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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No. * SR 2021 - * 17

Amendment No. (req. for Amendments *)

Filing by NYSE National, Inc.

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
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Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>
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Rule

<input type="checkbox"/>	19b-4(f)(1)	<input type="checkbox"/>	19b-4(f)(4)
<input type="checkbox"/>	19b-4(f)(2)	<input type="checkbox"/>	19b-4(f)(5)
<input type="checkbox"/>	19b-4(f)(3)	<input checked="" type="checkbox"/>	19b-4(f)(6)

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010
Section 806(e)(1) *

Section 806(e)(2) *

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 3C(b)(2) *

Exhibit 2 Sent As Paper Document

Exhibit 3 Sent As Paper Document

Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

Proposed Rule Change Delete the Order Audit Trail System Rules in the Rule 6.7400 Series

Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name * Samir Last Name * Patel
Title * Senior Counsel
E-mail * Samir.Patel@ice.com
Telephone * (212) 656-2030 Fax

Signature

Pursuant to the requirements of the Securities Exchange of 1934, NYSE National, Inc. has duty caused this filing to be signed on its behalf by the undersigned thereunto duty authorized.

Date 09/07/2021 (Title *)
By David De Gregorio Associate General Counsel
(Name *)

NOTE: Clicking the signature block at right will initiate digitally signing the form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

David De Gregorio
Digitally signed by David De Gregorio
Date: 2021.09.07 17:01:43 -04'00'

Required fields are shown with yellow backgrounds and astericks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

Form 19b-4 Information *

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SR-NYSEAT-2021-17 19b4.docx

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 1A - Notice of Proposed Rule Change, Security-Based Swap Submission, or Advanced Notice by Clearing Agencies *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2- Notices, Written Comments, Transcripts, Other Communications

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Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit Sent As Paper Document

Exhibit 3 - Form, Report, or Questionnaire

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Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit Sent As Paper Document

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

- (a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² and as required by the National Market System Plan Governing the Consolidated Audit Trail (the “CAT NMS Plan” or “Plan”),³ NYSE National, Inc. (“NYSE National” or the “Exchange”) proposes to delete the Order Audit Trail System (“OATS”) rules in the Rule 6.7400 Series as these Rules provide for the collection of information that is duplicative of the data collection requirements of the CAT. Further, the Financial Industry Regulatory Authority (“FINRA”) has determined to eliminate its OATS rules.

A notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1, and the text of the proposed rule change is attached as Exhibit 5.

- (b) The Exchange does not believe that the proposed rule change will have any direct effect, or any significant indirect effect, on any other Exchange rule in effect at the time of this filing.
- (c) Not applicable.

2. Procedures of the Self-Regulatory Organization

Senior management has approved the proposed rule change pursuant to authority delegated to it by the Board of the Exchange. No further action is required under the Exchange’s governing documents. Therefore, the Exchange’s internal procedures with respect to the proposed rule change are complete.

The person on the Exchange staff prepared to respond to questions and comments on the proposed rule change is:

Samir Patel
Senior Counsel
NYSE Group, Inc.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Unless otherwise specified, capitalized terms used in this rule filing are defined as set forth in the CAT Compliance Rule Series or in the CAT NMS Plan that the Exchange, FINRA and the other national securities exchanges (collectively, the “Participants”) filed with the Commission, pursuant to Section 11A of the Exchange Act and Rule 608 of Regulation NMS thereunder.

(212) 656-2030

3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

Rule 613 of Regulation NMS requires national securities exchanges and FINRA to create, implement, and maintain a consolidated audit trail to capture customer and order event information for orders in NMS Securities and OTC Equity Securities, across all markets, from the time of order inception through routing, cancellation, modification, or execution in a single consolidated data source. The Participants filed the Plan to comply with Rule 613 of Regulation NMS under the Act. The Plan was published for comment in the Federal Register on May 17, 2016,⁴ and approved by the Commission, as modified, on November 15, 2016.⁵

On August 14, 2020, FINRA filed with the Commission a proposed rule change to delete the OATS rules once Industry Members are effectively reporting to the CAT (the "OATS Retirement Filing").⁶ On October 29, 2020, FINRA filed Amendment No. 1 to the proposed rule change ("Amendment No. 1") and a response to the comments that were submitted on the original filing ("Response to Comments").⁷ On November 30, 2020, the Commission approved the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.⁸ On June 17, 2021, FINRA filed a proposed rule change setting forth the basis for its determination that the accuracy and reliability of the CAT meet the standards approved by the Commission in the OATS Retirement Filing for purposes of eliminating the OATS rules.⁹ The FINRA proposal stated that FINRA would retire OATS effective September 1, 2021.

⁴ See Securities Exchange Act Release No. 77724 (April 27, 2016), 81 FR 30614 (May 17, 2016).

⁵ See Securities Exchange Act Release No. 79318 (November 15, 2016), 81 FR 84696 (November 23, 2016) ("Order Approving the National Market System Plan Governing the Consolidated Audit Trail" ("Approval Order")).

⁶ See Securities Exchange Act Release No. 89679 (August 26, 2020), 85 FR 54461 (September 1, 2020) (Notice of Filing of File No. SR-FINRA-2020-024).

⁷ See Letter from Lisa C. Horrigan, Associate General Counsel, FINRA, to Vanessa Countryman, Secretary, Commission, dated October 29, 2020.

⁸ See Securities Exchange Act Release No. 90535 (November 30, 2020), 85 FR 78395 (December 4, 2020) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of SR-FINRA-2020-024).

⁹ See Securities Exchange Act Release No. 92239 (June 23, 2021), 86 FR 34293 (June 29, 2021) (SR-FINRA-2021-017) (Notice of Filing and Immediate

After conducting an analysis of its rules in accordance with the CAT NMS Plan, the Exchange has determined that the information collected pursuant to the OATS rules is intended to be collected by CAT. Further, the Exchange believes that the Rule 6.7400 Series will no longer be necessary and proposes to delete such rules from the Exchange's rulebook. Discussed below is a description of the duplicative rule requirements as well as the timeline for eliminating the duplicative rules followed by a discussion on the OATS Retirement Filing that formed the basis for retiring OATS.

Duplicative OATS Requirements

The Rule 6.7400 Series consists of Rules 6.7410 through 6.7470 and sets forth the recording and reporting requirements of the OATS Rules. The OATS Rules require all Exchange members and associated persons to record in electronic form and report to FINRA, on a daily basis, certain information with respect to orders originated, received, transmitted, modified, canceled, or executed by members in all NMS stocks, as that term is defined in Rule 600(b)(47) of Regulation NMS,¹⁰ traded on the Exchange. The Exchange relies on the information reported to OATS either to conduct surveillance or to facilitate surveillance conducted by FINRA pursuant to a regulatory services agreement ("RSA"). This information is used by Exchange and FINRA staff to conduct surveillance and investigations of member firms for violations of Exchange and FINRA rules and federal securities laws. The Exchange believes it is appropriate to retire OATS because the requirements of the Rule 6.7400 Series are duplicative of information available in the CAT and thus will no longer be necessary now that the CAT is operational.

Timeline for Elimination of Duplicative Rules

The CAT NMS Plan states that the elimination of rules that are duplicative of the requirements of the CAT and the retirement of the related systems should be effective at such time as CAT Data meets minimum standards of accuracy and reliability.¹¹ As discussed in more detail in the OATS Retirement Filing, FINRA believes that OATS may be retired effective September 1, 2021 given the error rate thresholds have been met, and FINRA has determined that its usage of the CAT Data has not revealed material issues that have not been corrected and further confirmed that the CAT includes all data necessary to allow FINRA to continue to meet its surveillance obligations.

Effectiveness of a Proposed Rule Change Relating to the Retirement of FINRA's Order Audit Trail System).

¹⁰ 17 CFR 242.600(B)(47).

¹¹ Appendix C of CAT NMS Plan, Approval Order at 85010.

OATS Retirement Filing

In the OATS Retirement Filing, FINRA proposed to eliminate the OATS rules once Industry Members are effectively reporting to the CAT and the CAT's accuracy and reliability meet certain standards. Specifically, FINRA proposed that before OATS could be retired, the CAT generally must achieve a sustained error rate for Industry Member reporting in five categories for a period of at least 180 days of 5% or lower on a pre-correction basis, and 2% or lower on a post-correction basis (measured at T+5). In addition to the maximum error rates and matching thresholds, FINRA's use of CAT Data must confirm that (i) there are no material issues that have not been corrected, (ii) the CAT includes all data necessary to allow FINRA to continue to meet its surveillance obligations, and (iii) the Plan Processor is sufficiently meeting its obligations under the CAT NMS Plan relating to the reporting and linkage of Phase 2a Industry Member Data.

In the OATS Retirement Filing, FINRA explained that its review of CAT Data and error rates would be based on data and linkages in the initial phase of reporting (or "Phase 2a"), which replicate the data in OATS today and thus are most relevant for OATS retirement purposes. Phase 2a Data includes all events and scenarios covered by OATS and applies only to equities. FINRA did not consider options order events or Phase 2c data and validations, which are not in OATS today, for purposes of OATS retirement.

As described below, FINRA has determined that the CAT meets the accuracy and reliability standards approved by the Commission in the OATS Retirement Filing.

