SECURITIES AND EXCHANGE COMMISSION


March 15, 2017.

I. Introduction

On January 17, 2017,1 January 30, 2017,2 January 31, 2017,3 February 1, 2017,4 and February 2, 2017,5 Bats BYX Exchange, Inc. ("Bats BYX"), Bats BZX Exchange, Inc. ("Bats BZX"), Bats EDGA Exchange, Inc. ("Bats EDGA"), Bats EDGX Exchange, Inc. ("Bats EDGX"), BOX Options Exchange LLC ("BOX"), C2 Options Exchange, Incorporated ("C2"), Chicago Board Options Exchange, Incorporated ("CBOE"), Chicago Stock Exchange, Inc. ("CHX"), International Securities Exchange, LLC ("ISE"), ISE Gemini, LLC ("ISE Gemini"), ISE Mercury, LLC ("ISE Mercury"), Investors Exchange LLC ("IEX"), Miami International Securities Exchange LLC ("MIAX"), MIAX PEARL, LLC ("MIAX PEARL"), NASDAQ BX, Inc. ("BX"), NASDAQ PHLX LLC ("Phlx"), the NASDAQ Stock Market LLC ("NASDAQ"), the New York Stock Exchange LLC ("NYSE"), NYSE Arca, Inc. ("NYSE Arca"), NYSE MKT LLC ("NYSE MKT"), and NYSE National, Inc. ("NYSE National") (I/k/a National Stock Exchange, Inc.)6 (collectively, “the Exchanges”) filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")7 and Rule 19b–4 thereunder,8 proposed rule changes to implement the compliance rules regarding the National Market System Plan Governing the Consolidated Audit Trail (the “CAT NMS Plan” or “Plan”)9 ("CAT Compliance Rules" or "Rules").10 On January 30, 2017, NYSE, NYSE Arca, and NYSE MKT each submitted amendments to their respective proposed rule filings.11 Those proposed rule changes were published for comment in the Federal Register on February 6, 2017.12 The proposed rule changes submitted by Bats BYX, Bats BZX, Bats EDGX, BOX, CBOE, CHX, IEX, MIAX PEARL, NYSE National, NASDAQ, and NASDAQ PHLX were published for comment in the Federal Register on February 8, 2017.13

1 The New York Stock Exchange LLC, NYSE Arca, Inc., and NYSE MKT LLC filed their proposed rule changes on January 17, 2017.
3 BOX Options Exchange LLC and The NASDAQ Stock Market LLC filed their proposed rule changes on January 31, 2017.
4 Chicago Stock Exchange, Inc. and MIAX PEARL, LLC filed their proposed rule changes on February 1, 2017.
5 International Securities Exchange, LLC, ISE Gemini, LLC, ISE Mercury, LLC and NASDAQ BX, Inc. filed their proposed rule changes on February 2, 2017.

8 The proposed CAT Compliance Rules of C2 and MIAX PEARL incorporate by reference the proposed CAT Compliance Rules of CBOE and MIAX, respectively. C2 and MIAX PEARL have requested exemptions from the rule filing requirements of Section 19(b) of the Exchange Act for changes to their proposed CAT Compliance Rules that are effected solely by virtue of changes to the proposed CBOE and MIAX CAT Compliance Rules. See Letter from Laura G. Dickman, Lead Counsel, CBOE, to Brent J. Fields, Secretary, Commission, dated January 30, 2017; Letter from Deborah L. Carroll, Associate General Counsel, MIAX PEARL, to Brent J. Fields, Secretary, Commission, dated February 17, 2017.
9 These amendments replaced the original proposed rule changes in their entirety prior to publication of these proposed rule changes for notice and comment.
changes submitted by BX, C2, Bats EDGA, ISE, ISE Gemini, and ISE Mercury were published for comment in the Federal Register on February 9, 2017. On March 7, 2017, BX, ISE, ISE Gemini, ISE Mercury, NASDAQ and PHILX each filed an amendment to its respective proposed rule change. The Commission received 3 comments in response to the proposed rule changes. On March 15, the Participants submitted a response to the comment letters. This order approves the proposed rule changes.

II. Background

On September 30, 2014, Bats BYX, Bats BZX, Bats EDGA, Bats EDGX, BOX C2, CBOE, CHX, Financial Industry Regulatory Authority, Inc. ("FINRA"), ISE, IEX, ISE Gemini, ISE Mercury, MIAX, MIAX PEARL, BX, PHILX, NASDAQ, NYSE, NYSE MKT, NYSE Arca, and NYSE National (collectively, the "Participants") filed with the Commission, pursuant to Section 11A of the Exchange Act and Rule 608 of Regulation NMS thereunder, the CAT Notice; 79949 (February 2, 2017), 82 FR 9765 ("Bats EDGX Notice"); 79942 (February 2, 2017), 82 FR 9819 ("BOX Notice"); 79950 (February 2, 2017), 82 FR 9916 ("CBOE Notice"); 79948 (February 2, 2017), 82 FR 9973 ("CHX Notice"); 79934 (February 2, 2017), 82 FR 9981 ("IEX Notice"); 79937 (February 2, 2017), 82 FR 9970 ("MIAX Notice"); 79938 (February 2, 2017), 82 FR 9929 ("MIAX PEARL Notice"); 79933 (February 2, 2017), 82 FR 9942 ("NYSE National"); 79935 (February 2, 2017), 82 FR 9811 ("NASDAQ Notice"); 79945 (February 2, 2017), 82 FR 9778 ("Phlx Notice").

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14 These amendments modified Section 2 of the Form 19b-4s submitted by BX, ISE, ISE Gemini, ISE Mercury, NASDAQ, and PHILX to state that on February 24, 2017, the exchanges obtained the necessary approval from their Board of Directors for the proposed rule changes. These amendments do not affect the substance of the filings and therefore are not subject to notice and comment.

15 See letters from William H. Herbert, Managing Director, Financial Information Forum, dated March 1, 2017 ("FF Letter"); Bonnie Wachtel, Wachtel & Co Inc., dated March 2, 2017 ("Wachtel Letter"); and Manisha Kimmel, Chief Regulatory Officer, Wealth Management, Thomson Reuters, dated March 2, 2017 ("Thomson Reuters Letter"). These comment letters were submitted in response to in SR-FINRA-2017-003, however the comments therein are applicable to all the CAT Compliance Rules, which are discussed in this Order.

16 See infra Section II.

17 See Letter from Participants to Brent J. Fields, Secretary, Commission, dated March 15, 2017 ("Participants’ Response Letter").

18 The Commission notes that for purposes of this Order, unless otherwise specified, capitalized terms used in this Order are defined as set forth in the Notices or in the CAT NMS Plan.


20 17 CFR 424.608.

A. Definitions

The proposed CAT Compliance Rules set forth the definitions for the terms used in each Exchange’s proposed CAT Compliance Rule. Each of the defined terms in the proposed CAT Compliance Rules is discussed below.

1. Account Effective Date

(a) Customer Information Approach

Rule 613 of Regulation NMS requires that certain data elements be reported to the CAT to enable regulators to identify Customers associated with orders. The Exchanges note that Rule 613(c)(7)(i)(A) requires an Industry Member to report the “Customer-ID” for each Customer for the original receipt or origination of an order, and that “Customer-ID” is defined in Rule 613(j)(5) to mean “with respect to a customer, a code that uniquely and consistently identifies such customer for purposes of providing data to the Central Repository.” Rule 613(c)(8) requires Industry Members to use the same Customer-ID for each Customer.

The Exchanges note that the Commission granted the Participants exemptive relief to permit the use of an alternative approach to the requirement that an Industry Member report a Customer-ID for every Customer upon original receipt or origination. The alternative approach is called the “Customer Information Approach.”

The Exchanges state that under the Customer Information Approach, the CAT NMS Plan requires each Industry Member to assign a unique Firm Designated ID to each Customer, and that for the Firm Designated ID, Industry Members are permitted to use an account number or any other identifier defined by the firm, provided each identifier is unique across the firm for each business date (i.e., a single firm may not have multiple separate customers with the same identifier on
any given date). Prior to their commencement of reporting to the CAT, Industry Members must submit an initial set of Customer information to the Central Repository, including the Firm Designated ID, Customer Identifying Information and Customer Account Information (which may include, as applicable, the Customer’s name, address, date of birth, individual tax payer identifier number (‘‘ITIN’’)/social security number (‘‘SSN’’), individual’s role in the account (e.g., primary holder, joint holder, guardian, trustee, person with power of attorney) and Legal Entity Identifier (‘‘LEI’’)/and/or Large Trader ID (‘‘LTID’’)). This process is referred to as the ‘‘customer definition process.’’

The Exchange notes that in accordance with the Customer Information Approach, Industry Members are required to report only the Firm Designated ID for each new order submitted to the Central Repository, rather than the ‘‘Customer-ID’’ with individual order events. Within the Central Repository, each Customer will be uniquely identified by identifiers or a combination of identifiers such as ITIN/SSN, date of birth, and as applicable, LEI and LTID. The Plan Processor will be required to use these unique identifiers to map orders to specific Customers across all Industry Members and Participants. To ensure information identifying a Customer is up to date, Industry Members will be required to submit to the Central Repository daily and periodic updates for reactivated accounts, newly established accounts, and revised Firm Designated IDs or associated reportable Customer information.

(b) Definition of Account Effective Date

In connection with the Customer Information Approach, Industry Members will be required to report ‘‘Customer Account Information’’ to the Central Repository. ‘‘Customer Account Information’’ is defined in Rule 613(i)(4) to ‘‘include, but not be limited to, account number, account type, customer type, date account opened, and large trader identification (if applicable).’’ Therefore, when reporting Customer Account Information, an Industry Member is required to report the date an account was opened. The Exchange notes that the Participants requested and received from the Commission an exemption to allow an ‘‘Account Effective Date’’ to be reported in lieu of an account open date in certain limited circumstances. The definition of ‘‘Account Effective Date’’ as set forth in the proposed CAT Compliance Rules describes those limited circumstances in which an Industry Member may report an ‘‘Account Effective Date’’ rather than the account open date. The Exchange states that the proposed definition is the same as the definition of ‘‘Account Effective Date’’ set forth in Section 1.1 of the CAT NMS Plan, provided, however, that specific dates have replaced the descriptions of those dates set forth in Section 1.1 of the Plan. Specifically, the proposed CAT Compliance Rules define ‘‘Account Effective Date’’ to mean, with regard to those circumstances in which an Industry Member has established a trading relationship with an institution but has not established an account with that institution: (1) When the trading relationship was established prior to November 15, 2018 for Industry Members other than Small Industry Members, or prior to November 15, 2019 for Small Industry Members, either (a) the date the relationship identifier was established within the Industry Member; (b) the date when trading began (i.e., the date the first order was received) using the relevant relationship identifier; or (c) if both dates are available, the earlier date will be used to the extent that the dates differ; or (2) when the trading relationship was established on or after November 15, 2018 for Industry Members other than Small Industry Members, or on or after November 15, 2019 for Small Industry Members, the date the Industry Member established the relationship identifier, which would be no later than the date the first order was received.

The proposed CAT Compliance Rules state that an ‘‘Account Effective Date’’ means, where an Industry Member changes back office providers or clearing firms prior to November 15, 2018 for Industry Members other than Small Industry Members, or prior to November 15, 2019 for Small Industry Members: (1) The date established for the account in the Industry Member or in a system of the
Industry Member or (2) the date when proprietary trading began in the account (i.e., the date on which the first orders were submitted from the account).

In addition, with regard to the provisions defining “Account Effective Date” as: (1) Where an Industry Member changes back office providers or clearing firms prior to November 15, 2018 for Industry Members other than Small Industry Members, or prior to November 15, 2019 for Small Industry Members, the date an account was established at the relevant Industry Member, either directly or via transfer; (2) where an Industry Member acquires another Industry Member prior to November 15, 2018 for Industry Members other than Small Industry Members, or prior to November 15, 2019 for Small Industry Members, the date an account was established at the relevant Industry Member, either directly or via transfer; (3) where there are multiple dates associated with an account established prior to November 15, 2018 for Industry Members other than Small Industry Members, or prior to November 15, 2019 for Small Industry Members, the earliest available date; and (4) with regard to Industry Member proprietary accounts established prior to November 15, 2018 for Industry Members other than Small Industry Members, or prior to November 15, 2019 for Small Industry Members: (i) The date established for the account in the Industry Member or in a system of the Industry Member or (ii) the date when proprietary trading began in the account (i.e., the date on which the first orders were submitted from the account).

The proposed CAT Compliance Rules state that the Account Effective Date will be no later than the date trading occurs at the Industry Member or in the Industry Member’s system.

2. Active Accounts

Under the Customer Information Approach, Industry Members are required to report Customer Identifying Information and Customer Account Information for only those accounts that are active. Accordingly, the proposed CAT Compliance Rules define “Active Accounts” as an account that has had activity in Eligible Securities within the last six months. The Exchange states that this is the same definition as set forth in Section 1.1 of the CAT NMS Plan.

