

*Required fields are shown with yellow backgrounds and asterisks.*

Page 1 of \*       SECURITIES AND EXCHANGE COMMISSION      File No.\* SR -  - \*   
 WASHINGTON, D.C. 20549      Form 19b-4      Amendment No. (req. for Amendments \*)

Filing by New York Stock Exchange LLC  
 Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

<b>Initial *</b>	<b>Amendment *</b>	<b>Withdrawal</b>	<b>Section 19(b)(2) *</b>	<b>Section 19(b)(3)(A) *</b>	<b>Section 19(b)(3)(B) *</b>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			Rule		
<b>Pilot</b>	<b>Extension of Time Period for Commission Action *</b>	<b>Date Expires *</b>	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="text"/>	<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)	

<b>Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010</b>	<b>Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934</b>
<b>Section 806(e)(1) *</b>	<b>Section 806(e)(2) *</b>
<input type="checkbox"/>	<input type="checkbox"/>
	<b>Section 3C(b)(2) *</b>
	<input type="checkbox"/>

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 \*).

Proposes to delete the Order Audit Trail System rules in the Rule 7400 Series and amend Rule 8211

**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 \*       Last Name \*

Title \*

E-mail \*

Telephone \*       Fax

**Signature**

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

(Title \*)

Date      

By      

(Name \*)

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

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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

**Form 19b-4 Information \***

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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 Advance 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, security-based swap submission, or advance notice 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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Exhibit Sent As Paper Document

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 3 - Form, Report, or Questionnaire**

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Exhibit Sent As Paper Document

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 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”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> and as required by the National Market System Plan Governing the Consolidated Audit Trail (the “CAT NMS Plan” or “Plan”),<sup>3</sup> the New York Stock Exchange LLC (“NYSE” or the “Exchange”) proposes to delete the Order Audit Trail System (“OATS”) rules in the Rule 7400 Series and amend Rule 8211 governing submission of Electronic Blue Sheet trading data (“EBS”) as these Rules provide for the collection of information that is duplicative of the data collection requirements of the CAT once the Financial Industry Regulatory Authority (“FINRA”) publishes a notice announcing the date that it will retire its OATS and EBS 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:

David De Gregorio  
Senior Counsel  
NYSE Group, Inc.  
(212) 656-4166

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Unless otherwise specified, capitalized terms used in this rule filing are defined as set forth herein or in the CAT NMS Plan.

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

(a) Purpose

Background

Bats BYX Exchange, Inc., Bats BZX Exchange, Inc., Bats EDGA Exchange, Inc., Bats EDGX Exchange, Inc., BOX Options Exchange LLC, C2 Options Exchange, Incorporated, Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., FINRA, Investors’ Exchange LLC, Miami International Securities Exchange, LLC, MIAX PEARL, LLC, NASDAQ BX, Inc., Nasdaq GEMX, LLC, Nasdaq ISE, LLC, Nasdaq MRX, LLC,<sup>4</sup> NASDAQ PHLX LLC, The NASDAQ Stock Market LLC, the Exchange, NYSE MKT LLC, NYSE Arca, Inc. and NYSE National, Inc.<sup>5</sup> (collectively, the “Participants”) filed with the Commission, pursuant to Section 11A of the Exchange Act<sup>6</sup> and Rule 608 of Regulation NMS thereunder,<sup>7</sup> the CAT NMS Plan.<sup>8</sup> The Participants filed the Plan to comply with Rule 613 of Regulation NMS under the Exchange Act.<sup>9</sup> The Plan was published for comment in the Federal Register on May 17, 2016,<sup>10</sup> and

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<sup>4</sup> ISE Gemini, LLC, ISE Mercury, LLC and International Securities Exchange, LLC have been renamed Nasdaq GEMX, LLC, Nasdaq MRX, LLC, and Nasdaq ISE, LLC, respectively. See Securities Exchange Act Release No. 80248 (March 15, 2017), 82 FR 14547 (March 21, 2017) (SR-ISEGemini-2017-13); Securities Exchange Act Release No. 80326 (March 29, 2017), 82 FR 16460 (April 4, 2017) (SR-ISEMercury-2017-05); and Securities Exchange Act Release No. 80325 (March 29, 2017), 82 FR 16445 (April 4, 2017) (SR-ISE-2017-25).

<sup>5</sup> National Stock Exchange, Inc. has been renamed NYSE National, Inc. See Securities Exchange Act Release No. 79902 (January 30, 2017), 82 FR 9258 (February 3, 2017) (SR-NSX-2016-16).

<sup>6</sup> 15 U.S.C. 78k-1.

<sup>7</sup> 17 CFR 242.608.

<sup>8</sup> See Letter from the Participants to Brent J. Fields, Secretary, Commission, dated September 30, 2014; and Letter from Participants to Brent J. Fields, Secretary, Commission, dated February 27, 2015. On December 24, 2015, the Participants submitted an amendment to the CAT NMS Plan. See Letter from Participants to Brent J. Fields, Secretary, Commission, dated December 23, 2015.

<sup>9</sup> 17 CFR 242.613.

<sup>10</sup> Securities Exchange Act Release No. 77724 (April 27, 2016), 81 FR 30614 (May 17, 2016) (File No. 4-698).

approved by the Commission, as modified, on November 15, 2016.<sup>11</sup> On March 21, 2017, the Commission approved<sup>12</sup> the Exchange's new Rule 6800 Series to implement provisions of the CAT NMS Plan that are applicable to Exchange member organizations.<sup>13</sup>

The Plan is designed to create, implement and maintain a CAT that would 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. Pursuant to Appendix C of the CAT NMS Plan, each Participant is required to conduct analyses of which of its existing trade and order data rules and systems require the collection of information that is duplicative of information collected for the CAT.<sup>14</sup> In addition, among other things, Section C.9 of Appendix C to the Plan, as modified by the Commission, 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."<sup>15</sup> The Plan notes that "the elimination of such rules and the retirement of

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<sup>11</sup> Securities Exchange Act Release No. 79318 (Nov. 15, 2016), 81 FR 84696 (November 23, 2016) (File No. 4-698) ("Approval Order").