(1) Maximum Error Rates

As discussed in the OATS Retirement Filing, FINRA believes that relevant error rates are the primary, but not the sole, metric by which to determine the CAT's accuracy and reliability and will serve as the baseline requirement needed before OATS can be retired. FINRA proposed that, before OATS could be retired, the CAT would generally need to achieve a sustained error rate for Industry Member reporting in five categories for a period of at least 180 days of 5% or lower, measured on a pre-correction or as-submitted basis, and 2% or lower on a post-correction basis (measured at T+5).¹² FINRA proposed to average the error rates across the period, rather than require a 5% pre-correction and 2% post-correction maximum each day for 180 consecutive days. FINRA also proposed to measure the error rates in the aggregate, rather than on a firm-by-firm basis. Finally,

¹² As clarified in the OATS Retirement Filing, although FINRA does not believe that post-correction errors need to be de minimis before OATS can be retired, FINRA was not suggesting, with the proposal, that 2% would meet the ultimate objective of de minimis error rates for CAT. See CAT NMS Plan, Appendix C, note 102 (error rates after reprocessing of error corrections are ultimately expected to be de minimis for the CAT). See also Approval Order.

FINRA proposed to measure the error rates separately for each of the five categories, rather than evaluate all categories in the aggregate. As noted above, FINRA's assessment of the error rates for Industry Member reporting is based solely on Phase 2a CAT reporting for equity events since options orders are not included in OATS today.

As discussed in the OATS Retirement Filing, FINRA measured the error rates in each of the five categories discussed below during the period from October 26, 2020 through April 26, 2021 (the "applicable period"). FINRA commenced this period on October 26, 2020, which was the date that Industry Members were required to begin correcting all errors for inter-firm linkages and exchange/TRF/ORF match validations. As discussed in the Response to Comments, although the production environment for inter-firm linkage and exchange/TRF/ORF match validations was open for testing as of September 28, 2020, FINRA did not believe it would be appropriate for the 180-day period to commence prior to the October 26, 2020 compliance date.¹³

Rejection Rates and Data Validations. As described in the OATS Retirement Filing, the Plan Processor must perform certain basic data validations,¹⁴ and if a record does not pass these basic data validations, it must be rejected and returned to the CAT Reporter to be corrected and resubmitted. FINRA proposed that over the 180-day period, aggregate rejection rates must be no more than 5% pre-correction or 2% post-correction across all Industry Member Reporters. FINRA has determined that, over the applicable period, aggregate rejection rates across all Industry Member Reporters were 0.03% pre-correction and 0.01% post-correction.

Intra-Firm Linkages. As described in the OATS Retirement Filing, the Plan Processor must be able to link all related order events from all CAT Reporters involved in the lifecycle of an order. At a minimum, this requirement includes the creation of an order lifecycle between all order events handled within an individual CAT Reporter, including orders routed to internal desks or departments with different functions (e.g., an internal ATS). FINRA proposed that aggregate intra-firm linkage rates across all Industry Member Reporters must be at least 95% pre-correction and 98% post-correction. FINRA has determined that, over the applicable period, aggregate intra-firm linkage rates across all Industry Member Reporters were 99.97% pre-correction and 99.99% post-correction.

¹³ See FINRA's Response to Comments, supra note 7.

¹⁴ Appendix D of the CAT NMS Plan, Section 7.2, for example, requires that certain file validations (e.g., file transmission and receipt are in the correct formats, confirmation of a valid SRO-Assigned Market Participant Identifier, etc.), and syntax and context checks (e.g., format checks, data type checks, consistency checks, etc.) be performed on all submitted records.

Inter-Firm Linkages. As described in the OATS Retirement Filing, the Plan Processor must be able to create the lifecycle between orders routed between broker-dealers. FINRA proposed that at least a 95% pre-correction and 98% post-correction aggregate match rate be achieved for orders routed between two Industry Member Reporters. FINRA has determined that during the applicable period there was a 99.08% pre-correction and 99.84% post-correction aggregate match rate for orders routed between two Industry Member Reporters.

Order Linkage Rates. As described in the OATS Retirement Filing, in addition to creating linkages within and between broker-dealers, the Plan Processor must be able to create lifecycles to link various pieces of related orders. For example, the Plan requires linkages of order information to create an order lifecycle from origination or receipt to cancellation or execution. This category essentially combines all of the order-related linkages to capture an overall snapshot of order linkages in the CAT.¹⁵ FINRA proposed that there be at least a 95% pre-correction and 98% post-correction rate for order linkages that are required in Phase 2a. FINRA has determined that during the applicable period there was a 99.66% pre-correction and 99.93% post-correction rate for order linkages required in Phase 2a.¹⁶

¹⁵ See FINRA's Response to Comments, supra note 7.

¹⁶ FINRA noted that in Phase 2a, linkage is required between the representative street side order and the order being represented when the representative order was originated specifically to represent a single order (received either from a customer or another broker-dealer) and there is: 1) an existing direct electronic link in the firm's system between the order being represented and the representative order, and 2) any resulting executions are immediately and automatically applied to the represented order in the firm's system. As set forth in the OATS Retirement Filing, while such linkages are not required in OATS, FINRA believes that it is appropriate to evaluate them for purposes of retiring OATS because they represent a significant enhancement to the data currently available in OATS and will enhance the quality of the equity audit trail. However, FINRA also explained in the Response to Comments that if all other proposed criteria have been met, FINRA would not anticipate delaying OATS retirement based on Phase 2a representative order linkage error rates alone.

In evaluating whether the standards for OATS retirement have been met, FINRA determined that the error rates for the Phase 2a representative order linkages did not have a significant negative impact on the overall error rates for order linkages. Accordingly, FINRA did not need to separately evaluate or exclude Phase 2a representative order linkage rates in measuring the error rates over the applicable period. For example, if the intra-firm linkage error rate had been above 5% over the applicable period, FINRA would have evaluated whether the error rate was the result of unlinked representative orders to create an apples-to-apples comparison to OATS.

Exchange and TRF/ORF Match Rates. As described in the OATS Retirement Filing, an order lifecycle must be created to link orders routed from broker-dealers to exchanges and executed orders and trade reports. FINRA proposed at least a 95% pre-correction and 98% post-correction aggregate match rate across all equity exchanges¹⁷ for orders routed from Industry Members to an exchange and, for over-the-counter executions, the same match rate for orders linked to trade reports. FINRA determined that, during the applicable period, there was a 99.51% pre-correction and 99.87% post-correction aggregate match rate across all equity exchanges for orders routed from Industry Members to an exchange and, for over-the-counter executions, there was a 99.34% pre-correction and 99.53% post-correction rate for orders linked to trade reports submitted to the FINRA Trade Reporting Facilities and OTC Reporting Facility.

As set forth above, the error rates for Industry Member reporting over the applicable period were well below the maximum rates established in the OATS Retirement Filing. FINRA also noted that the overall post-correction error rate for Phase 2a Industry Member reporting of 1.01% is comparable to the current overall OATS post-correction error rate, which generally is at or slightly below 1%. Therefore, FINRA has determined that, based on the error rates for Industry Member reporting, the CAT Data meets the accuracy and reliability baseline standards required for OATS retirement.

(2) FINRA's Use of CAT Data

In the OATS Retirement Filing, FINRA stated that while error rates are a key standardized measure in determining whether OATS retirement is appropriate, FINRA's use of the data in the CAT also must confirm that (i) there are no material issues that have not been corrected (e.g., delays in the processing of data, issues with query functions, etc.), (ii) the CAT includes all data necessary to allow FINRA to continue to meet its surveillance obligations, and (iii) the Plan Processor is sufficiently meeting its obligations under the CAT NMS Plan relating to the reporting and linkage of Phase 2a Data.

In the OATS Retirement Filing, FINRA stated that it has been planning for OATS retirement for several years and the necessary development work has been underway for some time. FINRA also has been analyzing and testing production CAT Data for purposes of transitioning its automated equity surveillance patterns since the commencement of Phase 2a Industry Member reporting in June 2020 and through subsequent CAT milestone releases. For example, in addition to quantitative reviews, such as the error rate statistics discussed above, FINRA has conducted a series of qualitative reviews of Industry Member CAT Data. Such reviews include, among other things, comparing the count and distribution of Industry Member event reporting through CAT versus OATS (e.g., new order and

¹⁷

See Amendment No. 1.

execution events, and data elements such as buy/sell/sell short codes), and reviewing results of examinations, alert reviews, and investigations relating to the timeliness and accuracy of Industry Member reporting. Based on such qualitative data reviews, FINRA has concluded that Industry Member CAT Data, in the aggregate, is a sufficient replacement for OATS for purposes of FINRA's surveillance program.

As discussed in the OATS Retirement Filing, today, FINRA's surveillance patterns rely on the cross-market data model ("CMDM"), which comprises linked OATS data, equity exchange data feeds from each of the exchanges with which FINRA has entered into a RSA, and transactions reported to FINRA's equity trade reporting facilities. The CMDM will be retired and replaced by a newly created surveillance data mart, the Pattern Optimized Datamart ("POD"), which incorporates both equities and options data. At that point, FINRA's patterns will rely on CAT Data in POD, i.e., Plan Participant and Industry Member data reported in CAT format and linked by CAT.¹⁸ FINRA notes that the Plan Participants transitioned to reporting via the CAT technical specification as of April 26, 2021, and full Plan Participant equities reporting and linkage validations in accordance with the CAT specification commenced on June 1, 2021.¹⁹ Successful completion of the transition to the CAT specification for Plan Participants is a prerequisite for FINRA to retire the CMDM and leverage CAT Data and linkages in POD for its surveillance patterns. As of the date of this filing, FINRA has completed all planned activities on schedule, including substantially completing the process of integrating CAT Data into POD and successfully running large amounts of production CAT Data for the month of May through POD.²⁰ FINRA anticipates completing additional activities before

¹⁸ FINRA's Response to Comments noted this dependency, stating that the process of transitioning FINRA's surveillance patterns to CAT Data necessarily includes, among other things, ingestion of all Industry Member and Plan Participant data and linkages in CAT format. See Response to Comments, *supra* note 7, at 4. The Response to Comments further noted that the Plan Participants would be reporting to CAT via another mechanism until April 2021.