3. Allocation Report

(a) Allocation Report Approach

Rule 613(c)(7)(vi)(A) of Regulation NMS requires each Industry Member to record and report to the Central Repository “the account number for any subaccount to which the execution is allocated (in whole or in part).” The Exchange notes that the Participants requested and received from the Commission the proposed CAT Compliance Rules define the term “Business Clock” as a clock used to record the date and time of any Reportable Event required to be reported under each Exchange’s proposed CAT Compliance Rule. The Exchange states that this is the same definition as set forth in the Plan, except a reference to Rule 613 at the end of the definition in Section 1.1 of the Plan is replaced with a reference to each Exchange’s proposed CAT Compliance Rule. The Exchange states that this change is intended to recognize that the Industry Members’ obligations with regard to the CAT are set forth in

4. Business Clock

To create the required audit trail, Industry Members are required to record the date and time of various Reportable Events to the Central Repository. Industry Members will use “Business Clocks” to record such dates and times. Accordingly, the proposed CAT Compliance Rules define the term “Business Clock” as a clock used to record the date and time of any Reportable Event required to be reported under each Exchange’s proposed CAT Compliance Rule.
each Exchange’s proposed CAT Compliance Rule.

5. CAT

The proposed CAT Compliance Rules define the term “CAT” to mean the consolidated audit trail contemplated by Rule 613. The Exchanges state that this is the same definition as set forth in Section 1.1 of the CAT NMS Plan.

6. CAT NMS Plan

The proposed CAT Compliance Rules define the term “CAT NMS Plan” to mean the National Market System Plan Governing the Consolidated Audit Trail, as amended from time to time.

7. CAT-Order-ID

(a) Daisy Chain Approach

The Exchanges state that under the CAT NMS Plan, a “daisy chain approach” would be used to link and reconstruct the complete lifecycle of each Reportable Event in CAT. According to this approach, Industry Members would assign their own identifiers to each order event. Within the Central Repository, the Plan Processor would replace the identifier provided by the Industry Member for each Reportable Event with a single identifier, called the CAT-Order-ID, for all order events pertaining to the same order. This CAT-Order-ID would be used to link the Reportable Events related to the same order.

(b) Definition of CAT-Order-ID

To implement a daisy chain approach, the Exchanges propose to define in the proposed CAT Compliance Rules the term “CAT-Order-ID” to mean a unique order identifier or series of unique order identifiers assigned to each Reportable Event in CAT, by the Central Repository to efficiently and accurately link all Reportable Events for an order, and all orders that result from the aggregation or disaggregation of such order.

8. CAT Reporting Agent

The CAT NMS Plan permits an Industry Member to use a third party, such as a vendor, to report the required data to the Central Repository on behalf of the Industry Members. The Exchanges state that such a third party, referred to in the proposed CAT Compliance Rules as a “CAT Reporting Agent,” would be one type of a Data Submitter, as that term is used in the CAT NMS Plan. Therefore, the proposed CAT Compliance Rules define the term “CAT Reporting Agent” to mean a Data Submitter that is a third party that enters into an agreement with an Industry Member pursuant to which the CAT Reporting Agent agrees to fulfill such Industry Member’s obligations under each Exchange’s proposed CAT Compliance Rule.

9. Central Repository

The proposed CAT Compliance Rules define the term “Central Repository” to mean the repository responsible for the receipt, consolidation, and retention of all information reported to the CAT pursuant to Rule 613 of Regulation NMS and the CAT NMS Plan. The Exchanges state that this is the same definition as set forth in Section 1.1 of the CAT NMS Plan, except they use the phrase “CAT NMS Plan” in place of the phrase “this Agreement.”

10. Compliance Threshold

The proposed CAT Compliance Rules state that each Industry Member shall be required to meet a separate compliance threshold which is based on an Industry Member-specific rate that may be used as the basis for further review or investigation into the Industry Member’s performance with regard to the CAT. The proposed CAT Compliance Rules define the Industry Member-specific rate noted as the term “Compliance Threshold.” The Exchanges state that this definition has the same substantive meaning as the definition set forth in Section 1.1 of the CAT NMS Plan.

11. Customer

Industry Members are required to submit to the Central Repository certain information related to their Customers, including Customer Identifying Information and Customer Account Information, as well as data related to their Customer’s Reportable Events. Accordingly, the proposed CAT Compliance Rules define the term...
"Customer." Specifically, the term "Customer" is defined to mean: (1) The account holder(s) of the account at an Industry Member originating the order; and (2) any person from whom the Industry Member is authorized to accept trading instructions for such account, if different from the account holder(s).\(^6\)

The Exchanges state that this is the same definition as set forth in Rule 613(i)(3), except the Exchanges propose to replace the references to a registered broker-dealer or broker-dealer with a reference to an Industry Member for consistency with the proposed CAT Compliance Rule.\(^6\) The Exchanges also note that Section 1.1 of the CAT NMS Plan defines "Customer" by reference to Rule 613(i)(3).

12. Customer Account Information

As discussed above, under the Customer Information Approach, Industry Members are required to report Customer Account Information to the Central Repository as part of the customer definition process. Accordingly, the Exchanges propose to define the term "Customer Account Information" to clarify what customer information would need to be reported to the Central Repository.

The proposed CAT Compliance Rules define the term "Customer Account Information" to include, in part, account number, account type, customer type, date account opened, and large account identifier (if applicable).\(^6\) The proposed CAT Compliance Rules, however, provide an alternative definition of "Customer Account Information" in two limited circumstances. First, in those circumstances in which an Industry Member has established a trading relationship with an institution but has not established an account with that institution, the Industry Member will: (1) Provide the Account Effective Date in lieu of the "date account opened"; (2) provide the relationship identifier in lieu of the "account number"; and (3) identify the "account type" as a "relationship."\(^6\) Second, in those circumstances in which the relevant account was established prior to November 15, 2018 for Industry Members other than Small Industry Members, or prior to November 15, 2019 for Small Industry Members, and no "date account opened" is available for the account, the Industry Member will provide the Account Effective Date in the following circumstances: (1) Where an Industry Member changes back office providers or clearing firms and the date account opened is changed to the date the account was opened on the new back office/clearing firm system; (2) where an Industry Member acquires another Industry Member and the date account opened is changed to the date the account was opened on the post-merger back office/clearing firm system; (3) where there are multiple dates associated with an account in an Industry Member's system, and the parameters of each date are determined by the individual Industry Member; and (4) where the relevant account is an Industry Member proprietary account.\(^6\)

The proposed definition is the same as the definition of "Customer Account Information" set forth in Section 1.1 of the CAT NMS Plan; provided, however, that specific dates have replaced the descriptions of those dates set forth in Section 1.1 of the Plan.

13. Customer Identifying Information

As discussed above, under the Customer Information Approach, Industry Members are required to report Customer Identifying Information to the Central Repository as part of the customer definition process. Accordingly, the Exchanges propose to define the term "Customer Account Information" in the proposed CAT Compliance Rules to include, but not be limited to: name, address, date of birth, ITIN/SSN, individual's role in the account (e.g., primary holder, joint holder, guardian, trustee, person with the power of attorney). With respect to legal entities, "Customer Identifying Information" includes, but is not limited to, name, address, EIN/LEI or other comparable common entity identifier, if applicable. The definition further notes that an Industry Member that has an LEI for a Customer must submit the Customer's LEI in addition to other information of sufficient detail to identify the Customer.\(^6\)

The Exchanges state that this is the same definition as set forth in Section 1.1 of the CAT NMS Plan.

14. Data Submitter

The CAT NMS Plan uses the term "Data Submitter" to refer to any person that reports data to the Central Repository.\(^6\) Such Data Submitters may include those entities that are required to submit data to the Central Repository (e.g., national securities exchanges, national securities associations and Industry Members), third-parties that may submit data to the CAT on behalf of CAT Reporters (i.e., CAT Reporting Agents), and outside parties that are not required to submit data to the CAT but from which the CAT may receive data (e.g., securities information processors ("SIPs")). To include this term in the proposed CAT Compliance Rules, the Exchanges propose to define "Data Submitter" to mean any person that reports data to the Central Repository, including national securities exchanges, national securities associations, broker-dealers, the SIPs for the CQS, CTA, UTP...
and Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information ("OPRA") Plans, and certain other vendors or third parties that may submit data to the Central Repository on behalf of Industry Members.69

15. Eligible Security

The reporting requirements of the proposed CAT Compliance Rules only apply to Reportable Events in Eligible Securities. Currently, an Eligible Security includes NMS Securities and OTC Equity Securities. Accordingly, the proposed CAT Compliance Rules define the term “Eligible Security” to include: (1) All NMS Securities; and (2) all OTC Equity Securities.70 The Exchanges state that this is the same definition as set forth in Section 1.1 of the CAT NMS Plan.

16. Error Rate

(a) Generally

The CAT NMS Plan requires the Plan Processor to: (1) Measure and report errors every business day; (2) provide Industry Members daily statistics and error reports as they become available, including a description of such errors; (3) provide Industry Members with reports to Industry Members that detail an Industry Member’s performance and comparison statistics; (4) define educational and support programs for Industry Members to minimize Error Rates; and (5) identify, daily, all Industry Members exceeding the maximum allowable Error Rate. To timely correct data-submitted errors to the Central Repository, the CAT NMS Plan requires that the Central Repository receive and process error corrections at all times. Further, the CAT NMS Plan requires that Industry Members be able to submit error corrections to the Central Repository through a web-interface or via bulk uploads or file submissions, and that the Plan Processor, subject to the Operating Committee’s approval, support the bulk replacement of records and the reprocessing of such records. The Participants, furthermore, require that the Plan Processor identify Industry Member data submission errors based on the Plan Processor’s validation processes.71

(b) Definition of Error Rate

To implement the requirements of the CAT NMS Plan related to the Error Rate, the Exchanges propose to define the term “Error Rate” in the proposed CAT Compliance Rules. “Error Rate” is defined to mean the percentage of Reportable Events collected by the Central Repository in which the data reported does not fully and accurately reflect the order event that occurred in the market.72 The Exchanges state that this is the same definition as set forth in Rule 613(j)(6), and Section 1.1 of the CAT NMS Plan defines “Error Rate” by reference to Rule 613(j)(6).73

(c) Maximum Error Rate

Under the CAT NMS Plan, the Operating Committee would set the maximum Error Rate that the Central Repository would tolerate from an Industry Member reporting data to the Central Repository.74 The Operating Committee would review and reset the maximum Error Rate, at least annually.75 If an Industry Member reports CAT data to the Central Repository with errors such that their error percentage exceeds the maximum Error Rate, then such Industry Member would not be in compliance with the CAT NMS Plan or Rule 613.76 The Exchanges state that, according to the CAT NMS Plan, the Exchanges or the SEC may take appropriate action against an Industry Member for failing to comply with its CAT reporting obligations.77 The CAT NMS Plan sets the initial Error Rate at 5%.78 The Exchanges state that it is anticipated that the maximum Error Rate will be reviewed and lowered by the Operating Committee once Industry Members begin to report to the Central Repository.79

17. Firm Designated ID

As discussed above, under the Customer Information Approach, the CAT NMS Plan requires each Industry Member to utilize a unique Firm Designated ID. Industry Members will be permitted to use as the Firm Designated ID an account number or any other identifier defined by the firm, provided each identifier is unique across the firm for each business date. Industry Members will be required to report only the Firm Designated ID for each new order submitted to the Central Repository, rather than the “Customer-ID” with individual order events. Accordingly, the Exchanges propose to define the term “Firm Designated ID” in the proposed CAT Compliance Rules to mean a unique identifier for each trading account designated by Industry Members for purposes of providing data to the Central Repository, where each such identifier is unique among all identifiers from any given Industry Member for each business date.80 The Exchanges state that this is the same definition as set forth in Section 1.1 of the CAT NMS Plan. Industry Members will be permitted to use an account number or any other identifier defined by the firm, provided each identifier is unique across the firm for each business date (i.e., a single firm may not have multiple separate customers with the same identifier on any given date).