<sup>12</sup> See Securities Exchange Act Release No. 80256 (March 15, 2017), 82 FR 14526 (March 21, 2017) (SR-NYSE-2017-01) (Order Approving Proposed Rule Changes to Adopt Consolidated Audit Trail Compliance Rules).

<sup>13</sup> The Rule 6800 Series utilizes the term "Industry Member," which applies to the Exchange's member organizations. The term "member organization" means a "registered broker or dealer (unless exempt pursuant to the Act) that is a member of FINRA or another registered securities exchange. Member organizations that transact business with public customers or conduct business on the Floor of the Exchange shall at all times be members of FINRA. A registered broker or dealer must also be approved by the Exchange and authorized to designate an associated natural person to effect transactions on the floor of the Exchange or any facility thereof. This term shall include a natural person so registered, approved and licensed who directly effects transactions on the floor of the Exchange or any facility thereof." See Rule 2(b)(i). The term "member organization" also includes any registered broker or dealer that is a member of FINRA or a registered securities exchange, consistent with the requirements of section 2(b)(i) of this Rule, which does not own a trading license and agrees to be regulated by the Exchange as a member organization and which the Exchange has agreed to regulate. See Rule 2(b)(ii).

<sup>14</sup> Appendix C of CAT NMS Plan, Approval Order at 85010.

<sup>15</sup> Id.

such systems [will] be effective at such time as CAT Data meets minimum standards of accuracy and reliability.”<sup>16</sup>

After conducting its analysis of its rules in accordance with the CAT NMS Plan, the Exchange has determined that the information collected pursuant to the OATS and EBS rules is intended to be collected by CAT. Therefore, the Exchange believes that the Rule 7400 Series will no longer be necessary once FINRA publishes notice announcing the date it will retire its OATS rules. Similarly, the Exchange believes that it will be necessary to clarify how the Exchange will request EBS data under Rule 8211 after members are reporting to the CAT. Accordingly, the Exchange submits proposes to amend Rule 8211 to add new Supplementary Material clarifying how the Exchange will request data under these rules after member organizations are reporting to the CAT once FINRA publishes notice announcing the date it will retire its OATS rules. Discussed below is a description of the duplicative rule requirements as well as the timeline for eliminating the duplicative rules.

If the Commission approves the proposed rule change, the rule text will be effective; however, the amendments will not be implemented until FINRA publishes a notice announcing the date that it will retire its OATS rules, at which time the Exchange will publish a regulatory notice announcing implementation date of the proposed rule change. As discussed below, FINRA will publish its notice once the CAT achieves certain specific accuracy and reliability standards and FINRA has determined that its usage of the CAT Data has not revealed material issues that have not been corrected, confirmed that the CAT includes all data necessary to allow FINRA to continue to meet its surveillance obligations,<sup>17</sup> and confirmed that the Plan Processor is sufficiently meeting all of its obligations under the CAT NMS Plan.

#### Duplicative OATS Requirements

The Rule 7400 Series consists of Rules 7410 through 7470 and sets forth the recording and reporting requirements of the OATS Rules. The OATS Rules

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<sup>16</sup> Id.

<sup>17</sup> As noted in the Participants’ September 23, 2016 response to comment letters on the Plan, the Participants “worked to keep [the CAT] gap analyses up-to-date by including newly-added data fields in these duplicative systems, such as the new OATS data fields related to the tick size pilot and ATS order book changes, in the gap analyses.” Letter from Participants to Brent J. Fields, Secretary, Commission, dated September 23, 2016, at 21. The Participants noted that they “will work with the Plan Processor and the industry to develop detailed Technical Specifications to ensure that by the time Industry Members are required to report to the CAT, the CAT will include all data elements necessary to facilitate the rapid retirement of duplicative systems.” Id.

require all Exchange member organizations 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 over-the-counter (“OTC”) equity securities and equity securities listed and traded on NASDAQ. This information is used by FINRA staff to conduct surveillance and investigations of member firms for violations of FINRA rules and federal securities laws. The Exchange has determined that the requirements of the Rule 7400 Series are duplicative of information available in the CAT and thus will no longer be necessary once the CAT is operational.

The Participants have provided OATS technical specifications to the Plan Processor for the CAT for use in developing the Technical Specifications for the CAT, and the Participants are working with the Plan Processor to include the necessary OATS data elements in the CAT Technical Specifications. Accordingly, the Exchange proposes to eliminate its OATS Rules in accordance with the proposed timeline discussed below.

#### 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.<sup>18</sup> As discussed in more detail in its rule filing, FINRA believes that OATS may be retired at a date after all Industry Members are reporting to the CAT when the proposed 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, confirmed that the CAT includes all data necessary to allow FINRA to continue to meet its surveillance obligations, and confirmed that the Plan Processor is sufficiently meeting all of its obligations under the CAT NMS Plan.<sup>19</sup>

The CAT NMS Plan requires that a rule filing to eliminate a duplicative rule address whether “the availability of certain data from Small Industry Members two years after the Effective Date would facilitate a more expeditious retirement of duplicative systems.”<sup>20</sup> FINRA believes that there is no effective way to retire OATS until all current OATS reporters are reporting to the CAT. As discussed in FINRA’s filing, FINRA believes that having data from those Small Industry Members currently reporting to OATS available two years after the Effective Date would substantially facilitate a more expeditious retirement of OATS and therefore supports an amendment to the Plan that would require current OATS

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<sup>18</sup> Appendix C of CAT NMS Plan, Approval Order at 85010.