¹⁹ For example, according to the CAT Reporting Technical Specification for Plan Participants (version 4.0.0-r4 dated April 20, 2021), additional linkage error feedback for off-exchange trade reports was effective as of June 1, 2021. The Technical Specifications can be found on the CAT NMS Plan website at www.catnmsplan.com/sites/default/files/2021-04/04.20.2021-CAT-ReportingTechnical-Specifications-for-Participants-4.0.0-r4.pdf.

²⁰ FINRA notes that additional POD releases are scheduled; however, these releases introduce minor enhancements to POD, as opposed to significant changes that would impact the way data is ingested or processed in POD.

the proposed OATS retirement date, including, e.g., planned user acceptance testing.²¹

As discussed in the OATS Retirement Filing, FINRA has performed broad analysis of its equity surveillance patterns and has determined that all of the data required to support the transition is available in CAT. By mapping OATS data to Industry Member CAT Data in POD, FINRA has confirmed that CAT Data has equivalent analogs to all data elements in OATS. In that regard, FINRA notes that, as a Plan Participant, FINRA has been involved in CAT development efforts to ensure that the scope and features of Industry Member data and processed output are sufficient for FINRA's surveillance program. These efforts include, for example, developing and updating the Industry Member Technical Specifications and Reporting Scenarios, conducting OATS-CAT gap analyses and validating that all such gaps have been properly addressed, and performing OATS-to-CAT field-level mappings.

With respect to Plan Participant data, FINRA notes in the OATS Retirement Filing that the test environment for Plan Participant reporting in accordance with the CAT specification opened on February 15, 2021.²² Plan Participant equity reporting in accordance with the CAT specification in the test environment had a very high compliance rate for data ingestion and validation, and compliance in the production environment is comparable. In addition, starting on April 26, 2021, CAT began linking copies of Industry Member and Plan Participant data reported via the CAT specification in a test environment, and at that point, FINRA began its evaluation of the quality of these linkages. Based on this review and evaluation, in the OATS Retirement Filing, FINRA stated that it believes that the linkages between Plan Participant data and Industry Member data in CAT are comparable to the linkages between RSA exchange data and OATS data in the CMDM today.²³ FINRA CAT and the Plan Participants have now met the necessary criteria for a full cutover from the RSA specification to the CAT specification, including, e.g., achieving comparable data ingestion validation and inter-venue linkage rates (within a variance of under one percent) between RSA and CAT specification submissions. Accordingly, the Operating Committee approved the cutover from the RSA specification to the CAT specification as the

²¹ FINRA notes that user acceptance testing is the final stage of any software development life cycle and enables actual users to test the system to confirm that it is able to carry out the required tasks it was designed to address in real-world situations.

²² See, e.g., CAT Q1 2021 Quarterly Progress Report dated April 30, 2021, available at www.catnmsplan.com/sites/default/files/2021-05/CAT-Q1-2021-QPR.pdf.

²³ FINRA notes that the CAT uses the same code in both the test and production environments. Thus, FINRA believes that linkages in the test environment are reliable indicators of linkages in the production environment.

official source of Plan Participant data as of June 1, 2021, and today, all Industry Member and Plan Participant equities data reported via the CAT specification is linked in the CAT production environment.

As discussed in the OATS Retirement Filing, FINRA continues to evaluate CAT Data quality, and in particular, linkages between Industry Member and Plan Participant data, and to test its surveillance patterns to run on CAT Data in POD. In that regard, FINRA notes that it has followed established and time-tested processes and protocols throughout the development process to ensure that its patterns will perform as expected and produce the necessary output using CAT Data following the retirement of OATS. For example, FINRA's Software Development Lifecycle ("SDLC") procedures govern systems design, changes, testing and controls. The SDLC procedures are an essential component of FINRA's operations and have been developed to serve FINRA's unique regulatory needs and structure. Additionally, consistent with SEC Regulation SCI, FINRA procedures include a plan of coordination and communication with regulatory staff. By relying on these established processes and protocols, FINRA has confidence that the CAT Data and linkages are reliable and sufficient to run FINRA's surveillance patterns.

Based on these results, as well as the results of its quantitative and qualitative reviews of CAT Data and successful efforts integrating CAT Data into POD, in the OATS Retirement Filing, FINRA stated that it believes that the complete portfolio of equity surveillance patterns will be capable of consuming CAT Data and achieving comparable (or better) output results.

Thus, FINRA proposes to retire OATS in accordance with the schedule set forth herein. FINRA will run its surveillance patterns for review periods through the end of the second quarter of 2021 using OATS data and begin using—and be fully reliant on—CAT Data for its surveillance patterns for review periods beginning in the third quarter of 2021. Following the retirement of OATS, FINRA expects to maintain the current established cadence of its monthly, quarterly and semi-annual surveillance patterns. In addition, FINRA's analytics platforms will have access to CAT Data as soon as such data is made available to regulators. Thus, outside of regularly scheduled surveillance pattern runs, FINRA can perform expedited analytics, as required by market events.

As discussed in the OATS Retirement Filing, FINRA is finalizing the development and certification of its surveillance patterns to run on CAT Data on a rolling basis and, in accordance with its existing SDLC procedures, will run a month's worth of data and compare the output before certifying each pattern. For those equity patterns that will be subject to certification after OATS retirement, FINRA anticipates that there would be sufficient time to identify and remediate any issues prior to running the patterns in accordance with the current established cadence. FINRA does not anticipate significant issues arising from additional

scheduled POD releases or in the final stages of its pattern development and certification efforts.

As discussed in the OATS Retirement Filing, on an ongoing basis following the retirement of OATS, FINRA will conduct regular reviews to ensure confidence in the completeness and accuracy of Industry Member reporting, along with the ability to remediate any issues in a timely manner. Among other things, FINRA has a robust mechanism for detecting data issues, determining which issues are material for purposes of its surveillance program, and requesting resubmission and/or reprocessing of data, as necessary. FINRA also (1) performs a suite of data quality checks against data sourced from CAT to POD and against data processed by POD for use in surveillance patterns; (2) oversees a robust surveillance and examination compliance program that evaluates Industry Member reporting timeliness, data quality, and other issues and trends; (3) reviews CAT compliance program alerts using a rapid remediation process and formal reviews, as necessary; and (4) reviews Industry Member self-reporting and error correction trends. FINRA believes that these practices are sufficient for identification and timely resolution of Industry Member reporting and data issues after OATS has been retired.

Specifically, with regard to the additional standards approved in the OATS Retirement Filing, through its use of CAT Data to date, as described above, FINRA believes that these standards have been satisfied. With respect to the first factor, FINRA does not believe that there are any material issues that have not been corrected (or could not be corrected in the course of operation of CAT, as approved by the Operating Committee)²⁴ that would impact FINRA's ability to incorporate and use CAT Data in FINRA's surveillance program. For example, the Plan requires that raw unprocessed data that has been ingested by the Plan Processor must be available to Participant regulatory staff and the SEC prior to 12:00 p.m. Eastern Time on T+1, and access to all iterations of processed data must be available to Participant regulatory staff and the SEC between 12:00 p.m. Eastern Time on T+1 and T+5.²⁵ The Plan Processor also must ensure that regulators have access to corrected and linked order data by 8:00 a.m. Eastern Time on T+5.²⁶ Additionally, after ingestion by the Central Repository, the raw unprocessed data must be transformed into a format appropriate for data querying

²⁴ FINRA notes that FINRA CAT tracks known issues relating to Industry Member and Plan Participant reporting. See, e.g., catnmsplan.com/CAT-Transaction-Known-Issues-List. FINRA regularly reviews and analyzes FINRA CAT's list of current and resolved issues and does not believe that any of these issues would impact its ability to incorporate and use CAT Data in its surveillance program.

²⁵ See CAT NMS Plan, Appendix D, Section 6.2.

²⁶ See CAT NMS Plan, Appendix C, Section A.2(a).

and regulatory output.²⁷ The user-defined direct queries and bulk extracts must provide authorized users with the ability to retrieve CAT Data via a query tool or language that allows users to query all available attributes and data sources.²⁸ FINRA's use of the CAT Data has not uncovered any processing delays or other material issues impacting the availability of, and FINRA's access to, the data.

With respect to the second factor, FINRA stated in the OATS Retirement Filing that it believes that the CAT includes all data necessary for FINRA to meet its surveillance obligations after the retirement of OATS. FINRA must ensure that the CAT, as the single source of order and trade data, can enable FINRA to conduct accurate and effective market surveillance in accordance with its regulatory obligations.²⁹ As noted above, Phase 2a Data includes all events and scenarios covered by OATS and is the most relevant for OATS retirement purposes. FINRA Rule 7440 describes the OATS requirements for recording information, which includes information related to the receipt or origination of orders, order transmittal, and order modifications, cancellations and executions. Large Industry Members and Small Industry Members that currently are reporting to OATS were required to submit data to the CAT for these same events and scenarios commencing in Phase 2a. FINRA's testing, analysis and use of the CAT Data (including integration into POD), as described above, has confirmed that the CAT includes all data necessary for FINRA to meet its surveillance obligations and that CAT is a reliable substitute for OATS. In addition, based on its qualitative data reviews, FINRA has concluded that Industry Member CAT Data, in the aggregate, is a sufficient replacement for OATS for purposes of FINRA's surveillance program.