69 See proposed Bats BYX Rule 4.5(n); Bats BZX Rule 4.5(n); Bats EDGA Rule 4.5(n); Bats EDGX Rule 4.5(n); BX Rules 6810(n) and Chapter IX, Section 8, paragraph (a)(xiv); BOX Rule 16010(n); C2 Rule 6, Section F; CBOE Rule 6.85(n); CHX Article 23, Rule 1(n); IEX Rule 11.610(n); ISE Rule 900(n); ISE Gemini Rule 900(n); ISE Mercury 900(n); MIAX Rule 1701(n); MIAX PEARL, Chapter XVIII; NASDAQ Rules 6810(n) and Chapter IX, Section 8, paragraph (a)(xiv); NYSE Arca Equities Rule 66810(n); NYSE Arca Options Rule 11.6810(n); NYSE Arca Options Rule 6.6810(n); NYSE Arca Options Rule 11.6810(n); NYSE Arca Options Rule 6.6810(n); NYSE Arca Options Rule 11.6810(n); NYSE Arca Equities Rule 6.6810(n); NYSE Arca Options Rule 11.6810(n); and Phlx Rule 910A(n).
70 See proposed Bats BYX Rule 4.5(n); Bats BZX Rule 4.5(n); Bats EDGA Rule 4.5(n); Bats EDGX Rule 4.5(n); BX Rules 6810(n) and Chapter IX, Section 8, paragraph (a)(xiv); BOX Rule 16010(n); C2 Rule 6, Section F; CBOE Rule 6.85(n); CHX Article 23, Rule 1(n); IEX Rule 11.610(n); ISE Rule 900(n); ISE Gemini Rule 900(n); ISE Mercury 900(n); MIAX Rule 1701(n); MIAX PEARL, Chapter XVII; NYSE Arca Equities Rule 66810(n); NYSE Arca Options Rule 11.6810(n); NYSE MKT Rule 6810(n); NYSE National Rule 14.1(n); and Phlx Rule 910A(n).
71 Approval Order, supra note 24, at 84718.
72 See proposed Bats BYX Rule 4.5(p); Bats BZX Rule 4.5(p); Bats EDGA Rule 4.5(p); Bats EDGX Rule 4.5(p); BX Rules 6810(p) and Chapter IX, Section 8, paragraph (a)(xiv); BOX Rule 16010(p); C2 Rule 6, Section F; CBOE Rule 6.85(p); CHX Article 23, Rule 1(p); IEX Rule 11.610(p); ISE Rule 900(p); ISE Gemini Rule 900(p); ISE Mercury 900(p); MIAX Rule 1701(p); MIAX PEARL, Chapter XVII; NASDAQ Rules 6810(p) and Chapter IX, Section 8, paragraph (a)(xiv); NYSE Arca Equities Rule 6.6810(p); NYSE Arca Options Rule 6.6810(p); NYSE Arca Equities Rule 66810(p); NYSE Arca Options Rule 11.6810(p); NYSE MKT Rule 6810(p); NYSE National Rule 14.1(p); and Phlx Rule 910A(p).
73 17 CFR 242.613(j)(6).
74 CAT NMS Plan, supra note 21, at Appendix C, Section A.3(b).
75 CAT NMS Plan, supra note 21, at Section 6.5(d)(i).
76 CAT NMS Plan, supra note 21, at Appendix C, Section A.3(b).
77 CAT NMS Plan, supra note 21, at Appendix C, Section A.3(b).
78 CAT NMS Plan, supra note 21, at Section 6.5(d)(i).
79 CAT NMS Plan, supra note 21, at Appendix C, Section A.3(b).
80 See proposed Bats BYX Rule 4.5(q); Bats BZX Rule 4.5(q); Bats EDGA Rule 4.5(q); Bats EDGX Rule 4.5(q); BX Rules 6810(q) and Chapter IX, Section 8, paragraph (a)(xiv); BOX Rule 16010(q); C2 Rule 6, Section F; CBOE Rule 6.85(q); CHX Article 23, Rule 1(q); IEX Rule 11.610(q); ISE Rule 900(q); ISE Gemini Rule 900(q); ISE Mercury 900(q); MIAX Rule 1701(q); MIAX PEARL, Chapter XVII; NASDAQ Rules 6810(q) and Chapter IX, Section 8, paragraph (a)(xiv); NYSE Arca Equities Rule 6.6810(q); NYSE Arca Options Rule 6.6810(q); NYSE Arca Equities Rule 11.6810(q); NYSE MKT Rule 6810(q); NYSE National Rule 14.1(q); and Phlx Rule 910A(q).
18. Industry Member

The proposed CAT Compliance Rules define the term “Industry Member” to mean “a member of a national securities exchange or a member of a national securities association.”

The Exchanges state that this is the same definition as set forth in Section 1.1 of the CAT NMS Plan.

19. Industry Member Data

The proposed CAT Compliance Rules state that the term “Industry Member Data” has the meaning set forth in each Exchange’s proposed CAT Compliance Rule. The Exchanges state that this definition has the same substantive meaning as the definition set forth in Section 1.1 of the CAT NMS Plan.

20. Initial Plan Processor

The proposed CAT Compliance Rules define the term “Initial Plan Processor” to mean the first Plan Processor selected by the Operating Committee in accordance with Rule 613, Section 6.1 of the CAT NMS Plan and the National Market System Plan Governing the Process for Selecting a Plan Processor and Developing a Plan for the Consolidated Audit Trail. The Exchanges state that this is the same definition as set forth in Section 1.1 of the CAT NMS Plan.

21. Listed Option or Option

The Exchanges represent that the reporting requirements of the CAT NMS Plan and the proposed CAT Compliance Rules apply to Eligible Securities, which includes NMS Securities, which, in turn, includes Listed Options. Certain requirements of the proposed CAT Compliance Rules apply specifically to Listed Options. Accordingly, “Listed Option” or “Option” have the meaning set forth in Rule 600(b)(35) of Regulation NMS.

Rule 600(b)(35) of Regulation NMS defines a listed option as “any option traded on a registered national securities exchange or automated facility of a national securities association.” The Exchanges state that the proposed definition of “Listed Option” is the same definition as the definition set forth in Section 1.1 of the CAT NMS Plan.

22. Manual Order Event

(a) Manual Order Event Approach

The CAT NMS Plan sets forth clock synchronization and timestamp requirements for Industry Members which reflect exemptions for Manual Order Events granted by the Commission. Specifically, the Plan requires Industry Members to record and report the time of each Reportable Event using timestamps reflecting current industry standards (which must be at least to the millisecond) or, if an Industry Member’s order handling or execution system uses timestamps in increments finer than milliseconds, such finer increments, when reporting to the Central Repository. For Manual Order Events, however, the Plan provides that such events must be recorded in increments up to and including one second, provided that Industry Members record and report the time the event is captured electronically in an order handling and execution system (“Electronic Capture Time”) in milliseconds. In addition, Industry Members are required to synchronize their respective Business Clocks (other than such Business Clocks used solely for Manual Order Events) at a minimum within 50 milliseconds of the time maintained by the National Institute of Standards and Technology (“NIST”), and maintain such synchronization. Each Industry Member is required to synchronize its Business Clocks used solely for Manual Order Events, however, at a minimum to within one second of the time maintained by the NIST.

(b) Definition of Manual Order Event

In order to clarify what a Manual Order Event is for clock synchronization and time stamp purposes, the Exchanges propose to define the term “Manual Order Event” in the proposed CAT Compliance Rules. Specifically, the term “Manual Order Event” means a non-electronic communication of order-related information for which Industry Members must record and report the time of the event. The Exchanges state that this is the same definition as set forth in Section 1.1 of the CAT NMS Plan.

23. Material Terms of the Order

The proposed CAT Compliance Rules require Industry Members to record and report to the Central Repository Material Terms of the Order with certain Reportable Events (e.g., for the original receipt or origination of an order, for the routing of an order). Accordingly, the Exchanges propose to define the term “Material Terms of the Order” to include: The NMS Security or OTC Equity Security symbol; security type; price (if not applicable); size (displayed and non-displayed); side (buy/sell); order type; if a sell order, whether the order is long, short, short exempt; open/close indicator (except on transactions in equities); time in force (if applicable); if the order is for a Listed Option, option type (put/call), option symbol or root symbol, underlying symbol, strike price, expiration date, and open/close (except on market maker quotations); and any special handling instructions.

The proposed CAT Compliance Rules apply specifically to Listed Options (Rule 600(b)(35) of Regulation NMS) and therefore do not apply to Listed Securities, as defined in Rule 600(b)(35) of Regulation NMS, or OTC Equity Securities, as defined in Rule 600(b)(35) of Regulation NMS. The proposed CAT Compliance Rules further define the term “Listing Expiration Date” to mean the listing expiration date of an option or security as described in Rule 600(b)(35) of Regulation NMS. The proposed CAT Compliance Rules also define the term “Listing Expiration Date” to mean the listing expiration date of an option or security as described in Rule 600(b)(35) of Regulation NMS. The proposed CAT Compliance Rules further define the term “Listing Expiration Date” to mean the listing expiration date of an option or security as described in Rule 600(b)(35) of Regulation NMS. The proposed CAT Compliance Rules further define the term “Listing Expiration Date” to mean the listing expiration date of an option or security as described in Rule 600(b)(35) of Regulation NMS. The proposed CAT Compliance Rules further define the term “Listing Expiration Date” to mean the listing expiration date of an option or security as described in Rule 600(b)(35) of Regulation NMS.
Exchanges state that this is the same definition as set forth in Section 1.1 of the CAT NMS Plan.

24. NMS Security

NMS Securities are one of the types of Eligible Securities for the CAT. Therefore, the Exchanges propose to define the term “NMS Security” to mean any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan, or an effective national market system plan for reporting transactions in Listed Options. The Exchanges state that this is the same definition as set forth in Section 1.1 of the CAT NMS Plan.

25. NMS Stock

Under the CAT NMS Plan, the Operating Committee may establish different Trading Days for NMS Stocks, as defined in Rule 600(b)(47) of Regulation NMS. Listed Options, OTC Equity Securities, and any other securities that are included as Eligible Securities from time to time. Accordingly, the Exchanges propose to define the term “NMS Stock” to mean any NMS Security other than an option. The Exchanges state that this is the same definition as set forth in Rule 600(b)(47) of Regulation NMS.

26. Operating Committee

The proposed CAT Compliance Rules define the term “Operating Committee” to mean the governing body of the CAT NMS, LLC designated as such and described in Article IV of the CAT NMS Plan. The Exchanges state that this is the same definition as set forth in Section 1.1 of the CAT NMS Plan, except the Exchanges propose to use the phrase “CAT NMS LLC” in place of the phrase “the Company” for clarity.

27. Options Market Maker

(a) Options Market Maker Quote Exemption

Rule 613(c)(7) provides that the CAT NMS Plan must require each Industry Member to record and electronically report to the Central Repository details for each order and each reportable event, including the routing and modification or cancellation of an order. Rule 613(j)(8) defines “order” to include “any bid or offer.” Therefore, under Rule 613, the details for each Options Market Maker quotation must be reported to the Central Repository by both the Options Market Maker and the options exchange to which it routes its quote.

The Participants, however, requested and received exemptive relief from Rule 613 of Regulation NMS so that the CAT NMS Plan may permit Options Market Maker quotes to be reported to the Central Repository by the relevant options exchange in lieu of requiring that such reporting be done by both the options exchange and the Options Market Maker, as is required by Rule 613. In accordance with the exemptive relief, Options Market Makers will be required to report to the options exchange the time at which a quote in a Listed Option is sent to the options exchange. Such time information also will be reported to the Central Repository by the options exchange in lieu of reporting by the Options Market Maker.

(b) Definition of Options Market Maker

To implement the requirements related to Option Market Maker quotes, the Exchanges propose to define the term “Options Market Maker” to mean broker-dealer registered with an exchange for the purpose of making markets in options contracts traded on the exchange. The Exchanges state that this is the same definition as set forth in Section 1.1 of the CAT NMS Plan.

28. Order

The proposed CAT Compliance Rules require each Industry Member to record and electronically report to the Central Repository certain details for each order. Accordingly, the Exchanges propose to define the term “Order” with respect to Eligible Securities, to include: (1) Any order received by an Industry Member from any person; (2) any order originated by an Industry Member; or (3) any bid or offer. The Exchanges state that this is the same definition as set forth in Rule 613(j)(8), except the Exchanges propose to replace the phrase “member of a national securities exchange or national securities association” with the term “Industry Member.” The Exchanges also note that Section 1.1 of the CAT NMS Plan defines “Order” by reference to Rule 613(j)(8).

29. OTC Equity Security

OTC Equity Securities are one of the types of Eligible Securities for the CAT. Therefore, the Exchanges propose to define the term “OTC Equity Security” to mean any equity security, other than an NMS Security, subject to prompt last sale reporting rules of a registered national securities association and...
reported to one of such association’s equity trade reporting facilities.\textsuperscript{103} The Exchanges state that this is the same definition as set forth in Section 1.1 of the CAT NMS Plan.  

30. Participant

The proposed CAT Compliance Rules define the term “Participant”\textsuperscript{102} to mean each Person identified as such in Exhibit A of the CAT NMS Plan, as amended, in such Person’s capacity as a Participant in CAT NMS, LLC.\textsuperscript{103} The Exchanges state that this is the same definition in substance as set forth in Section 1.1 of the CAT NMS Plan.

31. Person

The proposed CAT Compliance Rules define the term “Person” to mean any individual, partnership, limited liability company, corporation, joint venture, trust, business trust, cooperative or association and any and all heirs, executors, administrators, legal representatives, successors and assigns of such Person where the context so permits.\textsuperscript{104} The Exchanges state that this is the same definition as set forth in Section 1.1 of the CAT NMS Plan.