<sup>19</sup> See SR-FINRA-2017-013.

<sup>20</sup> Id.

Reporters that are “Small Industry Members” to report two years after the Effective Date (instead of three).<sup>21</sup>

The CAT NMS Plan also requires that this rule filing address “whether individual Industry Members can be exempted from reporting to duplicative systems once their CAT reporting meets specified accuracy and reliability standards, including, but not limited to, ways in which establishing cross-system regulatory functionality or integrating data from existing systems and the CAT would facilitate such Individual Industry Member exemptions.”<sup>22</sup>

FINRA believes that a single cut-over from OATS to CAT is highly preferable to a firm-by-firm approach and is not proposing to exempt members from the OATS requirements on a firm-by-firm basis. FINRA believes that that the overall accuracy and reliability thresholds for the CAT described above would need to be met under any conditions before firms could stop reporting to OATS. Moreover, as discussed above, FINRA supports amending the Plan to accelerate the reporting requirements for Small Industry Members that are OATS Reporters to report on the same timeframe as all other OATS Reporters. If such an amendment were approved by the Commission, there would be no need to exempt members from OATS requirements on a firm-by-firm basis.<sup>23</sup>

The CAT NMS Plan also requires that a rule filing to eliminate a duplicative rule to provide “specific accuracy and reliability standards that will determine when duplicative systems will be retired, including, but not limited to, whether the attainment of a certain Error Rate should determine when a system duplicative of the CAT can be retired.”<sup>24</sup> As discussed in Section A.3.(b) of Appendix C to the CAT NMS Plan, the Participants established an initial Error Rate, as defined in the Plan, of 5% on initially submitted data (i.e., data as submitted by a CAT Reporter before any required corrections are performed). The Participants noted in the Plan that their expectation was that “error rates after reprocessing of error corrections will be de minimis.”<sup>25</sup> The Participants based this Error Rate on their consideration of “current and historical OATS Error Rates, the magnitude of new

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<sup>21</sup> See SR-FINRA-2017-013. FINRA has represented that it intends to work with the other Participants to submit a proposed amendment to the Plan to require Small Industry Members that are OATS Reporters to report two years after the Effective Date.

<sup>22</sup> Id.

<sup>23</sup> Id.

<sup>24</sup> Id.

<sup>25</sup> See CAT NMS Plan, Appendix C, Section A.3(b), at n.102.



reporting requirements on the CAT Reporters and the fact that many CAT Reporters may have never been obligated to report data to an audit trail.”<sup>26</sup>

As set forth in its filing, FINRA believes that, when assessing the accuracy and reliability of the data for the purposes of retiring OATS, the error thresholds should be measured in more granular ways and should also include minimum error rates of post-correction data, which represents the data most likely to be used by FINRA to conduct surveillance. To ensure the CAT’s accuracy and reliability, FINRA is thus proposing that, before OATS could be retired, the CAT would generally need to achieve a sustained error rate for Industry Member reporting in each of the categories below 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).<sup>27</sup> FINRA is proposing to measure the 5% pre-correction and 2% post-correction thresholds by averaging the error rate across the period, not require a 5% pre-correction and 2% post-correction maximum each day for 180 consecutive days. FINRA believes that measuring each of the thresholds over the course of 180 days will ensure that the CAT consistently meets minimum accuracy and reliability thresholds for Industry Member reporting while also ensuring that single-day measurements do not unduly affect the overall measurements.<sup>28</sup> Consequently, FINRA is proposing to use error rates in four categories, measured separately for options and for equities, to assess whether the threshold pre- and post-correction error rates are being met.<sup>29</sup>

In addition to these minimum error rates before OATS can be retired FINRA believes that during the minimum 180-day period during which the thresholds are calculated, FINRA’s use of the data in the CAT must confirm that (i) usage over that time period has not revealed material issues that have not been corrected, (ii) the CAT includes all data necessary to allow the Exchange to continue to meet its surveillance obligations, and (iii) the Plan Processor is sufficiently meeting all of its obligations under the CAT NMS Plan. The Exchange believes this time period to use the CAT Data is necessary to reveal any errors that may manifest themselves only after surveillance patterns and other queries have been run and to confirm that the Plan Processor is meeting its obligations and performing its functions adequately.<sup>30</sup>

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<sup>26</sup> Id.

<sup>27</sup> The Plan requires that the Plan Processor must ensure that regulators have access to corrected and linked order and Customer data by 8:00 a.m. Eastern Time on T+5. See CAT NMS Plan, Appendix C, Section A.2(a).

<sup>28</sup> See SR-FINRA-2017-013.

<sup>29</sup> The categories are (1) rejection rates and data validations; (2) intra-firm linkages; (3) order linkage rates; and (4) Exchange and TRF/ORF match rates.

<sup>30</sup> See SR-FINRA-2017-013.

## Rule 8211

In addition to the OATS rules, Rule 8211 will also be affected by the implementation of the CAT. Rule 8211 is the Exchange's rule regarding the automated submission of specific trading data to the Exchange upon request (commonly referred to as "blue sheet" data) using the EBS system.

Once broker-dealer reporting to the CAT has begun, the CAT will contain much of the data the Participants would otherwise have requested via the EBS system for purposes of NMS Securities and OTC Equity Securities. Consequently, the Exchange will not need to use the EBS system or request information pursuant to Rule 8211 for NMS Securities or OTC Equity Securities for time periods after CAT reporting has begun if the appropriate accuracy and reliability thresholds are achieved, including an acceptable accuracy rate for customer and account information. However, Rule 8211 cannot be completely eliminated upon the CAT achieving the appropriate thresholds because Exchange staff may still need to request information pursuant to Rule 8211 for trading activity occurring before a member organization<sup>31</sup> was reporting to the CAT.<sup>32</sup> In addition, the Rule 8211 applies to information regarding transactions involving securities that will not be reportable to the CAT, such as fixed-income securities; thus, the rule must remain in effect with respect to those transactions until those transactions are captured in the CAT.