With respect to the third factor, FINRA stated in the OATS Retirement Filing that it believes that the Plan Processor is sufficiently meeting its obligations under the

²⁷ See CAT NMS Plan, Appendix C, Section A.1(b).

²⁸ See CAT NMS Plan, Section 6.10(c).

²⁹ As discussed in the OATS Retirement Filing, OATS was originally proposed to fulfill one of the undertakings contained in an order issued by the Commission relating to the settlement of an enforcement action against FINRA (f/k/a National Association of Securities Dealers, Inc. ("NASD")) for failure to adequately enforce its rules. See Securities Exchange Act Release No. 39729 (March 6, 1998), 63 FR 12559 (March 13, 1998) (Order Approving File No SR-NASD-97-56) ("OATS Approval Order"); see also Securities Exchange Act Release No. 37538 (August 8, 1996); Administrative Proceeding File No. 3-9056 ("SEC Order"). In the OATS Approval Order, the Commission concluded that OATS satisfied the conditions of the SEC Order and was consistent with the Exchange Act. See 63 FR 12559, 12566-67. FINRA believes that it will continue to be in compliance with the requirements of the SEC Order once the OATS Rules are deleted.

CAT NMS Plan relating to the reporting and linkage of Phase 2a Data. As detailed in the Implementation Plan and Quarterly Progress Reports submitted by the Plan Participants, the Plan Processor has met its targeted completion dates for the milestones for Phase 2a, including, for example, production Go-Live for Equities 2a file submission and data integrity validation (Large Industry Members and Small OATS Reporters) on June 22, 2020; Production Go-Live for Equities 2a Intrafirm Linkage validations on July 27, 2020; and production go-live for firm-to-firm linkage validations for equities (Large Industry Members and Small OATS Reporters) and exchange and TRF/ORF linkage validations for equities (Large Industry Members and Small OATS Reporters) on October 26, 2020.³⁰

Based on the foregoing, FINRA has determined that the CAT meets the accuracy and reliability standards approved by the Commission in the OATS Retirement Filing for purposes of eliminating the OATS Rules. FINRA has determined to retire OATS and remove the OATS rules from its rulebook effective September 1, 2021. Firms must continue to report to OATS all order events that occur on or prior to August 31, 2021. Reports submitted to OATS for order events that occur after August 31, 2021 will be rejected. In other words, August 31, 2021 will be the last “OATS Business Day,” as defined under FINRA Rule 7450(b)(3), for which OATS will accept order events and perform routine processing (including incorporation of corrections and repairs of rejections) occurring within the normal OATS timeframe for such activities. OATS will continue to accept reports for order events that occur on or prior to August 31, 2021 (including, but not limited to, late and corrected reports for such order events) through September 16, 2021. Firms must ensure that their OATS reporting is accurate and complete for all order events that occur on or prior to August 31, 2021.

(b) Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,³¹ in general, and furthers the objectives of Section 6(b)(5) of the Act,³² in particular, because it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and 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.

In particular, the Exchange believes that the proposed rule change is consistent

³⁰ The Implementation Plan and Quarterly Progress Reports are available at www.catnmsplan.com/implementation-plan.

³¹ 15 U.S.C. 78f(b).

³² 15 U.S.C. 78f(b)(5).

with Section C.9 of Appendix C to the Plan, which requires each Participant to “file with the SEC the relevant rule change filing to eliminate or modify its duplicative rules within six (6) months of the SEC’s approval of the CAT NMS Plan.”³³ The Plan notes that “the elimination of such rules and the retirement of such systems [will] be effective at such time as CAT Data meets minimum standards of accuracy and reliability.”³⁴ Accordingly, the Exchange believes the proposed rule change implements, supports, interprets or clarifies the provisions of the Plan, and is designed to assist the Exchange and its members in meeting regulatory obligations pursuant to, and milestones established by, the Plan. In approving the Plan, the SEC noted that it “is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act.”³⁵ To the extent that this proposal implements, interprets or clarifies the Plan and applies specific requirements to members, the Exchange believes that this proposal furthers the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Act.

4. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change is not designed to address any competitive issue but rather implement provisions of the CAT NMS Plan, and is designed to assist the Exchange in meeting its regulatory obligations pursuant to the Plan.

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

Not applicable.

6. Extension of Time Period for Commission Action

The Exchange does not consent to an extension of the time period specified in Section 19(b)(2)³⁶ of the Act.

7. Basis for Accelerated Effectiveness Pursuant to Section 19(b)(2)

³³ Appendix C of CAT NMS Plan, Approval Order at 85010.

³⁴ Id.

³⁵ Approval Order at 84697.

³⁶ 15 U.S.C. 78s(b)(2).

The Exchange believes that the proposal qualifies for immediate effectiveness upon filing as a “non-controversial” rule change in accordance with Section 19(b)(3)(A) of the Act³⁷ and Rule 19b-4(f)(6) thereunder.³⁸

The Exchange asserts that the proposed rule change (i) will not significantly affect the protection of investors or the public interest, (ii) will not impose any significant burden on competition, and (iii) by its terms, will not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest. In addition, the Exchange provided the Commission with 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.

The proposed rule change would not significantly affect the protection of investors or the public interest because it seeks to delete the Exchange’s OATS rules to be consistent with FINRA’s retirement of its OATS rules effective September 1, 2021. The Exchange further believes that the proposed rule change would not impose any significant burden on competition because the proposed rule change is not designed to address any competitive issue but rather implement provisions of the CAT NMS Plan, and is designed to assist the Exchange in meeting its regulatory obligations pursuant to the Plan. Accordingly, the Exchange has submitted this rule filing for immediate effectiveness under Section 19(b)(3)(A) of the Act³⁹ and paragraph (f)(6) of Rule 19b-4 thereunder.⁴⁰

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(ii), the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative upon filing. Waiver of the operative delay would allow the Exchange to delete the OATS rules from its rulebook immediately since FINRA retired OATS and deleted the OATS rules from its rulebook effective September 1, 2021.

At any time within sixty (60) days of the filing of such proposed rule change, the Commission may summarily 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.

³⁷ 15 U.S.C. 78s(b)(3)(A).

³⁸ 17 CFR 240.19b-4(f)(6).

³⁹ 15 U.S.C. 78s(b)(3)(A).

⁴⁰ 17 CFR 240.19b-4.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

As discussed in detail above, the proposed rule change is consistent with FINRA's filing to retire OATS and delete the OATS rules from its rulebook.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advanced Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

Exhibit 1 – Form of Notice of Proposed Rule Change for Publication in the Federal Register

Exhibit 5 – Text of the Proposed Rule Change

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-NYSENAT-2021-17)

[Date]

Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Delete the Order Audit Trail System Rules in the Rule 6.7400 Series

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that on September 7, 2021, NYSE National, Inc. (“NYSE National” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. 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

The Exchange proposes to delete the Order Audit Trail System (“OATS”) rules in the Rule 6.7400 Series as these Rules provide for the collection of information that is duplicative of the data collection requirements of the CAT. Further, the Financial Industry Regulatory Authority (“FINRA”) has determined to eliminate its OATS rules. The proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 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, the self-regulatory organization 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 those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Rule 613 of Regulation NMS requires national securities exchanges and FINRA to create, implement, and maintain a consolidated audit trail to capture customer and order event information for orders in NMS Securities and OTC Equity Securities, across all markets, from the time of order inception through routing, cancellation, modification, or execution in a single consolidated data source. The Participants filed the Plan to comply with Rule 613 of Regulation NMS under the Act. The Plan was published for comment in the Federal Register on May 17, 2016,⁴ and approved by the Commission, as modified, on November 15, 2016.⁵

On August 14, 2020, FINRA filed with the Commission a proposed rule change to delete the OATS rules once Industry Members are effectively reporting to the CAT

⁴ See Securities Exchange Act Release No. 77724 (April 27, 2016), 81 FR 30614 (May 17, 2016).

⁵ See Securities Exchange Act Release No. 79318 (November 15, 2016), 81 FR 84696 (November 23, 2016) (“Order Approving the National Market System Plan Governing the Consolidated Audit Trail”) (“Approval Order”).

(the “OATS Retirement Filing”).⁶ On October 29, 2020, FINRA filed Amendment No. 1 to the proposed rule change (“Amendment No. 1”) and a response to the comments that were submitted on the original filing (“Response to Comments”).⁷ On November 30, 2020, the Commission approved the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.⁸ On June 17, 2021, FINRA filed a proposed rule change setting forth the basis for its determination that the accuracy and reliability of the CAT meet the standards approved by the Commission in the OATS Retirement Filing for purposes of eliminating the OATS rules.⁹ The FINRA proposal stated that FINRA would retire OATS effective September 1, 2021.

After conducting an analysis of its rules in accordance with the CAT NMS Plan, the Exchange has determined that the information collected pursuant to the OATS rules is intended to be collected by CAT. Further, the Exchange believes that the Rule 6.7400 Series will no longer be necessary and proposes to delete such rules from the Exchange’s rulebook. Discussed below is a description of the duplicative rule requirements as well as the timeline for eliminating the duplicative rules followed by a discussion on the OATS Retirement Filing that formed the basis for retiring OATS.