32. Plan Processor

The proposed CAT Compliance Rules define the term “Plan Processor” to mean the Initial Plan Processor or any other Person selected by the Operating Committee pursuant to Rule 613 and Sections 4.3(b)(i) and 6.1 of the CAT NMS Plan, and with regard to the Initial Plan Processor, the National Market System Plan Governing the Process for Selecting a Plan Processor and Developing a Plan for the Consolidated Audit Trail, to perform the CAT processing functions required by Rule 613 of Regulation NMS and set forth in the CAT NMS Plan.\textsuperscript{105}

33. Received Industry Member Data

The proposed CAT Compliance Rules state that the term “Received Industry Member Data” has the meaning set forth in each Industry Member’s proposed CAT Compliance Rule.\textsuperscript{106} The Exchanges represent that this definition has the same substantive meaning as the definition set forth in Section 1.1 of the CAT NMS Plan.

34. Recorded Industry Member Data

The proposed CAT Compliance Rules state that the term “Recorded Industry Member Data” has the meaning set forth in each Industry Member’s proposed CAT Compliance Rule.\textsuperscript{107}

35. Reportable Event

The proposed CAT Compliance Rules require each Industry Member to record and electronically report to the Central Repository certain details for each Reportable Event. The Exchanges propose to define the term “Reportable Event” to include, but not be limited to, the original receipt of an order, modification, cancellation, routing, execution (in whole or in part) and allocation of an order, and receipt of a routed order.\textsuperscript{108} The Exchanges state that this is the same definition as set forth in Section 1.1 of the CAT NMS Plan.

36. SRO

The Exchanges propose to define the term “SRO” to mean any self-regulatory organization within the meaning of Section 3(a)(26) of the Exchange Act.\textsuperscript{109} The Exchanges state that this is the same definition as set forth in Section 1.1 of the CAT NMS Plan.

37. SRO-Assigned Market Participant Identifier

(a) Existing Identifier Approach

The Participants requested and received exemptive relief from Rule 613 of Regulation NMS so that the CAT NMS Plan may permit the “Existing Identifier Approach,” which would allow an Industry Member to report an existing SRO-Assigned Market Participant Identifier in lieu of requiring

\textsuperscript{103} See proposed Bats BYX Rule 4.5(cc); Bats BZX Rule 4.5(cc); Bats EDGA Rule 4.5(cc); Bats EDGX Rule 4.5(cc); BX Rules 6810(cc) and Chapter IX, Section 8, paragraph [a][xxxi]; BOX Rule 16100(cc); C2 Chapter 6, Section F; CBOE Rule 6.65(cc); CHX Article 23, Rule 1(cc); IEX Rule 11.610(cc); ISE Rule 900(cc); ISE Gemini Rule 900(cc); ISE Mercury 900(cc); MIAX Rule 1701(cc); MIAX PEARL Chapter XVII; NASDAQ Rules 6810(cc) and Chapter IX, Section 8, paragraph [a][xxxi]; NYSE Rule 6810(cc); NYSE Arca Equities Rule 6.6810(cc); NYSE Arca Options Rule 11.6810(cc); NYSE MKT Rule 6810(cc); NYSE National Rule 14.11(cc); and Phlx Rule 910A(cc).

\textsuperscript{102} The Commission notes that the proposed CHX CAT Compliance Rules use the term “Plan Participant” instead of “Participant,” but the definitions are the same. See proposed CHX Article 23, Rule 1(dd).

\textsuperscript{104} See proposed Bats BYX Rule 4.5(dd); Bats BZX Rule 4.5(dd); Bats EDGA Rule 4.5(dd); Bats EDGX Rule 4.5(dd); BX Rules 6810(dd) and Chapter IX, Section 8, paragraph [a][xx]; BX Rule 16100(dd); C2 Chapter 6, Section F; CBOE Rule 6.65(dd); CHX Article 23, Rule 1(dd); IEX Rule 11.610(dd); ISE Rule 900(dd); ISE Gemini Rule 900(dd); ISE Mercury 900(dd); MIAX Rule 1701(dd); MIAX PEARL Chapter XVI; NASDAQ Rules 6810(dd) and Chapter IX, Section 8, paragraph [a][xx]; NYSE Rule 6810(dd); NYSE Arca Equities Rule 6.6810(dd); NYSE Arca Options Rule 11.6810(dd); NYSE MKT Rule 6810(dd); NYSE National Rule 14.1(dd); and Phlx Rule 910A(dd).

\textsuperscript{105} See proposed Bats BYX Rule 4.5(ff); Bats BZX Rule 4.5(ff); EDGA Rule 4.5(ff); Bats EDGX Rule 4.5(ff); BX Rules 6810(ff) and Chapter IX, Section 8, paragraph [a][xxxi]; BOX Rule 16100(ff); C2 Chapter 6, Section F; CBOE Rule 6.65(ff); CHX Article 23, Rule 1(ff); IEX Rule 11.610(ff); ISE Rule 900(ff); ISE Gemini Rule 900(ff); ISE Mercury 900(ff); MIAX Rule 1701(ff); MIAX PEARL Chapter XVII; NASDAQ Rules 6810(ff) and Chapter IX, Section 8, paragraph [a][xxxi]; NYSE Rule 6810(ff); NYSE Arca Equities Rule 6.6810(ff); NYSE Arca Options Rule 11.6810(ff); NYSE MKT Rule 6810(ff); NYSE National Rule 14.1(ff); and Phlx Rule 910A(ff).

\textsuperscript{106} See proposed Bats BYX Rule 4.5(gg); Bats BZX Rule 4.5(gg); EDGA Rule 4.5(gg); Bats EDGX Rule 4.5(gg); BX Rules 6810(gg) and Chapter IX, Section 8, paragraph [a][xxxi]; BOX Rule 16100(gg); C2 Chapter 6, Section F; CBOE Rule 6.65(gg); CHX Article 23, Rule 1(gg); IEX Rule 11.610(gg); ISE Rule 900(gg); ISE Gemini Rule 900(gg); ISE Mercury 900(gg); MIAX Rule 1701(gg); MIAX PEARL Chapter XVII; NASDAQ Rules 6810(gg) and Chapter IX, Section 8, paragraph [a][xxxi]; NYSE Rule 6810(gg); NYSE Arca Equities Rule 6.6810(gg); NYSE Arca Options Rule 11.6810(gg); NYSE MKT Rule 6810(gg); NYSE National Rule 14.1(gg); and Phlx Rule 910A(gg).

\textsuperscript{107} See proposed Bats BYX Rule 4.5(hh); Bats BZX Rule 4.5(hh); EDGA Rule 4.5(hh); Bats EDGX Rule 4.5(hh); BX Rules 6810(hh) and Chapter IX, Section 8, paragraph [a][xxxi]; BOX Rule 16100(hh); C2 Chapter 6, Section F; CBOE Rule 6.65(hh); CHX Article 23, Rule 1(hh); IEX Rule 11.610(hh); ISE Rule 900(hh); ISE Gemini Rule 900(hh); ISE Mercury 900(hh); MIAX Rule 1701(hh); MIAX PEARL Chapter XVII; NASDAQ Rules 6810(hh) and Chapter IX, Section 8, paragraph [a][xxxi]; NYSE Rule 6810(hh); NYSE Arca Equities Rule 6.6810(hh); NYSE Arca Options Rule 11.6810(hh); NYSE MKT Rule 6810(hh); NYSE National Rule 14.1(hh); and Phlx Rule 910A(hh).

\textsuperscript{108} See proposed Bats BYX Rule 4.5(ii); Bats BZX Rule 4.5(ii); EDGA Rule 4.5(ii); Bats EDGX Rule 4.5(ii); BX Rules 6810(ii) and Chapter IX, Section 8, paragraph [a][xxxi]; BOX Rule 16100(ii); C2 Chapter 6, Section F; CBOE Rule 6.65(ii); CHX Article 23, Rule 1(ii); IEX Rule 11.610(ii); ISE Rule 900(ii); ISE Gemini Rule 900(ii); ISE Mercury 900(ii); MIAX Rule 1701(ii); MIAX PEARL Chapter XVII; NASDAQ Rules 6810(ii) and Chapter IX, Section 8, paragraph [a][xxxi]; NYSE Rule 6810(ii); NYSE Arca Equities Rule 6.6810(ii); NYSE Arca Options Rule 11.6810(ii); NYSE MKT Rule 6810(ii); NYSE National Rule 14.1(ii); and Phlx Rule 910A(ii).

\textsuperscript{109} See 15 U.S.C. 78c(a)(26); proposed Bats BYX Rule 4.5(jj); Bats BZX Rule 4.5(jj); EDGA Rule 4.5(jj); Bats EDGX Rule 4.5(jj); Bats EDGX Rule 4.5(jj); BX Rules 6810(jj) and Chapter IX, Section 8, paragraph [a][xxxi]; BOX Rule 16100(jj); C2 Chapter 6, Section F; CBOE Rule 6.65(jj); CHX Article 23, Rule 1(jj); IEX Rule 11.610(jj); ISE Rule 900(jj); ISE Gemini Rule 900(jj); ISE Mercury 900(jj); MIAX Rule 1701(jj); MIAX PEARL Chapter XVII; NASDAQ Rules 6810(jj) and Chapter IX, Section 8, paragraph [a][xxxi]; NYSE Rule 6810(jj); NYSE Arca Equities Rule 6.6810(jj); NYSE Arca Options Rule 11.6810(jj); NYSE MKT Rule 6810(jj); NYSE National Rule 14.1(jj); and Phlx Rule 910A(jj).
the reporting of a universal CAT-Reporter-ID (that is, a code that uniquely and consistently identifies an Industry Member for purposes of providing data to the Central Repository).

The CAT NMS Plan reflects the Existing Identifier Approach for purposes of identifying each Industry Member associated with an order or Reportable Event. Under the Existing Identifier Approach, Industry Members are required to record and report to the Central Repository an SRO-Assigned Market Participant Identifier for each order and certain Reportable Events to be used by the Central Repository to assign a unique CAT-Reporter-ID to identify Industry Members.

For the Central Repository to link the SRO-Assigned Market Participant Identifier to the CAT-Reporter-ID, each SRO will submit to the Central Repository, on a daily basis, all SRO-Assigned Market Participant Identifiers used by its Industry Members, as well as information to identify each such Industry Member, including CRD number and LEI, if the SRO has collected such LEI of the Industry Member. Additionally, each Industry Member is required to submit to the Central Repository the CRD number of the Industry Member as well as the LEI of the Industry Member (if the Industry Member has an LEI). The Plan Processor will use this information to assign a CAT-Reporter-ID to each Industry Member for internal use within the Central Repository.

(b) Definition of SRO-Assigned Market Participant Identifier

To implement the Existing Identifier Approach, the Exchanges propose to define the term “SRO-Assigned Market Participant Identifier” to mean an identifier assigned to an Industry Member by an SRO or an identifier used by a Participant.113 The Exchanges state that this is the same definition as set forth in Section 1.1 of the CAT NMS Plan.

38. Small Industry Member

The Exchanges represent that the requirements of the proposed CAT Compliance Rules differ to some extent for Small Industry Members versus Industry Members other than Small Industry Members. For example, the compliance dates for reporting data to the CAT are different for Small Industry Members versus other Industry Members. Accordingly, to clarify the requirements that apply to which Industry Members, the Exchanges propose to define the term “Small Industry Member” to mean an Industry Member that qualifies as a small broker-dealer as defined in Exchange Act Rule 0–10(c).114 The Exchanges state that this is the same in substance as the definition of “Small Industry Member” as set forth in Section 1.1 of the CAT NMS Plan. Specifically, Section 1.1 of the CAT NMS Plan defines a “Small Industry Member” as “an Industry Member that qualifies as a small broker-dealer as defined in Rule 613.” The definition of a small broker-dealer under Rule 613, in turn, is a small broker-dealer as defined in Exchange Act Rule 0–10(c).

39. Trading Day

The proposed CAT Compliance Rules establish the deadlines for reporting certain data to the Central Repository using the term “Trading Day.” Accordingly, the Exchanges propose that the term “Trading Day” shall have the meaning as is determined by the Operating Committee.115 For the avoidance of doubt, the Exchanges represent that the Operating Committee may establish different Trading Days for NMS Stocks, Listed Options, OTC Equity Securities, and any other securities that are included as Eligible Securities from time to time.

B. Clock Synchronization

The proposed CAT Compliance Rules set forth the manner in which Industry Members must synchronize their Business Clocks to the time maintained by NIST, consistent with industry standards.116 To comply with this provision, Section 6.8 of the Plan sets forth the clock synchronization requirements for Industry Members. To implement these provisions with regard to its Industry Members, the Exchanges propose CAT Compliance Rules to require their Industry Members to comply with the clock synchronization requirements of the Plan.117

1. Clock Synchronization

The proposed CAT Compliance Rules require each Industry Member to synchronize (1) its Business Clocks used solely for Manual Order Events and (2) its Business Clocks used solely for the time of allocation on Allocation Reports, at a minimum to within a fifty (50) millisecond tolerance of the time maintained by the NIST atomic clock, and maintain such synchronization. The Exchanges represent that this is the same requirement as set forth in Section 6.8a(ii)(A) of the CAT NMS Plan.