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<sup>31</sup> The Rule 6800 Series, the Exchange's Consolidated Audit Trail Compliance rule, utilizes the term "Industry Member," which applies to the Exchange's member organizations. The term "member organization" means a "registered broker or dealer (unless exempt pursuant to the Act) that is a member of FINRA or another registered securities exchange. Member organizations that transact business with public customers or conduct business on the Floor of the Exchange shall at all times be members of FINRA. A registered broker or dealer must also be approved by the Exchange and authorized to designate an associated natural person to effect transactions on the floor of the Exchange or any facility thereof. This term shall include a natural person so registered, approved and licensed who directly effects transactions on the floor of the Exchange or any facility thereof." See Rule 2(b)(i). The term "member organization" also includes any registered broker or dealer that is a member of FINRA or a registered securities exchange, consistent with the requirements of section 2(b)(i) of this Rule, which does not own a trading license and agrees to be regulated by the Exchange as a member organization and which the Exchange has agreed to regulate. See Rule 2(b)(ii).

<sup>32</sup> Firms are required to maintain the trade information for pre-CAT transactions in equities and options pursuant to applicable rules, such as books and records retention requirements, for the relevant time period, which is generally three or six years depending upon the record. See 17 CFR 240.17a-3(a), 240.17a-4.

The proposed rule change proposes to add new Supplementary Material to the Rule 8211 to clarify how the Exchange will request data under these rules after member organizations are reporting to the CAT. Specifically, the proposed Supplementary Material to the Rule 8211 will note that the Exchange will request information under Rule 8211 only if the information is not available in the CAT because, for example, the transactions in question occurred before the firm was reporting information to the CAT or involved securities that are not reportable to the CAT. In essence, under the new Supplementary Material, the Exchange will make requests under these rules if and only if the information is not otherwise available through the CAT.

However, as noted above, FINRA believes that the CAT must meet certain minimum accuracy and reliability standards before FINRA could rely on the CAT Data to replace existing regulatory tools, including EBS. Consequently, the proposed Supplementary Material will be implemented only after FINRA publishes its notice after the CAT achieves the thresholds set forth above with respect to OATS and an accuracy rate for customer and account information of 95% for pre-corrected data and 98% for post-correction data. In addition, as discussed above, FINRA can rely on CAT Data to replace EBS requests only after FINRA has determined that its usage of the CAT Data over a 180-day period has not revealed material issues that have not been corrected, confirmed that the CAT includes all data necessary to allow FINRA to continue to meet its surveillance obligations, and confirmed that the CAT Plan Processor is fulfilling its obligations under the CAT NMS Plan.

As noted, if the Commission approves the proposed rule change, the Exchange will announce the implementation date of the proposed rule change in a regulatory notice that will be published once FINRA publishes a notice announcing the date that it will retire its EBS rules, which FINRA will do once it concludes the thresholds for accuracy and reliability described above have been met and that the Plan Processor is sufficiently meeting all of its obligations under the CAT NMS Plan.

(b) Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>33</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>34</sup> 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.

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<sup>33</sup> 15 U.S.C. 78f(b).

<sup>34</sup> 15 U.S.C. 78f(b)(5).

In particular, the Exchange believes that 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.”<sup>35</sup> 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.

The Exchange also believes that adding a preamble to each current Rule impacted by the Plan would remove impediments to and perfect the mechanism of a free and open market and a national market system by adding clarity and transparency to the Exchange’s rules, reducing potential confusion, and making the Exchange’s rules easier to navigate and understand.

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. Further, the proposed change would enable the Exchange to exempt manual orders received by certain small firms from the OATS Rules and avoid imposing potentially unnecessary expense or hardship on those firms that qualify for the exemption. The Exchange notes that the compliance burden on these firms would be imposed for only a short period of time as these firms are required to develop a means to report order information to the CAT by 2019.

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

The Exchange has neither solicited nor received written comments on the proposed rule change.

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)<sup>36</sup> of the Act.

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<sup>35</sup> Approval Order, 81 FR at 84697.

<sup>36</sup> 15 U.S.C. 78s(b)(2).

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

Not applicable.

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

Not applicable.

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-NYSE-2017-24)

[Date]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change to Delete the Order Audit Trail System Rules in the Rule 7400 Series and Amend Rule 8211 Governing Submission of Electronic Blue Sheet Trading Data

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on May 15, 2017, New York Stock Exchange LLC (“NYSE” 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 7400 Series and amend Rule 8211 governing submission of Electronic Blue Sheet trading data (“EBS”) as these Rules provide for the collection of information that is duplicative of the data collection requirements of the CAT once the Financial Industry Regulatory Authority (“FINRA”) publishes a notice announcing the date that it will retire its OATS and EBS rules. The proposed rule change is available on the Exchange’s

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<sup>1</sup> 15 U.S.C.78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

website at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

Background

Bats BYX Exchange, Inc., Bats BZX Exchange, Inc., Bats EDGA Exchange, Inc., Bats EDGX Exchange, Inc., BOX Options Exchange LLC, C2 Options Exchange, Incorporated, Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., FINRA, Investors' Exchange LLC, Miami International Securities Exchange, LLC, MIAX PEARL, LLC, NASDAQ BX, Inc., Nasdaq GEMX, LLC, Nasdaq ISE, LLC, Nasdaq MRX, LLC,<sup>4</sup> NASDAQ PHLX LLC, The NASDAQ Stock Market LLC, the

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<sup>4</sup> ISE Gemini, LLC, ISE Mercury, LLC and International Securities Exchange, LLC have been renamed Nasdaq GEMX, LLC, Nasdaq MRX, LLC, and Nasdaq ISE, LLC, respectively. See Securities Exchange Act Release No. 80248 (March 15, 2017), 82 FR 14547 (March 21, 2017) (SR-ISEGemini-2017-13); Securities Exchange Act Release No. 80326 (March 29, 2017), 82 FR 16460 (April 4, 2017) (SR-ISEMercury-2017-05); and Securities Exchange Act Release No. 80325 (March 29, 2017), 82 FR 16445 (April 4, 2017) (SR-ISE-2017-25).