⁶ See Securities Exchange Act Release No. 89679 (August 26, 2020), 85 FR 54461 (September 1, 2020) (Notice of Filing of File No. SR-FINRA-2020-024).

⁷ See Letter from Lisa C. Horrigan, Associate General Counsel, FINRA, to Vanessa Countryman, Secretary, Commission, dated October 29, 2020.

⁸ See Securities Exchange Act Release No. 90535 (November 30, 2020), 85 FR 78395 (December 4, 2020) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of SR-FINRA-2020-024).

⁹ See Securities Exchange Act Release No. 92239 (June 23, 2021), 86 FR 34293 (June 29, 2021) (SR-FINRA-2021-017) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Retirement of FINRA’s Order Audit Trail System).

Duplicative OATS Requirements

The Rule 6.7400 Series consists of Rules 6.7410 through 6.7470 and sets forth the recording and reporting requirements of the OATS Rules. The OATS Rules require all Exchange members and associated persons to record in electronic form and report to FINRA, on a daily basis, certain information with respect to orders originated, received, transmitted, modified, canceled, or executed by members in all NMS stocks, as that term is defined in Rule 600(b)(47) of Regulation NMS,¹⁰ traded on the Exchange. The Exchange relies on the information reported to OATS either to conduct surveillance or to facilitate surveillance conducted by FINRA pursuant to a regulatory services agreement (“RSA”). This information is used by Exchange and FINRA staff to conduct surveillance and investigations of member firms for violations of Exchange and FINRA rules and federal securities laws. The Exchange believes it is appropriate to retire OATS because the requirements of the Rule 6.7400 Series are duplicative of information available in the CAT and thus will no longer be necessary now that the CAT is operational.

Timeline for Elimination of Duplicative Rules

The CAT NMS Plan states that the elimination of rules that are duplicative of the requirements of the CAT and the retirement of the related systems should be effective at such time as CAT Data meets minimum standards of accuracy and reliability.¹¹ As discussed in more detail in the OATS Retirement Filing, FINRA believes that OATS may be retired effective September 1, 2021 given the error rate thresholds have been met, and FINRA has determined that its usage of the CAT Data has not revealed material issues

¹⁰ 17 CFR 242.600(B)(47).

¹¹ Appendix C of CAT NMS Plan, Approval Order at 85010.

that have not been corrected and further confirmed that the CAT includes all data necessary to allow FINRA to continue to meet its surveillance obligations.

OATS Retirement Filing

In the OATS Retirement Filing, FINRA proposed to eliminate the OATS rules once Industry Members are effectively reporting to the CAT and the CAT's accuracy and reliability meet certain standards. Specifically, FINRA proposed that before OATS could be retired, the CAT generally must achieve a sustained error rate for Industry Member reporting in five categories for a period of at least 180 days of 5% or lower on a pre-correction basis, and 2% or lower on a post-correction basis (measured at T+5). In addition to the maximum error rates and matching thresholds, FINRA's use of CAT Data must confirm that (i) there are no material issues that have not been corrected, (ii) the CAT includes all data necessary to allow FINRA to continue to meet its surveillance obligations, and (iii) the Plan Processor is sufficiently meeting its obligations under the CAT NMS Plan relating to the reporting and linkage of Phase 2a Industry Member Data.

In the OATS Retirement Filing, FINRA explained that its review of CAT Data and error rates would be based on data and linkages in the initial phase of reporting (or "Phase 2a"), which replicate the data in OATS today and thus are most relevant for OATS retirement purposes. Phase 2a Data includes all events and scenarios covered by OATS and applies only to equities. FINRA did not consider options order events or Phase 2c data and validations, which are not in OATS today, for purposes of OATS retirement.

As described below, FINRA has determined that the CAT meets the accuracy and reliability standards approved by the Commission in the OATS Retirement Filing.

(1) Maximum Error Rates

As discussed in the OATS Retirement Filing, FINRA believes that relevant error rates are the primary, but not the sole, metric by which to determine the CAT's accuracy and reliability and will serve as the baseline requirement needed before OATS can be retired. FINRA proposed that, before OATS could be retired, the CAT would generally need to achieve a sustained error rate for Industry Member reporting in five categories for a period of at least 180 days of 5% or lower, measured on a pre-correction or as-submitted basis, and 2% or lower on a post-correction basis (measured at T+5).¹² FINRA proposed to average the error rates across the period, rather than require a 5% pre-correction and 2% post-correction maximum each day for 180 consecutive days. FINRA also proposed to measure the error rates in the aggregate, rather than on a firm-by-firm basis. Finally, FINRA proposed to measure the error rates separately for each of the five categories, rather than evaluate all categories in the aggregate. As noted above, FINRA's assessment of the error rates for Industry Member reporting is based solely on Phase 2a CAT reporting for equity events since options orders are not included in OATS today.

As discussed in the OATS Retirement Filing, FINRA measured the error rates in each of the five categories discussed below during the period from October 26, 2020 through April 26, 2021 (the "applicable period"). FINRA commenced this period on October 26, 2020, which was the date that Industry Members were required to begin correcting all

¹² As clarified in the OATS Retirement Filing, although FINRA does not believe that post-correction errors need to be de minimis before OATS can be retired, FINRA was not suggesting, with the proposal, that 2% would meet the ultimate objective of de minimis error rates for CAT. See CAT NMS Plan, Appendix C, note 102 (error rates after reprocessing of error corrections are ultimately expected to be de minimis for the CAT). See also Approval Order.

errors for inter-firm linkages and exchange/TRF/ORF match validations. As discussed in the Response to Comments, although the production environment for inter-firm linkage and exchange/TRF/ORF match validations was open for testing as of September 28, 2020, FINRA did not believe it would be appropriate for the 180-day period to commence prior to the October 26, 2020 compliance date.¹³

Rejection Rates and Data Validations. As described in the OATS Retirement Filing, the Plan Processor must perform certain basic data validations,¹⁴ and if a record does not pass these basic data validations, it must be rejected and returned to the CAT Reporter to be corrected and resubmitted. FINRA proposed that over the 180-day period, aggregate rejection rates must be no more than 5% pre-correction or 2% post-correction across all Industry Member Reporters. FINRA has determined that, over the applicable period, aggregate rejection rates across all Industry Member Reporters were 0.03% pre-correction and 0.01% post-correction.

Intra-Firm Linkages. As described in the OATS Retirement Filing, the Plan Processor must be able to link all related order events from all CAT Reporters involved in the lifecycle of an order. At a minimum, this requirement includes the creation of an order lifecycle between all order events handled within an individual CAT Reporter, including orders routed to internal desks or departments with different functions (e.g., an internal ATS). FINRA proposed that aggregate intra-firm linkage rates across all

¹³ See FINRA's Response to Comments, supra note 8.

¹⁴ Appendix D of the CAT NMS Plan, Section 7.2, for example, requires that certain file validations (e.g., file transmission and receipt are in the correct formats, confirmation of a valid SRO-Assigned Market Participant Identifier, etc.), and syntax and context checks (e.g., format checks, data type checks, consistency checks, etc.) be performed on all submitted records.

Industry Member Reporters must be at least 95% pre-correction and 98% post-correction. FINRA has determined that, over the applicable period, aggregate intra-firm linkage rates across all Industry Member Reporters were 99.97% pre-correction and 99.99% post-correction.

Inter-Firm Linkages. As described in the OATS Retirement Filing, the Plan Processor must be able to create the lifecycle between orders routed between broker-dealers. FINRA proposed that at least a 95% pre-correction and 98% post-correction aggregate match rate be achieved for orders routed between two Industry Member Reporters. FINRA has determined that during the applicable period there was a 99.08% pre-correction and 99.84% post-correction aggregate match rate for orders routed between two Industry Member Reporters.

Order Linkage Rates. As described in the OATS Retirement Filing, in addition to creating linkages within and between broker-dealers, the Plan Processor must be able to create lifecycles to link various pieces of related orders. For example, the Plan requires linkages of order information to create an order lifecycle from origination or receipt to cancellation or execution. This category essentially combines all of the order-related linkages to capture an overall snapshot of order linkages in the CAT.¹⁵ FINRA proposed that there be at least a 95% pre-correction and 98% post-correction rate for order linkages that are required in Phase 2a. FINRA has determined that during the applicable period there was a 99.66% pre-correction and 99.93% post-correction rate for order linkages required in Phase 2a.¹⁶

¹⁵ See FINRA's Response to Comments, supra note 8.

¹⁶ FINRA noted that in Phase 2a, linkage is required between the representative street side order and the order being represented when the representative order

Exchange and TRF/ORF Match Rates. As described in the OATS Retirement Filing, an order lifecycle must be created to link orders routed from broker-dealers to exchanges and executed orders and trade reports. FINRA proposed at least a 95% pre-correction and 98% post-correction aggregate match rate across all equity exchanges¹⁷ for orders routed from Industry Members to an exchange and, for over-the-counter executions, the same match rate for orders linked to trade reports. FINRA determined that, during the applicable period, there was a 99.51% pre-correction and 99.87% post-correction aggregate match rate across all equity exchanges for orders routed from Industry Members to an exchange and, for over-the-counter executions, there was a 99.34% pre-correction and 99.53% post-correction rate for orders linked to trade reports submitted to the FINRA Trade Reporting Facilities and OTC Reporting Facility.

was originated specifically to represent a single order (received either from a customer or another broker-dealer) and there is: 1) an existing direct electronic link in the firm's system between the order being represented and the representative order, and 2) any resulting executions are immediately and automatically applied to the represented order in the firm's system. As set forth in the OATS Retirement Filing, while such linkages are not required in OATS, FINRA believes that it is appropriate to evaluate them for purposes of retiring OATS because they represent a significant enhancement to the data currently available in OATS and will enhance the quality of the equity audit trail. However, FINRA also explained in the Response to Comments that if all other proposed criteria have been met, FINRA would not anticipate delaying OATS retirement based on Phase 2a representative order linkage error rates alone.