The proposed CAT Compliance Rules require each Industry Member to synchronize (1) its Business Clocks used solely for Manual Order Events and (2) its Business Clocks used solely for the time of allocation on Allocation Reports at a minimum to within a one second

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110 See Exemptive Request Letter, supra note 31, at 19; Exemption Order, supra note 31 at 40–41.
111 For example, an Industry Member would be permitted to use any existing SRO-Assigned Market Participant Identifier (e.g., FINRA MPID, NASDAQ MPID, SRO Moniker, CBOE User Acronym and CHX Acronym) when reporting order information to the Central Repository. See 15 U.S.C. 78a(a)(26); proposed Bats BYX Rule 4.5(kk); Bats BZX Rule 4.5(kk); Bats EDGA Rule 4.5(kk); Bats EDGX Rule 4.5(kk); CCH Article 23, Rule 1(kk); IEEE Rule 1701(mm); IEX Rule 1701(mm); IEX Private Securities from time to time.
112 17 CFR 240.9–10(c); proposed Bats BYX Rule 4.5(ii); Bats BZX Rule 4.5(ii); Bats EDGA Rule 4.5(ii); Bats EDGX Rule 4.5(ii); Bats EDGQ Rule 4.5(ii); Bats EDGD Rule 4.5(ii); RX Rules 6810(ii) and Chapter IX, Section 8, paragraph (a)(xxviii); BOX Rule 16010(ii); C2 Chapter 6, Section F: CBOE Rule 6.85(ii); CHX Article 23, Rule 1(ii); IEX Rule 6.85(ii); IEX Private Securities from time to time.
113 See proposed Bats BYX Rule 4.5(mm); Bats BZX Rule 4.5(mm); Bats EDGA Rule 4.5(mm); Bats EDGQ Rule 4.5(mm); Bats EDGD Rule 4.5(mm); RX Rules 6810(mm) and Chapter IX, Section 8, paragraph (a)(xxviii); BOX Rule 16010(mm); C2 Chapter 6, Section F: CBOE Rule 6.85(mm); CHX Article 23, Rule 1(mm); IEX Rule 6.85(mm); IEX Private Securities from time to time.
114 17 CFR 242.613(d)(4). Related to the clock synchronization requirements, the Commission notes that the Participants also filed a request for an exemption from the March 15, 2017 filing deadline requirement set forth in Section 6.7a(ii) of the CAT NMS Plan and in the proposed CAT Compliance Rules. See infra note 163. The Commission granted the Participants’ exemption request. See infra note 163.
115 In addition, Section 6.7a(ii) of the Plan sets forth the timeline for CAT Reporters to comply with the clock synchronization requirements.
116 See proposed Bats BYX Rule 4.6; Bats BZX Rule 4.6; Bats EDGA Rule 4.6; Bats EDGQ Rule 4.6; RX Rules 6820 and Section IX, Section 8, subparagraph (b); BOX Rule 16020; C2 Chapter 6, Section F: CBOE Rule 6.86; CHX Article 23, Rule 2: IEX Rule 11.620; IEX Rule 901; IEX Private Securities from time to time. The participants have also requested an exemption from this requirement. See infra note 163. The Commission granted the participants’ exemption request. See infra note 163.
117 See proposed Bats BYX Rule 4.6; Bats BZX Rule 4.6; Bats EDGA Rule 4.6; Bats EDGQ Rule 4.6; RX Rules 6820 and Section IX, Section 8, subparagraph (b); BOX Rule 16020; C2 Chapter 6, Section F: CBOE Rule 6.86; CHX Article 23, Rule 2: IEX Rule 11.620; IEX Rule 901; IEX Private Securities from time to time. The participants have also requested an exemption from this requirement. See infra note 163. The Commission granted the participants’ exemption request. See infra note 163.
tolerance of the time maintained by the NIST atomic clock, and maintain such synchronization. The Exchanges state that this is the same requirement as set forth in Section 6.8(a)(ii) and (iv) of the CAT NMS Plan. The proposed CAT Compliance Rules clarify that the tolerance described in paragraphs (a)(1) and (2) of the proposed Rules includes all of the following: (1) The time difference between the NIST atomic clock and the Industry Member’s Business Clock; (2) the transmission delay from the source; and (3) the amount of drift of the Industry Member’s Business Clock.

The proposed CAT Compliance Rules require Industry Members to synchronize their Business Clocks every business day before market open to ensure that timestamps for Reportable Events are accurate. In addition, to maintain clock synchronization, Business Clocks must be checked against the NIST atomic clock and re-synchronized, as necessary, throughout the day.

2. Documentation

The proposed CAT Compliance Rules set forth documentation requirements with regard to clock synchronization. Specifically, the proposed Rules require Industry Members to document and maintain their synchronization procedures for their Business Clocks. The proposed Rules require Industry Members to keep a log of the times when they synchronize their Business Clocks and the results of the synchronization process. This log is required to include notice of any time a Business Clock drifts more than the applicable tolerance specified in the Rules. Such logs must include results for a period of not less than five years ending on the then current date, or for the entire period for which the Industry Member has been required to comply with this Rule if less than five years. The Exchanges state that these documentation requirements are the same as those set forth in the “Sequencing Orders and Clock Synchronization” section of Appendix C of the CAT NMS Plan.

3. Certification

The proposed CAT Compliance Rules set forth certification requirements with regard to clock synchronization. Specifically, the Rules require each Industry Member to certify to a Participant that its Business Clocks satisfy the synchronization requirements set forth in the proposed CAT Compliance Rules periodically in accordance with the certification schedule established by the Operating Committee pursuant to the CAT NMS Plan. The Exchanges state that this requirement is the same as set forth in Section 6.8(a)(ii)(B), (iii) and (iv) of the CAT NMS Plan. The Exchanges state that they intend to announce to their Industry Members the certification schedule established by the Operating Committee.

4. Violation Reporting

The proposed CAT Compliance Rules establish reporting requirements with regard to clock synchronization. These proposed Rules require Industry Members to report to the Plan Processor and FINRA violations of the clock synchronization requirements of the proposed Rules pursuant to the thresholds set by the Operating Committee pursuant to the CAT NMS Plan. The Exchanges represent that this requirement is the same requirement as set forth in Section 6.8(a)(ii)(C), (iii) and (iv) of the CAT NMS Plan. The Exchanges intend to announce to their Industry Members the relevant thresholds established by the Operating Committee.

C. Industry Member Data Reporting

Rule 613(c) of Regulation NMS requires the CAT NMS Plan to set forth certain provisions requiring Industry Members to record and report data to the CAT. To comply with this provision, Section 6.4 of the CAT NMS Plan sets forth the data reporting requirements for Industry Members. To implement these provisions with regard to its Industry Members, the Exchanges propose provisions in their CAT Compliance Rules addressing Industry Member Data Reporting to require their Industry Members to comply with the Industry Member Data reporting requirements of the Plan. The proposed CAT Compliance Rules have five sections covering: (1) Recording and Reporting Industry Member Data, (2) timing of the recording and reporting, (3) the applicable securities covered by the recording and reporting requirements, (4) the security symbology to be used in the recording and reporting, and (5) error correction requirements, each of which is described below.

1. Recording and Reporting Industry Member Data

The proposed CAT Compliance Rules describe the recording and reporting of Industry Member Data to the Central Repository. The proposed Rules cover Recorded Industry Member Data, Received Industry Member Data and Options Market Maker data. The proposed CAT Compliance Rules set forth the recording and reporting requirements required in Section 6.4(d)(i)-(iii) of the CAT NMS Plan.

The proposed CAT Compliance Rules require, subject to provisions regarding Options Market Makers, each Industry Member to record and electronically report to the Central Repository the following details for each order and each Reportable Event, as applicable (“Recorded Industry Member Data”) in the manner prescribed by the Operating Committee pursuant to the CAT NMS Plan:

- For original receipt or origination of an order: (1) Firm Designated ID(s) for each Customer; (2) CAT-Order-ID; (3) SRO-Assigned Market Participant Identifier of the Industry Member receiving or originating the order; (4) date of order receipt or origination; (5) time of order receipt or origination (using timestamps pursuant to the proposed Rules 122); and (6) Material Terms of the Order;
- for the routing of an order: (1) CAT-Order-ID; (2) date on which the order is routed; (3) time at which the order is routed (using timestamps pursuant to the proposed Rules 122); (4) SRO-Assigned Market Participant Identifier of the Industry Member routing the order; (5) SRO-Assigned Market Participant Identifier of the Industry Member or Participant to which the order is being routed; (6) if routed internally at the Industry Member, the identity and nature of the department or desk to which the order is routed; and (7) Material Terms of the Order;
- for the receipt of an order that has been routed, the following information: (1) CAT-Order-ID; (2) date on which the order is received; (3) time at which the order is received (using timestamps

117 The proposed CBOE and C2 CAT Compliance Rules require Industry Members to synchronize their business clocks before each trading session. See proposed CBOE Rule 6.86(a)(iv); C2 Chapter 6, Section F.

118 The proposed CAT Compliance Rules have five sections covering: (1) Recording and Reporting Industry Member Data, (2) timing of the recording and reporting, (3) the applicable securities covered by the recording and reporting requirements, (4) the security symbology to be used in the recording and reporting, and (5) error correction requirements, each of which is described below.

119 Id.

120 See 17 CFR 242.613(c).

121 See infra note 135.

122 Id.
pursuant to the proposed Rules 124; (4) SRO-Assigned Market Participant Identifier of the Industry Member receiving the order; (5) SRO-Assigned Market Participant Identifier of the Industry Member or Participant routing the order; and (6) Material Terms of the Order;

- if the order is modified or cancelled: (1) CAT-Order-ID; (2) date the modification or cancellation is received or originated; (3) time at which the modification or cancellation is received or originated (using timestamps pursuant to the proposed Rules 125); (4) price and remaining size of the order, if modified; (5) other changes in the Material Terms of the Order, if modified; and (6) whether the modification or cancellation instruction was given by the Customer or was initiated by the Industry Member;

- if the order is executed, in whole or in part: (1) CAT-Order-ID; (2) date of execution; (3) time of execution (using timestamps pursuant to the proposed Rules 125); (4) execution capacity (principal, agency or riskless principal); (5) execution price and size; (6) SRO-Assigned Market Participant Identifier of the Industry Member executing the order; (7) whether the execution was reported pursuant to an effective transaction reporting plan or the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information; and

- other information or additional events as may be prescribed pursuant to the CAT NMS Plan.

The proposed CAT Compliance Rules require, subject to provisions regarding Options Market Makers, each Industry Member to record and report to the Central Repository the following, as applicable (“Received Industry Member Data”) and collectively with the information referred to in the proposed Rules governing Industry Member Data prior to the applicable (“Received Industry Member Data”) and collectively with the information referred to in the proposed Rules governing Industry Member Data in the manner prescribed by the Operating Committee pursuant to the CAT NMS Plan:

- If the order is executed, in whole or in part: (1) An Allocation Report; (2) SRO-Assigned Market Participant Identifier of the clearing broker or prime broker, if applicable; and (3) CAT-Order-ID of any contra-side order(s); if the trade is cancelled, a cancelled trade indicator; and

- for original receipt or origination of an order, the Firm Designated ID for the relevant Customer, and in accordance with the proposed CAT Compliance Rules, Customer Identifying Information and Customer Identifying Information for the relevant Customer.

The proposed CAT Compliance Rules state that each Industry Member that is an Options Market Maker is not required to report to the Central Repository the Industry Member Data regarding the routing, modification or cancellation of its quotes in Listed Options. Each Industry Member that is an Options Market Maker, however, is required to report to the Exchange the time at which its quote in a Listed Option is sent to the Exchange (and, if applicable, any subsequent quote modification time and/or cancellation time when such modification or cancellation is originated by the Options Market Maker). The proposed CAT Compliance Rules implement the Options Market Maker Quote Exemption, as discussed above.

2. Timing of Recording and Reporting

The proposed CAT Compliance Rules describe the requirements related to the timing of recording and reporting of Industry Member Data.127 These Rules set forth the requirements related to the timing of the recording and reporting requirements required in Section 6.4(b)(i)–(ii) of the CAT NMS Plan. The proposed CAT Compliance Rules require each Industry Member to record Recorded Industry Member Data contemporaneously with the applicable Reportable Event. The proposed Rules require each Industry Member to report: (1) Recorded Industry Member Data to the Central Repository by 8:00 a.m. Eastern Time on the Trading Day following the day the Industry Member records such Recorded Industry Member Data; and (2) Received Industry Member Data to the Central Repository by 8:00 a.m. Eastern Time on the Trading Day following the day the Industry Member receives such Recorded Industry Member Data. The Rules state that Industry Members may, but are not required to, voluntarily report Industry Member Data prior to the applicable 8:00 a.m. Eastern Time deadline.