Exchange, NYSE MKT LLC, NYSE Arca, Inc. and NYSE National, Inc.<sup>5</sup> (collectively, the “Participants”) filed with the Commission, pursuant to Section 11A of the Exchange Act<sup>6</sup> and Rule 608 of Regulation NMS thereunder,<sup>7</sup> the CAT NMS Plan.<sup>8</sup> The Participants filed the Plan to comply with Rule 613 of Regulation NMS under the Exchange Act.<sup>9</sup> The Plan was published for comment in the Federal Register on May 17, 2016,<sup>10</sup> and approved by the Commission, as modified, on November 15, 2016.<sup>11</sup> On March 21, 2017, the Commission approved<sup>12</sup> the Exchange’s new Rule 6800 Series to implement provisions of the CAT NMS Plan that are applicable to Exchange member organizations.<sup>13</sup>

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<sup>5</sup> National Stock Exchange, Inc. has been renamed NYSE National, Inc. See Securities Exchange Act Release No. 79902 (January 30, 2017), 82 FR 9258 (February 3, 2017) (SR-NSX-2016-16).

<sup>6</sup> 15 U.S.C. 78k-1.

<sup>7</sup> 17 CFR 242.608.

<sup>8</sup> See Letter from the Participants to Brent J. Fields, Secretary, Commission, dated September 30, 2014; and Letter from Participants to Brent J. Fields, Secretary, Commission, dated February 27, 2015. On December 24, 2015, the Participants submitted an amendment to the CAT NMS Plan. See Letter from Participants to Brent J. Fields, Secretary, Commission, dated December 23, 2015.

<sup>9</sup> 17 CFR 242.613.

<sup>10</sup> Securities Exchange Act Release No. 77724 (April 27, 2016), 81 FR 30614 (May 17, 2016) (File No. 4-698).

<sup>11</sup> Securities Exchange Act Release No. 79318 (Nov. 15, 2016), 81 FR 84696 (November 23, 2016) (File No. 4-698) (“Approval Order”).

<sup>12</sup> See Securities Exchange Act Release No. 80256 (March 15, 2017), 82 FR 14526 (March 21, 2017) (SR-NYSE-2017-01) (Order Approving Proposed Rule Changes to Adopt Consolidated Audit Trail Compliance Rules).

<sup>13</sup> The Rule 6800 Series utilizes the term “Industry Member,” which applies to the Exchange’s member organizations. The term “member organization” means a “registered broker or dealer (unless exempt pursuant to the Act) that is a member of FINRA or another registered securities exchange. Member organizations that transact business with public customers or conduct business on the Floor of the Exchange shall at all times be members of FINRA. A registered broker or dealer



The Plan is designed to create, implement and maintain a CAT that would 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. Pursuant to Appendix C of the CAT NMS Plan, each Participant is required to conduct analyses of which of its existing trade and order data rules and systems require the collection of information that is duplicative of information collected for the CAT.<sup>14</sup> In addition, among other things, Section C.9 of Appendix C to the Plan, as modified by the Commission, 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.”<sup>15</sup> 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.”<sup>16</sup>

After conducting its analysis of its rules in accordance with the CAT NMS Plan, the Exchange has determined that the information collected pursuant to the OATS and EBS rules is intended to be collected by CAT. Therefore, the Exchange believes that the

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must also be approved by the Exchange and authorized to designate an associated natural person to effect transactions on the floor of the Exchange or any facility thereof. This term shall include a natural person so registered, approved and licensed who directly effects transactions on the floor of the Exchange or any facility thereof.” See Rule 2(b)(i). The term “member organization” also includes any registered broker or dealer that is a member of FINRA or a registered securities exchange, consistent with the requirements of section 2(b)(i) of this Rule, which does not own a trading license and agrees to be regulated by the Exchange as a member organization and which the Exchange has agreed to regulate. See Rule 2(b)(ii).

<sup>14</sup> Appendix C of CAT NMS Plan, Approval Order at 85010.

<sup>15</sup> Id.

<sup>16</sup> Id.

Rule 7400 Series will no longer be necessary once FINRA publishes notice announcing the date it will retire its OATS rules. Similarly, the Exchange believes that it will be necessary to clarify how the Exchange will request EBS data under Rule 8211 after members are reporting to the CAT. Accordingly, the Exchange submits proposes to amend Rule 8211 to add new Supplementary Material clarifying how the Exchange will request data under these rules after member organizations are reporting to the CAT once FINRA publishes notice announcing the date it will retire its OATS rules. Discussed below is a description of the duplicative rule requirements as well as the timeline for eliminating the duplicative rules.