In evaluating whether the standards for OATS retirement have been met, FINRA determined that the error rates for the Phase 2a representative order linkages did not have a significant negative impact on the overall error rates for order linkages. Accordingly, FINRA did not need to separately evaluate or exclude Phase 2a representative order linkage rates in measuring the error rates over the applicable period. For example, if the intra-firm linkage error rate had been above 5% over the applicable period, FINRA would have evaluated whether the error rate was the result of unlinked representative orders to create an apples-to-apples comparison to OATS.

¹⁷ See Amendment No. 1.

As set forth above, the error rates for Industry Member reporting over the applicable period were well below the maximum rates established in the OATS Retirement Filing. FINRA also noted that the overall post-correction error rate for Phase 2a Industry Member reporting of 1.01% is comparable to the current overall OATS post-correction error rate, which generally is at or slightly below 1%. Therefore, FINRA has determined that, based on the error rates for Industry Member reporting, the CAT Data meets the accuracy and reliability baseline standards required for OATS retirement.

(2) FINRA's Use of CAT Data

In the OATS Retirement Filing, FINRA stated that while error rates are a key standardized measure in determining whether OATS retirement is appropriate, FINRA's use of the data in the CAT also must confirm that (i) there are no material issues that have not been corrected (e.g., delays in the processing of data, issues with query functions, etc.), (ii) the CAT includes all data necessary to allow FINRA to continue to meet its surveillance obligations, and (iii) the Plan Processor is sufficiently meeting its obligations under the CAT NMS Plan relating to the reporting and linkage of Phase 2a Data.

In the OATS Retirement Filing, FINRA stated that it has been planning for OATS retirement for several years and the necessary development work has been underway for some time. FINRA also has been analyzing and testing production CAT Data for purposes of transitioning its automated equity surveillance patterns since the commencement of Phase 2a Industry Member reporting in June 2020 and through subsequent CAT milestone releases. For example, in addition to quantitative reviews, such as the error rate statistics discussed above, FINRA has conducted a series of qualitative reviews of Industry Member CAT Data. Such reviews include, among other

things, comparing the count and distribution of Industry Member event reporting through CAT versus OATS (e.g., new order and execution events, and data elements such as buy/sell/sell short codes), and reviewing results of examinations, alert reviews, and investigations relating to the timeliness and accuracy of Industry Member reporting. Based on such qualitative data reviews, FINRA has concluded that Industry Member CAT Data, in the aggregate, is a sufficient replacement for OATS for purposes of FINRA's surveillance program.

As discussed in the OATS Retirement Filing, today, FINRA's surveillance patterns rely on the cross-market data model ("CMDM"), which comprises linked OATS data, equity exchange data feeds from each of the exchanges with which FINRA has entered into a RSA, and transactions reported to FINRA's equity trade reporting facilities. The CMDM will be retired and replaced by a newly created surveillance data mart, the Pattern Optimized Datamart ("POD"), which incorporates both equities and options data. At that point, FINRA's patterns will rely on CAT Data in POD, i.e., Plan Participant and Industry Member data reported in CAT format and linked by CAT.¹⁸ FINRA notes that the Plan Participants transitioned to reporting via the CAT technical specification as of April 26, 2021, and full Plan Participant equities reporting and linkage validations in accordance with the CAT specification commenced on June 1, 2021.¹⁹

¹⁸ FINRA's Response to Comments noted this dependency, stating that the process of transitioning FINRA's surveillance patterns to CAT Data necessarily includes, among other things, ingestion of all Industry Member and Plan Participant data and linkages in CAT format. See Response to Comments, supra note 8, at 4. The Response to Comments further noted that the Plan Participants would be reporting to CAT via another mechanism until April 2021.

¹⁹ For example, according to the CAT Reporting Technical Specification for Plan Participants (version 4.0.0-r4 dated April 20, 2021), additional linkage error feedback for off-exchange trade reports was effective as of June 1, 2021. The

Successful completion of the transition to the CAT specification for Plan Participants is a prerequisite for FINRA to retire the CMDM and leverage CAT Data and linkages in POD for its surveillance patterns. As of the date of this filing, FINRA has completed all planned activities on schedule, including substantially completing the process of integrating CAT Data into POD and successfully running large amounts of production CAT Data for the month of May through POD.²⁰ FINRA anticipates completing additional activities before the proposed OATS retirement date, including, e.g., planned user acceptance testing.²¹

As discussed in the OATS Retirement Filing, FINRA has performed broad analysis of its equity surveillance patterns and has determined that all of the data required to support the transition is available in CAT. By mapping OATS data to Industry Member CAT Data in POD, FINRA has confirmed that CAT Data has equivalent analogs to all data elements in OATS. In that regard, FINRA notes that, as a Plan Participant, FINRA has been involved in CAT development efforts to ensure that the scope and features of Industry Member data and processed output are sufficient for FINRA's surveillance program. These efforts include, for example, developing and updating the Industry Member Technical Specifications and Reporting Scenarios, conducting OATS-

Technical Specifications can be found on the CAT NMS Plan website at www.catnmsplan.com/sites/default/files/2021-04/04.20.2021-CAT-ReportingTechnical-Specifications-for-Participants-4.0.0-r4.pdf.

²⁰ FINRA notes that additional POD releases are scheduled; however, these releases introduce minor enhancements to POD, as opposed to significant changes that would impact the way data is ingested or processed in POD.

²¹ FINRA notes that user acceptance testing is the final stage of any software development life cycle and enables actual users to test the system to confirm that it is able to carry out the required tasks it was designed to address in real-world situations.

CAT gap analyses and validating that all such gaps have been properly addressed, and performing OATS-to-CAT field-level mappings.

With respect to Plan Participant data, FINRA notes in the OATS Retirement Filing that the test environment for Plan Participant reporting in accordance with the CAT specification opened on February 15, 2021.²² Plan Participant equity reporting in accordance with the CAT specification in the test environment had a very high compliance rate for data ingestion and validation, and compliance in the production environment is comparable. In addition, starting on April 26, 2021, CAT began linking copies of Industry Member and Plan Participant data reported via the CAT specification in a test environment, and at that point, FINRA began its evaluation of the quality of these linkages. Based on this review and evaluation, in the OATS Retirement Filing, FINRA stated that it believes that the linkages between Plan Participant data and Industry Member data in CAT are comparable to the linkages between RSA exchange data and OATS data in the CMDM today.²³ FINRA CAT and the Plan Participants have now met the necessary criteria for a full cutover from the RSA specification to the CAT specification, including, e.g., achieving comparable data ingestion validation and inter-venue linkage rates (within a variance of under one percent) between RSA and CAT specification submissions. Accordingly, the Operating Committee approved the cutover from the RSA specification to the CAT specification as the official source of Plan Participant data as of June 1, 2021, and today, all Industry Member and Plan Participant

²² See, e.g., CAT Q1 2021 Quarterly Progress Report dated April 30, 2021, available at www.catnmsplan.com/sites/default/files/2021-05/CAT-Q1-2021-QPR.pdf.

²³ FINRA notes that the CAT uses the same code in both the test and production environments. Thus, FINRA believes that linkages in the test environment are reliable indicators of linkages in the production environment.

equities data reported via the CAT specification is linked in the CAT production environment.

As discussed in the OATS Retirement Filing, FINRA continues to evaluate CAT Data quality, and in particular, linkages between Industry Member and Plan Participant data, and to test its surveillance patterns to run on CAT Data in POD. In that regard, FINRA notes that it has followed established and time-tested processes and protocols throughout the development process to ensure that its patterns will perform as expected and produce the necessary output using CAT Data following the retirement of OATS. For example, FINRA's Software Development Lifecycle ("SDLC") procedures govern systems design, changes, testing and controls. The SDLC procedures are an essential component of FINRA's operations and have been developed to serve FINRA's unique regulatory needs and structure. Additionally, consistent with SEC Regulation SCI, FINRA procedures include a plan of coordination and communication with regulatory staff. By relying on these established processes and protocols, FINRA has confidence that the CAT Data and linkages are reliable and sufficient to run FINRA's surveillance patterns.

Based on these results, as well as the results of its quantitative and qualitative reviews of CAT Data and successful efforts integrating CAT Data into POD, in the OATS Retirement Filing, FINRA stated that it believes that the complete portfolio of equity surveillance patterns will be capable of consuming CAT Data and achieving comparable (or better) output results.

Thus, FINRA proposes to retire OATS in accordance with the schedule set forth herein. FINRA will run its surveillance patterns for review periods through the end of the

second quarter of 2021 using OATS data and begin using—and be fully reliant on—CAT Data for its surveillance patterns for review periods beginning in the third quarter of 2021. Following the retirement of OATS, FINRA expects to maintain the current established cadence of its monthly, quarterly and semi-annual surveillance patterns. In addition, FINRA’s analytics platforms will have access to CAT Data as soon as such data is made available to regulators. Thus, outside of regularly scheduled surveillance pattern runs, FINRA can perform expedited analytics, as required by market events.