3. Applicable Securities

The proposed CAT Compliance Rules describe the securities to which the recording and reporting requirements of the proposed Rules apply. The proposed Rules set forth the description of applicable securities as set forth in Section 6.4(c)(i) and (ii) of the CAT NMS Plan, respectively.128 The proposed Rules require each Industry Member to record and report to the Central Repository the Industry Member Data as set forth in the Rules for each NMS Security registered or listed for trading on such exchange or admitted to unlisted trading privileges on such exchange. The proposed Rules require each Industry Member to record and report to the Central Repository the Industry Member Data as set forth in the Rules for each Eligible Security for which transaction reports are required to be submitted to FINRA.

4. Security Symbol

The proposed CAT Compliance Rules describe the security symbology that Industry Members are required to use when reporting Industry Member Data to the Central Repository. The proposed Rules require, for each exchange-listed Eligible Security, each Industry Member to report Industry Member Data to the Central Repository using the symbology format of the exchange listing the security.129 The Exchanges state that this requirement implements the requirement set forth in Section 2 of Appendix D of the CAT NMS Plan to use the listing exchange symbology when reporting data to the Central Repository for exchange-listed Eligible Securities. For each Eligible Security that is not exchange-listed, however, the Exchanges represent that there is no listing exchange to provide the symbology format. Moreover, to date,
the requisite symbology format has not been determined. Therefore, the proposed CAT Compliance Rules require, for each Eligible Security that is not exchange-listed, each Industry Member to report Industry Member Data to the Central Repository using such symbology format as approved by the Operating Committee pursuant to the CAT NMS Plan. The Exchanges state that they intend to announce to their Industry Members the relevant symbology formats established by the Operating Committee.130

5. Error Correction Timeline

To ensure that the CAT contains accurate data, the CAT NMS Plan requires Industry Members to correct erroneous data submitted to the Central Repository. Therefore, the proposed CAT Compliance Rules require that for each Industry Member for which errors in Industry Member Data submitted to the Central Repository have been identified by the Plan Processor or otherwise, such Industry Member submit corrected Industry Member Data to the Central Repository by 8:00 a.m. Eastern Time on T+3. The Exchanges represent that this requirement implements the error correction requirement set forth in Section 6 of Appendix D of the CAT NMS Plan.

D. Customer Information Reporting

Section 6.4(d)(iv) of the CAT NMS Plan requires Industry Members to submit to the Central Repository certain information related to their Customers in accordance with the Customer Information Approach discussed above. The proposed CAT Compliance Rules regarding Customer information reporting to implement this provision of the CAT NMS Plan with regard to their Industry Members.131

1. Initial Set of Customer Information

The proposed CAT Compliance Rules require each Industry Member to submit to the Central Repository the Firm Designated ID, Customer Account Information and Customer Identifying Information for each of its Customers with an Active Account prior to such Industry Member’s commencement of reporting to the Central Repository and in accordance with the deadlines set forth in the CAT Compliance Rules.

2. Daily Updates to Customer Information

The proposed CAT Compliance Rules require each Industry Member to submit to the Central Repository any updates, additions or other changes to the Firm Designated ID, Customer Account Information and Customer Identifying Information for each of its Customers with an Active Account. This periodic refresh is intended to ensure that the Central Repository has the most current information identifying a Customer. The Exchanges represented that they intend to announce to their Industry Members when such a periodic refresh is required by the Plan Processor and the Operating Committee.132

4. Error Correction Timeline

Finally, the proposed CAT Compliance Rules address the correction of erroneous Customer data reported to the Central Repository to ensure an accurate audit trail. The Rules require, for each Industry Member for which errors in Firm Designated ID, Customer Account Information and Customer Identifying Information for each of its Customers with an Active Account submitted to the Central Repository have been identified by the Plan Processor or otherwise, such Member to submit corrected data to the Central Repository by 5:00 p.m. Eastern Time on T+3. The Exchanges state that this requirement implements the error correction requirement set forth in Appendix C of the CAT NMS Plan.

E. Industry Member Information Reporting

Section 6.4(d)(vi) of the CAT NMS Plan requires Industry Members to submit to the Central Repository information sufficient to identify such Industry Member, including CRD number and LEI, if such LEI has been obtained, prior to such Industry Member’s commencement of reporting to the Central Repository and in accordance with the deadlines set forth in the proposed Rules, and keep such information up to date as necessary.133 The Exchanges state that this provision implements Section 6.4(d)(vi) of the CAT NMS Plan with regard to its Industry Members information reporting.

F. Time Stamps

Rule 613(d)(3) of Regulation NMS sets forth requirements for time stamps used by CAT Reporters in recording and reporting data to the CAT.134 To comply with this provision, Section 6.8(b) of the Plan sets forth time stamp requirements for Industry Members. To implement this provision with regard to its Industry Members, the Exchanges propose CAT Compliance Rules to require their Industry Members to comply with the time stamp requirements of the Plan.135

1. Millisecond Time Stamps

The proposed CAT Compliance Rules set forth the time stamp increments to be used by Industry Members in their CAT reporting. The Rules require each Industry Member to record and report Industry Member Data to the Central Repository with time stamps in milliseconds. To the extent that any Industry Member’s order handling or execution system uses time stamps in increments finer than milliseconds, the proposed Rules require such Industry Member to record and report Industry Member Data to the Central Repository with time stamps in such finer

130 See supra note 118.
131 See proposed Bats BYX Rule 4.8; Bats BZX Rule 4.8; Bats EDGA Rule 4.8; Bats EDGX Rule 4.8; BX Rule 6840 and Chapter IX, Section 8, subparagraph (d); BOX Rule 16040; C2 Chapter 6, Section F; CBOE Rule 6.88; CHX Article 23, Rule 4; IEX Rule 11.640; ISE Rule 904; ISE Gemini Rule 904; ISE Mercury Rule 904; IEX Rule 11.650; IEX Article 23, Rule 5; IEX Rule 11.660; IEX Article 23, Rule 6; IEX Rule 11.660; IEX Article 23, Rule 7; IEX Rule 11.660; IEX Article 23, Rule 8; NASDAQ Rule 6840 and Chapter IX, Section 8, subparagraph (d); NYSE Rule 6840; NYSE Arca Equities Rule 6.6840; NYSE Arca Options Rule 11.6840; NYSE MKT Rule 6840; NYSE National Rule 14.4; and Phlx Rule 940A.
132 See supra note 118.
133 See supra note 118.
134 17 CFR 242.613(d)(3).
135 See proposed Bats BYX Rule 4.10; Bats BZX Rule 4.10; Bats EDGA Rule 4.10; Bats EDGX Rule 4.10; Bats EDGA Rule 4.10; Bats EDGX Rule 4.10; Bats EDGA Rule 4.10; Bats EDGX Rule 4.10; Bats EDGA Rule 4.10; Bats EDGX Rule 4.10; Bats EDGA Rule 4.10; Bats EDGX Rule 4.10; Bats EDGA Rule 4.10; Bats EDGX Rule 4.10; Bats EDGA Rule 4.10; Bats EDGX Rule 4.10; Bats EDGA Rule 4.10; Bats EDGX Rule 4.10; Bats EDGA Rule 4.10; Bats EDGX Rule 4.10; Bats EDGA Rule 4.10; Bats EDGX Rule 4.10; Bats EDGA Rule 4.10; Bats EDGX Rule 4.10; Bats EDGA Rule 4.10; Bats EDGX Rule 4.10; Bats EDGA Rule 4.10; Bats EDGX Rule 4.10.
increment, subject to the proposed Rules regarding Manual Order Events and Allocation Reports.

2. One-Second Time Stamps/Electronic Order Capture

The proposed CAT Compliance Rules set forth the permissible time stamp increments for Manual Order Events and Allocation Reports. Specifically, the proposed Rules permit each Industry Member to record and report Manual Order Events to the Central Repository in increments up to and including one second, provided that each Industry Member is required to record and report the Electronic Capture Time in milliseconds. In addition, the proposed CAT Compliance Rules permit each Industry Member to record and report the time of Allocation Reports in increments up to and including one second.

G. Clock Synchronization Rule Violations

The proposed CAT Compliance Rules describe potential violations of the clock synchronization time period requirements.136 The proposed Rules state that an Industry Member that engages in a pattern or practice of reporting Reportable Events outside of the required clock synchronization time period without reasonable justification or exceptional circumstances may be considered in violation of this Rule. The Exchanges state that this provision implements the requirements of Section 6.8 of the CAT NMS Plan which requires the Compliance Rule to provide that a pattern or practice of reporting events outside of the required clock synchronization time period without reasonable justification or exceptional circumstances may be considered a violation of Rule 613 of Regulation NMS or the CAT NMS Plan.

H. Connectivity and Data Transmission

The proposed CAT Compliance Rules address connectivity and data transmission requirements related to the CAT.137

1. Data Transmission

The proposed CAT Compliance Rules describe the format(s) for reporting Industry Member Data to the Central Repository. Specifically, the proposed Rules require each Industry Member to transmit data as required under the CAT NMS Plan to the Central Repository utilizing such format(s) as may be provided by the Plan Processor and approved by the Operating Committee. The Exchanges state that this provision implements the formatting requirements as set forth in Section 6.4(a) of the CAT NMS Plan.

2. Connectivity

The proposed CAT Compliance Rules address connectivity requirements related to the CAT. The proposed Rules require each Industry Member to connect to the Central Repository using a secure method(s), including, but not limited to, private line(s) and virtual private network connection(s). The Exchanges state that this provision implements the connectivity requirements set forth in Section 4 of Appendix D to the CAT NMS Plan.

3. CAT Reporting Agent

The proposed CAT Compliance Rules permit Industry Members to enter into an agreement with CAT Reporting Agents to fulfill their data reporting obligations related to the CAT.138 Any such agreement must be evidenced in writing, which specifies the respective functions and responsibilities of each party to the agreement that are required to effect full compliance with the requirements of the proposed CAT Compliance Rules. The proposed Rules require that all written documents evidencing an agreement with a CAT Reporting Agent be maintained by each party to the agreement. The proposed Rules further state that each Industry Member remains primarily responsible for compliance with the requirements of the proposed CAT Compliance Rules, notwithstanding the existence of an agreement described otherwise in the proposed Rules.

I. Development and Testing

The Exchanges propose CAT Compliance Rules to address

requirements for Industry Members related to CAT development and testing.139

1. Development

The proposed Rules set forth the testing requirements and deadlines for Industry Members to develop and commence reporting to the Central Repository. The Exchanges state that these requirements are set forth in Appendix C to the CAT NMS Plan. The CAT Compliance Rules set forth the deadlines related to connectivity and acceptance testing. Industry Members (other than Small Industry Members) are required to begin connectivity and acceptance testing with the Central Repository no later than August 15, 2018, and Small Industry Members are required to begin connectivity and acceptance testing with the Central Repository no later than August 15, 2019. The CAT Compliance Rules also set forth the deadlines related to reporting Customer and Industry Member information.140 The proposed Rules require Industry Members (other than Small Industry Members) to begin reporting Customer and Industry Member information to the Central Repository for processing no later than October 15, 2018. The proposed Rules require Small Industry Members to begin reporting Customer and Industry Member information to the Central Repository for processing no later than October 15, 2019.

The proposed CAT Compliance Rules set forth the deadlines related to the submission of order data. Under the proposed Rules, Industry Members (other than Small Industry Members) are permitted, but not required, to submit order data for testing purposes.

136 See proposed Bats BYX Rule 4.11; Bats BZX Rule 4.11; Bats EDGA Rule 4.11; Bats EDGX Rule 4.11; BX Rules 6665 and Chapter IX, Section 8, subparagraph (b); BOX Rule 16065; C2 Chapter 6, Section F; CBDD Rule 6.91; CHX Article 23, Rule 7; IEX Rule 11.665; ISE Rule 906; ISE Gemini Rule 906; ISE Mercury Rule 906; MIAX Rule 1707; MIAX Pearl Chapter XVII; NASDAQ Rule 6685 and Chapter IX, Section 8, subparagraph (g); NYSE Rule 6685; NYSE Arca Equities Rule 6.6865; NYSE Arca Options Rule 11.6685; NYSE MKT Rule 6685; NYSE National Rule 14.7; and Phlx Rule 906A.

137 See proposed Bats BYX Rule 4.12; Bats BZX Rule 4.12; Bats EDGA Rule 4.12; Bats EDGX Rule 4.12; BX Rules 6670 and Chapter IX, Section 8, subparagraph (b); BOX Rule 16070; C2 Chapter 6, Section F; CBDD Rule 6.92; CHX Article 23, Rule

8; IEX Rule 11.670; ISE Rule 907; ISE Gemini Rule 907; ISE Mercury 907; MIAX Rule 1708; MIAX Pearl Chapter XVII; NASDAQ Rule 6685 and Chapter IX, Section 8, subparagraph (b); NYSE Rule 6670; NYSE Arca Equities Rule 6.6870; NYSE Arca Options Rule 11.6670; NYSE MKT Rule 6670; NYSE National Rule 14.8; and Phlx Rule 970A.