If the Commission approves the proposed rule change, the rule text will be effective; however, the amendments will not be implemented until FINRA publishes a notice announcing the date that it will retire its OATS rules, at which time the Exchange will publish a regulatory notice announcing implementation date of the proposed rule change. As discussed below, FINRA will publish its notice once the CAT achieves certain specific accuracy and reliability standards and FINRA has determined that its usage of the CAT Data has not revealed material issues that have not been corrected, confirmed that the CAT includes all data necessary to allow FINRA to continue to meet its surveillance obligations,<sup>17</sup> and confirmed that the Plan Processor is sufficiently

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<sup>17</sup> As noted in the Participants' September 23, 2016 response to comment letters on the Plan, the Participants "worked to keep [the CAT] gap analyses up-to-date by including newly-added data fields in these duplicative systems, such as the new OATS data fields related to the tick size pilot and ATS order book changes, in the gap analyses." Letter from Participants to Brent J. Fields, Secretary, Commission, dated September 23, 2016, at 21. The Participants noted that they "will work with the Plan Processor and the industry to develop detailed Technical Specifications to ensure that by the time Industry Members are required to report to the CAT, the CAT will include all data elements necessary to facilitate the rapid retirement of

meeting all of its obligations under the CAT NMS Plan.

#### Duplicative OATS Requirements

The Rule 7400 Series consists of Rules 7410 through 7470 and sets forth the recording and reporting requirements of the OATS Rules. The OATS Rules require all Exchange member organizations 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 over-the-counter (“OTC”) equity securities and equity securities listed and traded on NASDAQ. This information is used by FINRA staff to conduct surveillance and investigations of member firms for violations of FINRA rules and federal securities laws. The Exchange has determined that the requirements of the Rule 7400 Series are duplicative of information available in the CAT and thus will no longer be necessary once the CAT is operational.

The Participants have provided OATS technical specifications to the Plan Processor for the CAT for use in developing the Technical Specifications for the CAT, and the Participants are working with the Plan Processor to include the necessary OATS data elements in the CAT Technical Specifications. Accordingly, the Exchange proposes to eliminate its OATS Rules in accordance with the proposed timeline discussed below.

#### 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.<sup>18</sup> As discussed in more detail in its rule filing, FINRA believes that OATS may be retired at a

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duplicative systems.” Id.

<sup>18</sup> Appendix C of CAT NMS Plan, Approval Order at 85010.

date after all Industry Members are reporting to the CAT when the proposed 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, confirmed that the CAT includes all data necessary to allow FINRA to continue to meet its surveillance obligations, and confirmed that the Plan Processor is sufficiently meeting all of its obligations under the CAT NMS Plan.<sup>19</sup>

The CAT NMS Plan requires that a rule filing to eliminate a duplicative rule address whether “the availability of certain data from Small Industry Members two years after the Effective Date would facilitate a more expeditious retirement of duplicative systems.”<sup>20</sup> FINRA believes that there is no effective way to retire OATS until all current OATS reporters are reporting to the CAT. As discussed in FINRA’s filing, FINRA believes that having data from those Small Industry Members currently reporting to OATS available two years after the Effective Date would substantially facilitate a more expeditious retirement of OATS and therefore supports an amendment to the Plan that would require current OATS Reporters that are “Small Industry Members” to report two years after the Effective Date (instead of three).<sup>21</sup>

The CAT NMS Plan also requires that this rule filing address “whether individual Industry Members can be exempted from reporting to duplicative systems once their CAT reporting meets specified accuracy and reliability standards, including, but not

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<sup>19</sup> See SR-FINRA-2017-013.

<sup>20</sup> Id.

<sup>21</sup> See SR-FINRA-2017-013. FINRA has represented that it intends to work with the other Participants to submit a proposed amendment to the Plan to require Small Industry Members that are OATS Reporters to report two years after the Effective Date.

limited to, ways in which establishing cross-system regulatory functionality or integrating data from existing systems and the CAT would facilitate such Individual Industry Member exemptions.”<sup>22</sup>

FINRA believes that a single cut-over from OATS to CAT is highly preferable to a firm-by-firm approach and is not proposing to exempt members from the OATS requirements on a firm-by-firm basis. FINRA believes that that the overall accuracy and reliability thresholds for the CAT described above would need to be met under any conditions before firms could stop reporting to OATS. Moreover, as discussed above, FINRA supports amending the Plan to accelerate the reporting requirements for Small Industry Members that are OATS Reporters to report on the same timeframe as all other OATS Reporters. If such an amendment were approved by the Commission, there would be no need to exempt members from OATS requirements on a firm-by-firm basis.<sup>23</sup>

The CAT NMS Plan also requires that a rule filing to eliminate a duplicative rule to provide “specific accuracy and reliability standards that will determine when duplicative systems will be retired, including, but not limited to, whether the attainment of a certain Error Rate should determine when a system duplicative of the CAT can be retired.”<sup>24</sup> As discussed in Section A.3.(b) of Appendix C to the CAT NMS Plan, the Participants established an initial Error Rate, as defined in the Plan, of 5% on initially submitted data (i.e., data as submitted by a CAT Reporter before any required corrections are performed). The Participants noted in the Plan that their expectation was that “error

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<sup>22</sup> Id.

<sup>23</sup> Id.

<sup>24</sup> Id.

rates after reprocessing of error corrections will be de minimis.”<sup>25</sup> The Participants based this Error Rate on their consideration of “current and historical OATS Error Rates, the magnitude of new reporting requirements on the CAT Reporters and the fact that many CAT Reporters may have never been obligated to report data to an audit trail.”<sup>26</sup>

As set forth in its filing, FINRA believes that, when assessing the accuracy and reliability of the data for the purposes of retiring OATS, the error thresholds should be measured in more granular ways and should also include minimum error rates of post-correction data, which represents the data most likely to be used by FINRA to conduct surveillance. To ensure the CAT’s accuracy and reliability, FINRA is thus proposing that, before OATS could be retired, the CAT would generally need to achieve a sustained error rate for Industry Member reporting in each of the categories below 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).<sup>27</sup> FINRA is proposing to measure the 5% pre-correction and 2% post-correction thresholds by averaging the error rate across the period, not require a 5% pre-correction and 2% post-correction maximum each day for 180 consecutive days. FINRA believes that measuring each of the thresholds over the course of 180 days will ensure that the CAT consistently meets minimum accuracy and reliability thresholds for Industry Member reporting while also ensuring that single-day measurements do not unduly affect the overall measurements.<sup>28</sup>

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<sup>25</sup> See CAT NMS Plan, Appendix C, Section A.3(b), at n.102.