As discussed in the OATS Retirement Filing, FINRA is finalizing the development and certification of its surveillance patterns to run on CAT Data on a rolling basis and, in accordance with its existing SDLC procedures, will run a month’s worth of data and compare the output before certifying each pattern. For those equity patterns that will be subject to certification after OATS retirement, FINRA anticipates that there would be sufficient time to identify and remediate any issues prior to running the patterns in accordance with the current established cadence. FINRA does not anticipate significant issues arising from additional scheduled POD releases or in the final stages of its pattern development and certification efforts.

As discussed in the OATS Retirement Filing, on an ongoing basis following the retirement of OATS, FINRA will conduct regular reviews to ensure confidence in the completeness and accuracy of Industry Member reporting, along with the ability to remediate any issues in a timely manner. Among other things, FINRA has a robust mechanism for detecting data issues, determining which issues are material for purposes of its surveillance program, and requesting resubmission and/or reprocessing of data, as necessary. FINRA also (1) performs a suite of data quality checks against data sourced

from CAT to POD and against data processed by POD for use in surveillance patterns; (2) oversees a robust surveillance and examination compliance program that evaluates Industry Member reporting timeliness, data quality, and other issues and trends; (3) reviews CAT compliance program alerts using a rapid remediation process and formal reviews, as necessary; and (4) reviews Industry Member self-reporting and error correction trends. FINRA believes that these practices are sufficient for identification and timely resolution of Industry Member reporting and data issues after OATS has been retired.

Specifically, with regard to the additional standards approved in the OATS Retirement Filing, through its use of CAT Data to date, as described above, FINRA believes that these standards have been satisfied. With respect to the first factor, FINRA does not believe that there are any material issues that have not been corrected (or could not be corrected in the course of operation of CAT, as approved by the Operating Committee)²⁴ that would impact FINRA's ability to incorporate and use CAT Data in FINRA's surveillance program. For example, the Plan requires that raw unprocessed data that has been ingested by the Plan Processor must be available to Participant regulatory staff and the SEC prior to 12:00 p.m. Eastern Time on T+1, and access to all iterations of processed data must be available to Participant regulatory staff and the SEC between 12:00 p.m. Eastern Time on T+1 and T+5.²⁵ The Plan Processor also must

²⁴ FINRA notes that FINRA CAT tracks known issues relating to Industry Member and Plan Participant reporting. See, e.g., catnmsplan.com/CAT-Transaction-Known-Issues-List. FINRA regularly reviews and analyzes FINRA CAT's list of current and resolved issues and does not believe that any of these issues would impact its ability to incorporate and use CAT Data in its surveillance program.

²⁵ See CAT NMS Plan, Appendix D, Section 6.2.

ensure that regulators have access to corrected and linked order data by 8:00 a.m. Eastern Time on T+5.²⁶ Additionally, after ingestion by the Central Repository, the raw unprocessed data must be transformed into a format appropriate for data querying and regulatory output.²⁷ The user-defined direct queries and bulk extracts must provide authorized users with the ability to retrieve CAT Data via a query tool or language that allows users to query all available attributes and data sources.²⁸ FINRA's use of the CAT Data has not uncovered any processing delays or other material issues impacting the availability of, and FINRA's access to, the data.

With respect to the second factor, FINRA stated in the OATS Retirement Filing that it believes that the CAT includes all data necessary for FINRA to meet its surveillance obligations after the retirement of OATS. FINRA must ensure that the CAT, as the single source of order and trade data, can enable FINRA to conduct accurate and effective market surveillance in accordance with its regulatory obligations.²⁹ As noted above, Phase 2a Data includes all events and scenarios covered by OATS and is the most

²⁶ See CAT NMS Plan, Appendix C, Section A.2(a).

²⁷ See CAT NMS Plan, Appendix C, Section A.1(b).

²⁸ See CAT NMS Plan, Section 6.10(c).

²⁹ As discussed in the OATS Retirement Filing, OATS was originally proposed to fulfill one of the undertakings contained in an order issued by the Commission relating to the settlement of an enforcement action against FINRA (f/k/a National Association of Securities Dealers, Inc. ("NASD")) for failure to adequately enforce its rules. See Securities Exchange Act Release No. 39729 (March 6, 1998), 63 FR 12559 (March 13, 1998) (Order Approving File No SR-NASD-97-56) ("OATS Approval Order"); see also Securities Exchange Act Release No. 37538 (August 8, 1996); Administrative Proceeding File No. 3-9056 ("SEC Order"). In the OATS Approval Order, the Commission concluded that OATS satisfied the conditions of the SEC Order and was consistent with the Exchange Act. See 63 FR 12559, 12566-67. FINRA believes that it will continue to be in compliance with the requirements of the SEC Order once the OATS Rules are deleted.

relevant for OATS retirement purposes. FINRA Rule 7440 describes the OATS requirements for recording information, which includes information related to the receipt or origination of orders, order transmittal, and order modifications, cancellations and executions. Large Industry Members and Small Industry Members that currently are reporting to OATS were required to submit data to the CAT for these same events and scenarios commencing in Phase 2a. FINRA's testing, analysis and use of the CAT Data (including integration into POD), as described above, has confirmed that the CAT includes all data necessary for FINRA to meet its surveillance obligations and that CAT is a reliable substitute for OATS. In addition, based on its qualitative data reviews, FINRA has concluded that Industry Member CAT Data, in the aggregate, is a sufficient replacement for OATS for purposes of FINRA's surveillance program.

With respect to the third factor, FINRA stated in the OATS Retirement Filing that it believes that the Plan Processor is sufficiently meeting its obligations under the CAT NMS Plan relating to the reporting and linkage of Phase 2a Data. As detailed in the Implementation Plan and Quarterly Progress Reports submitted by the Plan Participants, the Plan Processor has met its targeted completion dates for the milestones for Phase 2a, including, for example, production Go-Live for Equities 2a file submission and data integrity validation (Large Industry Members and Small OATS Reporters) on June 22, 2020; Production Go-Live for Equities 2a Intrafirm Linkage validations on July 27, 2020; and production go-live for firm-to-firm linkage validations for equities (Large Industry Members and Small OATS Reporters) and exchange and TRF/ORF linkage validations

for equities (Large Industry Members and Small OATS Reporters) on October 26, 2020.³⁰

Based on the foregoing, FINRA has determined that the CAT meets the accuracy and reliability standards approved by the Commission in the OATS Retirement Filing for purposes of eliminating the OATS Rules. FINRA has determined to retire OATS and remove the OATS rules from its rulebook effective September 1, 2021. Firms must continue to report to OATS all order events that occur on or prior to August 31, 2021. Reports submitted to OATS for order events that occur after August 31, 2021 will be rejected. In other words, August 31, 2021 will be the last “OATS Business Day,” as defined under FINRA Rule 7450(b)(3), for which OATS will accept order events and perform routine processing (including incorporation of corrections and repairs of rejections) occurring within the normal OATS timeframe for such activities. OATS will continue to accept reports for order events that occur on or prior to August 31, 2021 (including, but not limited to, late and corrected reports for such order events) through September 16, 2021. Firms must ensure that their OATS reporting is accurate and complete for all order events that occur on or prior to August 31, 2021.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,³¹ in general, and furthers the objectives of Section 6(b)(5) of the Act,³² in particular, because it is designed to prevent fraudulent and manipulative acts and

³⁰ The Implementation Plan and Quarterly Progress Reports are available at www.catnmsplan.com/implementation-plan.

³¹ 15 U.S.C. 78f(b).

³² 15 U.S.C. 78f(b)(5).

practices, promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and 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.

In particular, the Exchange believes that the proposed rule change is consistent with Section C.9 of Appendix C to the Plan, which requires each Participant to “file with the SEC the relevant rule change filing to eliminate or modify its duplicative rules within six (6) months of the SEC’s approval of the CAT NMS Plan.”³³ The Plan notes that “the elimination of such rules and the retirement of such systems [will] be effective at such time as CAT Data meets minimum standards of accuracy and reliability.”³⁴ Accordingly, the Exchange believes the proposed rule change implements, supports, interprets or clarifies the provisions of the Plan, and is designed to assist the Exchange and its members in meeting regulatory obligations pursuant to, and milestones established by, the Plan. In approving the Plan, the SEC noted that it “is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act.”³⁵ To the extent that this proposal implements, interprets or clarifies the Plan and applies specific requirements to members, the Exchange believes that this proposal furthers the objectives of the Plan,

³³ Appendix C of CAT NMS Plan, Approval Order at 85010.

³⁴ Id.

³⁵ Approval Order at 84697.

as identified by the SEC, and is therefore consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change is not designed to address any competitive issue but rather implement provisions of the CAT NMS Plan, and is designed to assist the Exchange in meeting its regulatory obligations pursuant to the Plan.

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

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act³⁶ and Rule 19b-4(f)(6) thereunder.³⁷ Because the 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 prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)³⁸ normally does not become

³⁶ 15 U.S.C. 78s(b)(3)(A)(iii).

³⁷ 17 CFR 240.19b-4(f)(6).

³⁸ 17 CFR 240.19b-4(f)(6).

operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),³⁹ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing.