138 The Exchanges represent that the proposed Rules are based on FINRA Rule 7450(c), which permits OATS Reporting Members to enter into agreements with Reporting Agents to fulfill the OATS obligations of the OATS Reporting Member.

139 See proposed Bats BYX Rule 4.13; Bats BZX Rule 4.13; Bats EDGA Rule 4.13; Bats EDGX Rule 4.13; EX Rules 6680 and Chapter IX, Section 8, subparagraph (i); BOX Rule 16080; C2 Chapter 6, Section F; CBDD Rule 6.93; CHX Article 23, Rule 9; IEX Rule 11.680; ISE Rule 908; ISE Gemini Rule 908; ISE Mercury Rule 908; MIAX Rule 1709; MIAX Pearl Chapter XVII; NASDAQ Rule 6680 and Chapter IX, Section 8, subparagraph (j); NYSE Rule 6680; NYSE Arca Equities Rule 6.6880; NYSE Arca Options Rule 11.6680; NYSE MKT Rule 6680; NYSE National Rule 14.9; and Phlx Rule 980A.

140 See proposed Bats BYX Rule 4.13(a)(2); Bats BZX Rule 4.13(a)(2); Bats EDGA Rule 4.13(a)(2); Bats EDGX Rule 4.13(a)(2); EX Rules 6680(a)(2) and Chapter IX, Section 8, subparagraph (j)(ii); BOX Rule 16080(a)(2); C2 Chapter 6, Section F; CBDD Rule 6.93(a)(ii); CHX Article 23, Rule 9a(a)(2); IEX Rule 11.680(a)(2); ISE Rule 908(a)(2); ISE Gemini Rule 908(a)(2); ISE Mercury 908(a)(2); MIAX Rule 1709(a)(2); MIAX Pearl Chapter XVII; NASDAQ Rule 6680(a)(2) and Chapter IX, Section 8, subparagraph (ii)(ii); NYSE Rule 6680(a)(2); NYSE Arca Equities Rule 6.6880(a)(2); NYSE Arca Options Rule 11.6680(a)(2); NYSE Arca Rule 14.9a(a)(2); and Phlx Rule 980A(a)(2).
beginning no later than May 15, 2018. In addition, Industry Members (other than Small Industry Members) are required to participate in the coordinated and structured testing of order submission, which will begin no later than August 15, 2018. Under the proposed Rules, Small Industry Members are permitted, but not required, to submit order data for testing purposes beginning no later than May 15, 2019. In addition, Small Industry Members are required to participate in the coordinated and structured testing of order submission, which will begin no later than August 15, 2019.

The proposed CAT Compliance Rules state that Industry Members are permitted, but not required to, submit Quote Sent Times on Options Market Maker quotes to Exchanges, beginning no later than October 15, 2018 for testing purposes.

2. Testing

The proposed CAT Compliance Rules implement the requirement under the CAT NMS Plan that Industry Members participate in required industry testing with the Central Repository. Specifically, the proposed Rules require that each Industry Member participate in testing related to the Central Repository, including any industry-wide disaster recovery testing, pursuant to the schedule established pursuant to the CAT NMS Plan. The Exchanges state that they intend to announce to their Industry Members the schedule established pursuant to the CAT NMS Plan.146

J. Recordkeeping

The proposed CAT Compliance Rules set forth the recordkeeping obligations related to the CAT for Industry Members.142 The proposed Rules require each Industry Member to maintain and preserve records of the information required to be recorded under the proposed Rules for the period of time and accessibility specified in Exchange Act Rule 17a–4(b).143 The records required to be maintained and preserved under the proposed Rules may be immediately produced or reproduced on “micrographic media” as defined in Rule 17a–4(f)(1)(i)144 or by means of “electronic storage media” as defined in Exchange Act Rule 17a–4(f)(1)(ii)145 that meet the conditions set forth in Exchange Act Rule 17a–4(f).146 and be maintained and preserved for the required time in that form. The proposed CAT Compliance Rules are based on FINRA Rule 7440(a)(5), which sets forth the recordkeeping requirements related to OATS.

K. Timely, Accurate and Complete Data

1. General

The Exchanges note that Rule 613 of Regulation NMS and the CAT NMS Plan emphasize the importance of the timeliness, accuracy, completeness and integrity of the data submitted to the CAT.147 Accordingly, the proposed CAT Compliance Rules require that Industry Members record and report data to the Central Repository as required by the proposed Rules in a manner that ensures the timeliness, accuracy, integrity and completeness of such data.148 The Exchanges state that the proposed CAT Compliance Rules implement the Plan’s requirement with respect to the importance of timely, accurate and complete data with regard to Industry Members.

2. LEIs

In addition, without limiting the general requirement as set forth in the proposed Rules, the proposed CAT Compliance Rules require Industry Members to accurately provide the LEIs in their records as required by the proposed Rules and state that Industry Members may not knowingly submit inaccurate LEIs to the Central Repository. The Exchanges note, however, that this requirement does not impose any additional due diligence obligations on Industry Members with regard to LEIs for CAT purposes. Accordingly, the Exchanges state that this provision does not impose any due diligence obligations beyond those that may exist today with respect to

144 17 CFR 240.17a–4(f).
145 See supra note 118.
146 See proposed Bats BYX Rule 4.14; Bats BZX Rule 4.14; Bats EDGA Rule 4.14; Bats EDGX Rule 4.14; BX Rules 6890 and Chapter IX, Section 8, subparagraph (j); C2 Chapter 6, Section F; CBOE Rule 6.94; CHX Article 23, Rule 10; IEX Rule 11.690; ISIE Rule 900; ISIE Gemini Rule 909; ISE Mercury Rule 909; MIAX Rule 1710; MIAX PEARL, Chapter XIX; NASCAR Rule 6893 and Chapter IX, Section 8, subparagraph (j); NYSE Rule 6890; NYSE Arca Equities Rule 6.6890; NYSE Arca Options Rule 11.6890; NYSE MKT Rule 6890; NYSE National Rule 14.10; and Phlx Rule 990A.
147 17 CFR 240.17a–4(f).
148 See supra note 118.
149 See proposed Bats BYX Rule 4.14; Bats BZX Rule 4.14; Bats EDGA Rule 4.14; Bats EDGX Rule 4.14; BX Rules 6890 and Chapter IX, Section 8, subparagraph (j); BOX Rule 16090; C2 Chapter 6, Section F; CBOE Rule 6.94; CHX Article 23, Rule 10; IEX Rule 11.690; ISIE Rule 900; ISIE Gemini Rule 909; ISE Mercury Rule 909; MIAX Rule 1710; MIAX PEARL, Chapter XIX; NASCAR Rule 6893 and Chapter IX, Section 8, subparagraph (j); NYSE Rule 6890; NYSE Arca Equities Rule 6.6890; NYSE Arca Options Rule 11.6890; NYSE MKT Rule 6890; NYSE National Rule 14.10; and Phlx Rule 990A.

3. Compliance With Error Rate

The proposed CAT Compliance Rules state that, if an Industry Member reports data to the Central Repository with errors such that its error percentage exceeds the maximum Error Rate established by the Operating Committee pursuant to the CAT NMS Plan, then such Industry Member would not be in compliance with the Rules. As discussed above, the initial maximum Error Rate is 5%, although the Error Rate is expected to be reduced over time. The Exchanges state that they intend to announce to their Industry Members changes to the Error Rate established pursuant to the CAT NMS Plan.150

4. Compliance Thresholds

The proposed CAT Compliance Rules also address compliance thresholds related to reporting data to the CAT. These proposed Rules state that each Industry Member is required to meet a separate compliance threshold which will be an Industry Member-specific rate that may be used as the basis for further review or investigation into the Industry Member’s performance with regard to the CAT (the “Compliance Thresholds”). The Exchanges note that Compliance Thresholds will compare an Industry Member’s error rate to the aggregate Error Rate over a period of time to be defined by the Operating Committee. Compliance Thresholds will be set by the Operating Committee, and will be calculated at intervals to be set by the Operating Committee.151 Compliance Thresholds will include compliance with the data reporting and clock synchronization requirements. The proposed CAT Compliance Rules state that an Industry Member’s performance with respect to its Compliance Threshold will not signify, as a matter of law, that such Industry

149 See Approval Order, supra note 24, at 84745.
150 See supra note 118.
151 See CAT NMS Plan, supra note 21, at Appendix G.
Industry Member to record and report the Industry Member Data to the Central Repository by November 15, 2019. The exchanges state that such compliance dates are consistent with the compliance dates set forth in Rule 613(a)(3)(v) and (vi),154 and Section 6.7(a)(v) and (vi) of the CAT NMS Plan.

IV. Summary of Comments
As noted above, the Commission received three comment letters on the proposed rule change and a response letter from the Participants.155 Two commenters raised concerns about the clock synchronization requirements for Allocation Reports.156 One commenter noted that the CAT NMS Plan states that the participants have not yet determined how the “time of allocation” will be defined and that the Participants stated they would address this in the Technical Specifications.157 Given that the time of allocation had not yet been defined, this commenter stated that it “was not possible to ensure clock synchronization requirements on Allocation Reports at this time.”158 Another commenter asked for clarification whether the Clock Synchronization Exemption Request, as discussed below, filed by the Participants extends to time stamps required for Allocation Reports, and for clarification regarding when time stamps on manual orders and electronic capture of manual orders need to be captured.159

The Participants noted in their Response Letter that Section 6.7(a)(ii) of the CAT NMS Plan requires that Industry Members must synchronize their Business Clocks and certify that they have satisfied applicable Business Clock synchronization requirements by March 15, 2017.160 However, the Participants noted that, on January 17, 2017, they filed with the Commission a request for exemptive relief from Section 6.7(a)(iii) of the CAT NMS Plan (the “Clock Synchronization Exemption Request”).161 The Clock Synchronization Exemption Request requested that the Commission permit the Participants to extend the Business Clock synchronization compliance date in Section 6.7(a)(ii) of the CAT NMS Plan from March 15, 2017 to February 19, 2018 for Industry Members’ Business Clocks that do not capture time in milliseconds.162 On March 2, 2017, the Commission granted the Exemption Request.163

The Participants also noted that the Operating Committee of the CAT NMS Plan recently approved guidance that clarifies that, for purposes of the initial March 15, 2017 Business Clock synchronization and certification deadlines, “Business Clocks” include those clocks that currently capture time in milliseconds and that are used to record time related to “Reportable Events,” as defined under the Plan, including, without limitation, the original receipt or origination, modification, cancellation, routing, execution (in whole or in part) and allocation of an order, and receipt of a routed order, in Eligible Securities (i.e., NMS Securities and OTC Equity Securities).164 The Participants represented that each Participant has, or will, issue this guidance to its members. The Participants further stated in their response letter that to align the compliance rule with the Exemption Request, Business Clocks used solely for the time of allocation on Allocation Reports must comply with the March 15, 2017 synchronization deadline to the extent that such Business Clocks currently capture time in milliseconds.165

With respect to time stamps on manual orders and electronic capture of manual orders the Participants acknowledged in their response letter that additional information will be provided in Technical Specifications prepared by the Plan Processor and approved by the Operating Committee.166 The Participants noted that the Technical Specifications also will define the “time of allocation.” The Participants stated that as a result, the Participants cannot issue additional information or definitions at this time since the development and construction of the CAT System and Central Repository are underway. The Participants represented that the Participants intend to work with the Plan Processor to define various terms.

152 See proposed Bats BYX Rule 4.16; Bats BZX Rule 4.16; Bats EDGA Rule 4.16; Bats EDGX Rule 4.16; BOX Rule 16095; BX Rule 6895 and Chapter IX, Section 8, subparagraph (I); C2 Chapter 6, Section F; CHX Article 23, Rule 12; IEX Rule 11.695; ISE Rule 911; ISE Gemini Rule 911; ISE Mercury Rule 911; MIAX Rule 1712; MIAX Pearl Chapter XVI; NASDAQ Rule 6895 and Chapter IX, Section 8, subparagraph (I); NYSE Rule 6895; NYSE Arca Equities Rule 6.895; NYSE Arca Options Rule 11.895; NYSE MKT Rule 6895; NYSE National Rule 14.12: and Phlx Rule 995A.

153 See infra notes 161 and 163, and accompanying text (discussing the Participants’ Clock Synchronization Exemption Request and Order Granting Limited Exemptive Relief, Pursuant to Rule 608(b)(i) of the Securities Exchange Act of 1934, from the Clock Synchronization Compliance Deadline Specified in Section 6.7(a)(ii) of the National Market System Plan Governing the Consolidated Audit Trail).


