prior to the October 26, 2012 due date of the initial SSOI. Accordingly, FINRA would like the SSOI to be in final form and fully operative as of the start of the first reporting period on July 1.

Given FINRA’s desire to provide member firms with a final and completed SSOI at the outset of the initial SSOI reporting period, the Commission believes that FINRA’s request is reasonable and believes that waiver of the operative delay is consistent with the protection of investors and the public interest, and therefore designates the proposal operative upon filing. 12

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 shall institute proceedings to determine whether the proposed rule 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–FINRA–2012–033 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–2012–033 on the subject line.

For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78s(b)(1).

proposed rule change was published for comment in the Federal Register on May 17, 2012. The Commission received no comments on the proposal.

Section 19(b)(2) of the Act provides that, within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day for this filing is July 1, 2012. The Commission is extending this 45-day time period.

The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposal. The Benchmark Order would allow NASDAQ members to enter a single order in a single security that seeks to match the performance of one of three selected benchmarks—Volume Weighted Average Price, Time Weighted Average Price and Percent of Volume—over a pre-determined period of time. Benchmark Orders would not be executed by the NASDAQ matching engine, but would be directed to a system application dedicated to processing Benchmark Orders (“Application”). The Application would generate Child Orders to be sent to the NASDAQ matching engine or to the NASDAQ router, as necessary, to achieve the desired benchmark selected by the entering firm.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act, designates August 15, 2012, as the date by which the Commission should either approve or disapprove or institute proceedings to determine whether to disapprove the proposed rule change.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.\(^6\)

Kevin M. O’Neill,
Deputy Secretary.


\[^{4}\text{15 U.S.C. 78b(b)(2).}\]

\[^{5}\text{15 U.S.C. 78b(b)(2).}\]

\[^{6}\text{17 CFR 200.30–3(a)(31).}\]