<sup>26</sup> Id.

<sup>27</sup> The Plan requires that the Plan Processor must ensure that regulators have access to corrected and linked order and Customer data by 8:00 a.m. Eastern Time on T+5. See CAT NMS Plan, Appendix C, Section A.2(a).

<sup>28</sup> See SR-FINRA-2017-013.

Consequently, FINRA is proposing to use error rates in four categories, measured separately for options and for equities, to assess whether the threshold pre- and post-correction error rates are being met.<sup>29</sup>

In addition to these minimum error rates before OATS can be retired FINRA believes that during the minimum 180-day period during which the thresholds are calculated, FINRA's use of the data in the CAT must confirm that (i) usage over that time period has not revealed material issues that have not been corrected, (ii) the CAT includes all data necessary to allow the Exchange to continue to meet its surveillance obligations, and (iii) the Plan Processor is sufficiently meeting all of its obligations under the CAT NMS Plan. The Exchange believes this time period to use the CAT Data is necessary to reveal any errors that may manifest themselves only after surveillance patterns and other queries have been run and to confirm that the Plan Processor is meeting its obligations and performing its functions adequately.<sup>30</sup>

#### Rule 8211

In addition to the OATS rules, Rule 8211 will also be affected by the implementation of the CAT. Rule 8211 is the Exchange's rule regarding the automated submission of specific trading data to the Exchange upon request (commonly referred to as "blue sheet" data) using the EBS system.

Once broker-dealer reporting to the CAT has begun, the CAT will contain much of the data the Participants would otherwise have requested via the EBS system for purposes of NMS Securities and OTC Equity Securities. Consequently, the Exchange

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<sup>29</sup> The categories are (1) rejection rates and data validations; (2) intra-firm linkages; (3) order linkage rates; and (4) Exchange and TRF/ORF match rates.

<sup>30</sup> See SR-FINRA-2017-013.

will not need to use the EBS system or request information pursuant to Rule 8211 for NMS Securities or OTC Equity Securities for time periods after CAT reporting has begun if the appropriate accuracy and reliability thresholds are achieved, including an acceptable accuracy rate for customer and account information. However, Rule 8211 cannot be completely eliminated upon the CAT achieving the appropriate thresholds because Exchange staff may still need to request information pursuant to Rule 8211 for trading activity occurring before a member organization<sup>31</sup> was reporting to the CAT.<sup>32</sup> In addition, the Rule 8211 applies to information regarding transactions involving securities that will not be reportable to the CAT, such as fixed-income securities; thus, the rule must remain in effect with respect to those transactions until those transactions are captured in the CAT.

The proposed rule change proposes to add new Supplementary Material to the Rule 8211 to clarify how the Exchange will request data under these rules after member

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<sup>31</sup> The Rule 6800 Series, the Exchange's Consolidated Audit Trail Compliance rule, utilizes the term "Industry Member," which applies to the Exchange's member organizations. The term "member organization" means a "registered broker or dealer (unless exempt pursuant to the Act) that is a member of FINRA or another registered securities exchange. Member organizations that transact business with public customers or conduct business on the Floor of the Exchange shall at all times be members of FINRA. A registered broker or dealer must also be approved by the Exchange and authorized to designate an associated natural person to effect transactions on the floor of the Exchange or any facility thereof. This term shall include a natural person so registered, approved and licensed who directly effects transactions on the floor of the Exchange or any facility thereof." See Rule 2(b)(i). The term "member organization" also includes any registered broker or dealer that is a member of FINRA or a registered securities exchange, consistent with the requirements of section 2(b)(i) of this Rule, which does not own a trading license and agrees to be regulated by the Exchange as a member organization and which the Exchange has agreed to regulate. See Rule 2(b)(ii).

<sup>32</sup> Firms are required to maintain the trade information for pre-CAT transactions in equities and options pursuant to applicable rules, such as books and records retention requirements, for the relevant time period, which is generally three or six years depending upon the record. See 17 CFR 240.17a-3(a), 240.17a-4.



organizations are reporting to the CAT. Specifically, the proposed Supplementary Material to the Rule 8211 will note that the Exchange will request information under Rule 8211 only if the information is not available in the CAT because, for example, the transactions in question occurred before the firm was reporting information to the CAT or involved securities that are not reportable to the CAT. In essence, under the new Supplementary Material, the Exchange will make requests under these rules if and only if the information is not otherwise available through the CAT.

However, as noted above, FINRA believes that the CAT must meet certain minimum accuracy and reliability standards before FINRA could rely on the CAT Data to replace existing regulatory tools, including EBS. Consequently, the proposed Supplementary Material will be implemented only after FINRA publishes its notice after the CAT achieves the thresholds set forth above with respect to OATS and an accuracy rate for customer and account information of 95% for pre-corrected data and 98% for post-correction data. In addition, as discussed above, FINRA can rely on CAT Data to replace EBS requests only after FINRA has determined that its usage of the CAT Data over a 180-day period has not revealed material issues that have not been corrected, confirmed that the CAT includes all data necessary to allow FINRA to continue to meet its surveillance obligations, and confirmed that the CAT Plan Processor is fulfilling its obligations under the CAT NMS Plan.

As noted, if the Commission approves the proposed rule change, the Exchange will announce the implementation date of the proposed rule change in a regulatory notice that will be published once FINRA publishes a notice announcing the date that it will retire its EBS rules, which FINRA will do once it concludes the thresholds for accuracy

and reliability described above have been met and that the Plan Processor is sufficiently meeting all of its obligations under the CAT NMS Plan.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>33</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>34</sup> 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 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.”<sup>35</sup> 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.