At any time within 60 days of the filing of such 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 under Section 19(b)(2)(B)⁴⁰ of the Act 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 e-mail to rule-comments@sec.gov. Please include File Number SR-NYSENAT-2021-17 on the subject line.

³⁹ 17 CFR 240.19b-4(f)(6)(iii).

⁴⁰ 15 U.S.C. 78s(b)(2)(B).

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-NYSENAT-2021-17. 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 also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSENAT-2021-17 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.⁴¹

Eduardo A. Aleman
Deputy Secretary

⁴¹ 17 CFR 200.30-3(a)(12).

Proposed new language is underlined;
Proposed deletions are in [brackets].

[Rule 6.7400. ORDER AUDIT TRAIL SYSTEM

Rule 6.7410. Definitions

For purposes of the Rule 6.7400 Series:

For purposes of the Rule 6.7400 Series:

- a. Terms shall have the same meaning as those defined in the Exchange Rules, unless otherwise specified.
- b. "Bunched Order" shall mean two or more orders that are aggregated prior to execution.
- c. "Customer" shall mean a person other than a broker or dealer.
- d. "Electronic Communication Network" shall mean any electronic system that widely disseminates to third parties orders entered therein by an exchange market maker or over-the-counter market maker, and permits such orders to be executed in whole or in part, and as further defined in Rule 600(b)(23) of SEC Regulation NMS.
- e. "Electronic Order" shall mean an order captured by an ETP Holder in an electronic order-routing or execution system.
- f. "Exchange System" shall mean the service provided by the Exchange that provides for the automated execution and reporting of transactions in NMS Stocks.
- g. "Index Arbitrage" shall mean a trading strategy in which pricing is based on discrepancies between a "basket" or group of stocks and the derivative index product (i.e. a basis trade) involving the purchase or sale of a "basket" or group of stocks in conjunction with the purchase or sale, or intended purchase or sale, of one or more derivative index products in an attempt to profit by the price difference between the "basket" or group of stocks and the derivative index products. While the purchase or sale of the stocks must be in conjunction with the purchase or sale of derivative index products, the transaction need not be executed

- contemporaneously to be considered index arbitrage. The term "derivative index products" refers to cash-settled options or futures contracts on index stock groups, and options on any such futures contracts.
- h. "Intermarket sweep order" shall have the same meaning as contained in Rule 600(b)(30) of SEC Regulation NMS.
 - i. "Manual Order" shall mean an order that is captured by an ETP Holder other than in an electronic order-routing or execution system.
 - j. "NMS Stock" shall have the same meaning as contained in Rule 600(b)(47) of SEC Regulation NMS.
 - k. "Order" shall mean any oral, written, or electronic instruction to effect a transaction in an NMS Stock that is received by an ETP Holder from another person for handling or execution, or that is originated by a department of an ETP Holder for execution by the same or another ETP Holder, other than any such instruction to effect a proprietary transaction originated by a trading desk in the ordinary course of an ETP Holder's market making activities.
 - l. "Order Audit Trail System" shall mean the automated system owned and operated by FINRA that is designed to capture order information in NMS Stocks reported by ETP Holders for integration with trade and quotation information to provide the Exchange with an accurate time sequenced record of orders and transactions.
 - m. "Program Trading" means either (A) index arbitrage or (B) any trading strategy involving the related purchase or sale of a "basket" or group of 15 or more stocks. Program trading includes the purchases or sales of stocks that are part of a coordinated trading strategy, even if the purchases or sales are neither entered nor executed contemporaneously, nor part of a trading strategy involving options or futures contracts on an index stock group, or options on any such futures contracts, or otherwise relating to a stock market index.
 - n. "Reporting Agent" shall mean a third party that enters into any agreement with an ETP Holder pursuant to which the Reporting Agent agrees to fulfill such ETP Holder's obligations under Rule 6.7450.
 - o. "Reporting ETP Holder" shall mean an ETP Holder that receives or originates an order and has an obligation to record and report information under Rules 6.7440 and 6.7450. An ETP Holder shall not be considered a Reporting ETP Holder in connection with an order, if the following conditions are met:

1. the ETP Holder engages in a non-discretionary order routing process, pursuant to which it immediately routes, by electronic or other means, all of its orders to a single receiving Reporting ETP Holder;
 2. the ETP Holder does not direct and does not maintain control over subsequent routing or execution by the receiving Reporting ETP Holder;
 3. the receiving Reporting ETP Holder records and reports all information required under Rules 6.7440 and 6.7450 with respect to the order; and
 4. the ETP Holder has a written agreement with the receiving Reporting ETP Holder specifying the respective functions and responsibilities of each party to effect full compliance with the requirements of Rules 6.7440 and 6.7450.
- p. "Proprietary Trading Firm" shall mean an ETP Holder that trades its own capital and that does not have "customers," as that term is defined in NYSE National Rule 6.7410(c), and that is not a FINRA member. The funds used by a Proprietary Trading firm must be exclusively firm funds and all trading must be in the firm's accounts. Traders must be owners of, employees of, or contractors to the firm.

Rule 6.7420. Applicability

- a. Unless otherwise indicated, the requirements of the Rule 6.7400 Series are in addition to the requirements contained elsewhere in Exchange Rules.
- b. Unless otherwise indicated, the requirements of the Rule 6.7400 Series shall apply to all ETP Holders and to their Associated Persons.
- c. Unless otherwise indicated, the requirements of the Rule 6.7400 Series shall apply to all executed or unexecuted orders for all NMS Stocks traded on the Exchange.

Rule 6.7430. Synchronization of ETP Holder Business Clocks

Each ETP Holder shall synchronize its business clocks that are used for purposes of recording the date and time of any event that must be recorded pursuant to the Rules of the Exchange, with reference to a time source as designated by the Exchange, and shall maintain the synchronization of such business clocks in conformity with such procedures as are prescribed by the Exchange.

Rule 6.7440. Recording of Order Information

- a. ETP Holders and Associated Persons shall comply with FINRA Rule 7440, which is incorporated by reference herein, as if such Rule were part of the Exchange's rules. The Exchange and FINRA are parties to the Regulatory Services Agreement pursuant to which FINRA has agreed to perform certain functions on behalf of the Exchange. Therefore, ETP Holders are complying with Rule 6.7440 by complying with FINRA Rule 7440 as written, including, for example, filing requirements and notifications. In addition, functions performed by FINRA, FINRA departments, and FINRA staff under NYSE National Rule 6.7440 are being performed by FINRA on behalf of the Exchange.
- b. For purposes of this Rule, references to Rules 6.7420 through 6.7460 shall be construed as references to NYSE National Rules 6.7420 through 6.7460.
- c. ETP Holders shall assign and enter a unique order identifier, in the form prescribed by the Exchange, to all orders that are electronically transmitted to the Exchange. An order identifier shall not be required for orders that are manually transmitted.

Rule 6.7450. Order Data Transmission Requirements

- a. Except as provided in paragraph (b), ETP Holders and Associated Persons shall comply with FINRA Rule 7450, which is incorporated by reference herein, as if such Rule were part of the Exchange's rules. The Exchange and FINRA are parties to the Regulatory Services Agreement pursuant to which FINRA has agreed to perform certain functions on behalf of the Exchange. Therefore, ETP Holders are complying with NYSE National Rule 6.7450 by complying with FINRA Rule 7450 as written, including, for example, filing requirements and notifications. In addition, functions performed by FINRA, FINRA departments, and FINRA staff under NYSE National Rule 6.7450 are being performed by FINRA on behalf of the Exchange.
- b. Proprietary Trading Firms shall be required to comply with FINRA Rule 7450 as if such Rule were part of the Exchange's rules, only when they receive a request from the Exchange to submit order information with respect to specific time periods identified in such request. Nothing in this Rule shall be construed to limit the obligations of Proprietary Trading Firms under any other Rule of the 6.7400 Series, including but not limited to, Rule 6.7440.
- c. For purposes of this Rule, references to Rule 6.7440 shall be construed as references to NYSE National Rule 6.7440.

Rule 6.7460. Violation of Order Audit Trail System Rules

Failure of an ETP Holder or Associated Person to comply with any of the requirements of Rule 6.7410 through Rule 6.7460 may be considered conduct that is inconsistent with high standards of commercial honor and just and equitable principles of trade, in violation of Rule 11.3.1.

Rule 6.7470. Exemption to the Order Recording and Data Transmission Requirements

- a. The Exchange, for good cause shown after taking into consideration all relevant factors, may exempt subject to specified terms and conditions, an ETP Holder from the recording and order data transmission requirements of Rules 6.7440 and 6.7450, respectively, for manual orders, if such exemption is consistent with the protection of investors and the public interest, and the ETP Holder meets the following criteria:
 1. the ETP Holder and current control affiliates and Associated Persons have not been subject within the last five years to any final disciplinary action, and within the last ten years to any disciplinary action involving fraud;
 2. the ETP Holder has annual revenues of less than \$2 million;
 3. the ETP Holder does not conduct any market making activities in NMS Stocks;
 4. the ETP Holder does not execute principal transactions with its customers (with limited exception for principal transactions executed pursuant to error corrections); and
 5. the ETP Holder does not conduct clearing or carrying activities for other firms.
- b. An exemption provided pursuant to this Rule shall not exceed a period of two years. At or prior to the expiration of a grant of exemptive relief under this Rule, an ETP Holder meeting the criteria set forth in paragraph (a) above may request a subsequent exemption, which will be considered at the time of the request consistent with the protection of investors and the public interest.
- c. This Rule shall be in effect until November 15, 2019.]