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<sup>33</sup> 15 U.S.C. 78f(b).

<sup>34</sup> 15 U.S.C. 78f(b)(5).

<sup>35</sup> Approval Order, 81 FR at 84697.

The Exchange also believes that adding a preamble to each current Rule impacted by the Plan would remove impediments to and perfect the mechanism of a free and open market and a national market system by adding clarity and transparency to the Exchange's rules, reducing potential confusion, and making the Exchange's rules easier to navigate and understand.

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. Further, the proposed change would enable the Exchange to exempt manual orders received by certain small firms from the OATS Rules and avoid imposing potentially unnecessary expense or hardship on those firms that qualify for the exemption. The Exchange notes that the compliance burden on these firms would be imposed for only a short period of time as these firms are required to develop a means to report order information to the CAT by 2019.

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

Within 45 days of the date of publication of this notice in the Federal Register or up to 90 days (i) as the Commission may designate if it finds such longer period to be

appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2017-24 on the subject line.

##### Paper comments:

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

All submissions should refer to File Number SR-NYSE-2017-24. 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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2017-24 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.<sup>36</sup>

Robert W. Errett  
Deputy Secretary

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<sup>36</sup> 17 CFR 200.30-3(a)(12).

Additions underlined  
Deletions [bracketed]

Rules of New York Stock Exchange LLC

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**[Order Audit Trail System - Rule 7400 Series**

**Rule 7410. Definitions**

For purposes of the Rule 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 a member organization 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 a member organization 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 a member organization from another person for handling or execution, or that is originated by a department of a member organization for execution by the same or another member organization, other than any such instruction to effect a proprietary transaction originated by a trading desk in the ordinary course of a member organization'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 member organizations 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 a member organization pursuant to which the Reporting Agent agrees to fulfill such member organization's obligations under Rule 7450.
- (o) "Reporting Member Organization" shall mean a member organization that receives or originates an order and has an obligation to record and report information under Rules 7440 and 7450.
  - (1) A member organization shall not be considered a Reporting Member Organization in connection with an order, if the following conditions are met:
    - (A) the member organization 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 Member Organization;

- (B) the member organization does not direct and does not maintain control over subsequent routing or execution by the receiving Reporting Member Organization;
  - (C) the receiving Reporting Member Organization records and reports all information required under Rules 7440 and 7450 with respect to the order; and
  - (D) the member organization has a written agreement with the receiving Reporting Member Organization specifying the respective functions and responsibilities of each party to effect full compliance with the requirements of Rules 7440 and 7450.
- (2) A member organization shall not be considered a Reporting Member Organization in connection with an order if:
- (A) the member organization was approved as a member organization pursuant to NASD IM-1013-1 or NASD IM-1013-2;
  - (B) the member organization operates consistent with NASD IM-1013-1 or NASD IM-1013-2, including limiting its business operations to "permitted floor activities," as that term is defined in NASD IM-1013-1 and NASD IM-1013-2; and
  - (C) the order was received by the member organization through systems operated and regulated by the Exchange.
- (p) "Proprietary Trading Firm" shall mean a member organization that trades its own capital and that does not have "customers," as that term is defined in NYSE Rule 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 7420. Applicability**

- (a) Unless otherwise indicated, the requirements of the Rule 7400 Series are in addition to the requirements contained elsewhere in Exchange Rules.
- (b) Unless otherwise indicated, the requirements of the Rule 7400 Series shall apply to all member organizations and to their associated persons.
- (c) Unless otherwise indicated, the requirements of the Rule 7400 Series shall apply to all executed or unexecuted orders for all NMS stocks traded on the Exchange.

••• *Supplementary Material* : -----



.01 "associated person". For the purposes of this Rule, the term "associated person" shall have the same meaning as the terms "person associated with a member" or "associated person of a member" as defined in Article I (rr) of the FINRA By-Laws.

#### **Rule 7430. Synchronization of Member Organization Business Clocks**

Each member organization 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 7440. Recording of Order Information**

(a) Member organizations and associated persons shall comply with FINRA Rule 7440 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, member organizations are complying with NYSE Rule 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 Rule 7440 are being performed by FINRA on behalf of the Exchange.

(b) For purposes of this Rule, references to Rules 7420 through 7460 shall be construed as references to NYSE Rules 7420 through 7460.

(c) Member organizations 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 7450. Order Data Transmission Requirements**

(a) Except as provided in paragraph (b), member organizations and associated persons shall comply with FINRA Rule 7450 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, member organizations are complying with NYSE Rule 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 Rule 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 7400 Series, including but not limited to, Rule 7440.

(c) For purposes of this Rule, references to Rule 7440 shall be construed as references to NYSE Rule 7440.

#### **Rule 7460. Violation of Order Audit Trail System Rules**

Failure of a member organization or associated person to comply with any of the requirements of Rule 7410 through Rule 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 2010.

#### **Rule 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, a member organization from the recording and order data transmission requirements of Rules 7440 and 7450, respectively, for manual orders, if such exemption is consistent with the protection of investors and the public interest, and the member organization meets the following criteria:

- (1) the member organization 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 member organization has annual revenues of less than \$2 million;
- (3) the member organization does not conduct any market making activities in NMS stocks;
- (4) the member organization does not execute principal transactions with its customers (with limited exception for principal transactions executed pursuant to error corrections); and
- (5) the member organization 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, a member organization 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 July 10, 2015.]

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**Rule 8211. Automated Submission of Trading Data Requested by the Exchange**

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

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The Exchange will request information pursuant to this Rule only if the information is not available in the CAT because, for example, the transactions in question occurred before the firm was reporting information to the CAT or involved securities that are not reportable to the CAT.

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