155 See supra note 17.

156 Thomson Reuters Letter at 1; FIF Letter at 1.

157 Thomson Reuters Letter at 1.

158 Thomson Reuters Letter at 1–2. See also FIF Letter at 2.

159 FIF Letter at 1.2.

160 Participants’ Response Letter at 1.

161 See Letter from Participants to Brent J. Fields, Secretary, Commission, dated January 17, 2017 (“Clock Synchronization Exemption Request Letter”).
including “time of the allocation,” and to provide Technical Specifications approved by the Operating Committee before Industry Members will be required to report to the Central Repository on November 15, 2018 (or November 15, 2019 for Small Industry Members) or comply with the February 19, 2018 Business Clock synchronization requirement.

One commenter discussed several concerns related to the clock synchronization requirements of the proposed CAT Compliance Rules.167 This commenter noted that “retention of a complete log of clock synchronization events is an additional business cost without providing compensatory regulatory benefit.”168 This commenter urged FINRA to collect clock synchronization data based on the data received as a result of the requirements of FINRA Rule 4590 to see if such a log of clock synchronization is “required to effectively surveil for compliance with clock synchronization standards” and requested that the Commission require FINRA to assess the effectiveness of the logging requirement.169 This commenter also noted that there is a two year difference in the log retention requirements between FINRA Rule 4590 and the proposed CAT Compliance Rules and stated that the extra two years of log retention represents an additional business cost for storage and clock management.170

In response, the Participants stated that they believe that it is appropriate for Industry Members to maintain a log of all clock synchronization events in order to demonstrate the Industry Members’ compliance with the Proposed Compliance Rule and the CAT NMS Plan and to retain such log for five-years.171 The Participants noted that the Business Clock synchronization log was discussed and considered in the CAT NMS Plan Proposing and Adopting Releases, and that the Commission considered an alternative where Industry Members would record only exceptions to the clock synchronization requirement. Because the CAT NMS Plan contains the requirement that logs be created and retained for five-years, the Participants stated that the retention period set forth in the Participants’ Proposed Compliance Rules is consistent with the data retention period applicable to the Central Repository as set forth in Rule 613(e)(8).

With respect to the clock synchronization procedures in the proposed CAT Compliance Rules, one commenter also stated that proposed Rules “[d]o not contain any definition of clock synchronization certification procedures and schedules, reporting procedures for violation notification or any specifics regarding documentation requirements.”172 This commenter requested that the date for compliance with the clock synchronization procedures be delayed, and requested that there be the adoption of “one set of procedures for clock synchronization management and reporting to regulators be adopted across FINRA and CAT.”173

In response, the Participants stated that they agree it would be helpful to provide Industry Members with additional guidance regarding Industry Members’ compliance with the clock synchronization and certification requirements set forth in the CAT NMS Plan and the Proposed Compliance Rules.174 Accordingly, the Participants stated that they have issued, or intend to issue, to their members guidance approved by the Operating Committee regarding clock synchronization and certification procedures and schedules, and documentation requirements (i.e., regarding the logging of clock synchronization events). The Participants represented that they intend to issue this guidance prior to the initial March 15, 2017 compliance deadline. The Participants also noted that thereafter they will issue additional guidance approved by the Operating Committee regarding the reporting of violations of applicable clock synchronization thresholds. Accordingly, the Participants stated that they believe that the Proposed Compliance Rules need not be amended at this time.

Two commenters also discussed the application of the Firm Designated ID requirement in the CAT NMS Plan. Both commenters noted that the Proposed Compliance Rules require each Industry Member to provide a Firm Designated ID “for each Customer,” whereas a “Firm Designated ID,” in relevant part, is defined as a “unique identifier for each trading account.” Both commenters requested that the Participants amend the language of the Proposed Compliance Rules to reflect the Exemption Order.175

In response, the Participants stated that they recognize that the definition of Firm Designated ID and the reporting requirements set forth in Section 6.3 of the CAT NMS Plan, as well as the parallel provisions in the proposed Participant Compliance Rules are somewhat unclear.176 The Participants noted that the Customer Information Approach is intended to require that each broker-dealer assign a unique Firm Designated ID at the account level, rather than the customer level. Accordingly, the Participants state that Section 6.3(d)(i)(A) of the CAT NMS Plan, which refers to the assignment of a “Firm Designated ID(s) for each Customer,” should not be interpreted to mean that each Customer must have a unique Firm Designated ID, rather, a Firm Designated ID must be assigned at the account level, so that multiple Customers may have the same Firm Designated ID. The Participants further stated that they will consider issuing additional guidance, subject to the approval of the Operating Committee of the CAT NMS Plan, to Industry Members on this issue and, as necessary, whether to amend the CAT NMS Plan to clarify the use of Firm Designated IDs.

One commenter suggested that the Participants consider firms that are exempt from reporting to OATS as “Small Industry Members,” stating that “this should be so easy and so obviously warranted (given the huge incremental cost of first-time order reporting for those firms that choose to remain independent and comply) that we cannot imagine any objection.”177 This commenter also requested that a cost and benefit analysis should be performed to review the impact of the CAT on firms currently exempt from OATS.178

In response, the Participants stated they believe that the definition of Small Industry Member for purposes of the CAT NMS Plan and Participant Compliance Rules is appropriate and need not be amended.179 The Participants noted that as a threshold matter, this definition was created and adopted by the Commission rather than the Participants, and that the definition of “Small Industry Member” in the CAT

167 FIF Letter at 2.
168 FIF Letter at 2.
169 FIF Letter at 2.
170 FIF Letter at 2.
171 Participants’ Response Letter at 4.
172 FIF Letter at 3.
173 FIF Letter at 3.
174 Participants’ Response Letter at 5.
175 FIF Letter at 3–4; Thomson Reuters Letter at 2–5.
176 Participants’ Response Letter at 5.
177 Wachtel Letter at 1.
178 Wachtel Letter at 1.
179 Participants’ Response Letter at 6.
NMS Plan refers to the definition of “small broker-dealer” in Rule 613 of Regulation NMS. Rule 613(a)(3)(v) and (vi) define “small broker-dealer” by using the definition set forth in Rule 0–10(c) under the Exchange Act. In adopting Rule 613, the Participants noted that the Commission explained that defining “small broker-dealer” by reference to Rule 0–10(c) “is appropriate because it is an existing regulatory standard that is an indication of small entities for which regulators should be sensitive when imposing regulatory burden.” The Participants stated that they cannot modify the definition of “Small Industry Member” because it is based on the definition of small broker-dealer in Rule 613 and that the Commission would have to effectuate any change to the requirement that broker-dealers (other than “small broker-dealers”) must report to the CAT no later than two-years after the Effective Date. The Participants also noted that after the CAT is operational and the Central Repository begins to collect data, the Participants will conduct various assessments, as set forth in Section 6.6 of the CAT NMS Plan, regarding the operations and efficiency of the Plan Processor, CAT and Central Repository. As necessary, the Participants will consider whether to amend any requirements in the CAT NMS Plan or Proposed Compliance Rules, provided that such amendments are necessary or appropriate and comply with Rule 613 of Regulation NMS.

V. Discussion and Commission Findings

After carefully considering the proposed CAT Compliance Rules, the comments submitted, and the Participants’ response to the comments, the Commission finds that the proposals are consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges. Specifically, the Commission finds that the proposed rule changes are consistent with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and are not designed to permit unfair discrimination between customers, issuers, brokers or dealers. In addition, the Commission finds that the proposed rule changes are consistent with Section 6(b)(8) of the Act, which requires that the rules of a national securities exchange not impose any burden on competition that is not necessary or appropriate.

Rule 613(g) of Regulation NMS provides that each national securities exchange and national securities association shall file with the Commission pursuant to section 19(b)(2) of the Act and Rule 19b–4 on or before 60 days from approval of the CAT NMS Plan a proposed rule change to require its members to comply with the requirements of this section and the national market system plan approved by the Commission. In addition, Rule 608(c) of Regulation NMS provides that “[e]ach self-regulatory organization shall comply with the terms of any effective national market system plan of which it is a sponsor or participant. Each self-regulatory organization also shall, absent reasonable justification or excuse, enforce compliance with any such plan by its members and persons associated with its members.” The Exchanges, as Participants in the Plan, have obligations to comply, and enforce compliance by their members, with the terms of the Plan. Accordingly, the Exchanges filed these proposed rule changes to adopt their proposed CAT Compliance Rules, which would impose compliance obligations on the Exchanges’ members. As discussed below, the Commission also believes the proposals are consistent with the Act because they are designed to assist the Exchanges in meeting their regulatory obligations pursuant to Rule 608 of Regulation NMS and the Plan.

A. Definitions

The Commission finds that proposed CAT Compliance Rules addressing definitions are consistent with the Act as they implement the CAT NMS Plan. With the exception of the term “CAT Reporting Agent,” the definitions in proposed CAT Compliance Rules are consistent with the definitions of Article I, Section 1.1 of the CAT NMS Plan. With respect to the inclusion of a definition for “CAT Reporting Agent,” the Exchanges note that the CAT NMS Plan permits an Industry Member to use a third party, such as a vendor, to report the required data to the Central Repository on behalf of an Industry Member, and that as defined, a “CAT Reporting Agent” would be one type of Data Submitter, which term is defined in the CAT NMS Plan.

The Commission notes that two commenters discussed the need for further clarification on the application of the term “Firm Designated ID.” The Participants responded that the Customer Information Approach is intended to require that each broker-dealer assign a unique Firm Designated ID at the account level, rather than the customer level. Accordingly, a Firm Designated ID must be assigned at the account level, so multiple Customers may be associated with the same Firm Designated ID. The Commission believes that the definition of the term Firm Designated ID and its applicability to accounts is consistent with the Customer Information Approach and the CAT NMS Plan.

B. Clock Synchronization

The Commission finds that the proposed CAT Compliance Rules addressing clock synchronization are consistent with the Act as they implement the clock synchronization provisions of the CAT NMS Plan. The Commission notes that the proposed CAT Compliance Rules set out the clock synchronization requirements for the Exchanges’ members and that these clock synchronization requirements, including the synchronization standards, tolerance levels, documentation, certification and violation reporting are consistent with and implement the clock synchronization requirements of the CAT NMS Plan.

Note 116.

186 See supra note 27. The Commission also notes that NYSE MKT’s proposed change to NYSE MKT Rule 0—Equities, is reasonable to clarify that the CAT Compliance Rules would apply to Industry Members of the Exchange’s equities and options markets.

187 See supra note 116.

188 See CAT NMS Plan, Section 6.8.
As noted above, two commenters raised concerns about the clock synchronization requirements in proposed Rule 6820, including whether the synchronization requirements of the rule apply to Business Clocks that capture Manual Order Events; the definition of “time of allocation,” the necessity of the clock synchronization logs; and the details concerning the clock synchronization certification. The Participants responded by clarifying the applicability of the clock synchronization requirements to Allocation Reports, and by stating that the Participants intend to work with the Plan Processor to define various terms, including “time of allocation,” and to provide Technical Specifications approved by the Operating Committee—relating to time stamps on manual orders and electronic capture of manual orders, as well as the “time of allocation”—before Industry Members will be required to report to the Central Repository on November 15, 2018 (or November 15, 2019 for Small Industry Members) or comply with the February 19, 2018 Business Clock synchronization requirement. The Participants also provided further details about the utility of the synchronization logs and discussed the clock synchronization certification requirements. The Commission believes that the Participants’ response is reasonable and consistent with the Act.

C. Industry Member Data Reporting

The Commission finds that the provisions of the proposed CAT Compliance Rules regarding Industry Member data reporting are consistent with the Act as they implement the data reporting requirements for Industry Members that are required by the CAT NMS Plan. As noted above, each Exchange’s proposed CAT Compliance Rule is divided into five sections which address (1) recording and reporting Industry Member Data, (2) timing of the recording and reporting, (3) the applicable securities covered by the recording and reporting requirements, (4) the security symbology to be used in the recording and reporting, and (5) error correction requirements.

D. Customer Information Reporting

The Commission finds that the provisions of the proposed CAT Compliance Rules regarding the data reported to the CAT in order to identify Customers are consistent with the Act as they implement the reporting provisions of the CAT NMS Plan relating to the identification of Customers.

E. Industry Member Information Reporting

The Commission finds that the provisions of the proposed CAT Compliance Rules which set out the requirements for Industry Members regarding the data that they must report to identify such Industry Member, including the timeframe for reporting such identifying information, are consistent with the Act as they implement the Industry Member reporting provisions of the CAT NMS Plan.

F. Time Stamps

The Commission finds that the provisions of the proposed CAT Compliance Rules regarding the time stamp increments to be used by Industry Members in their CAT Reporting are consistent with the Act as they implement the time stamp provisions of the CAT NMS Plan. In general, the proposed CAT Compliance Rules require Industry Members to record and report Industry Member Data to the Central Repository in milliseconds, but provide that, to the extent any Industry Member’s order handling or execution systems utilize time stamps in increments finer than milliseconds, such Industry Member is to record and report Industry Member Data to the Central Repository with time stamps in such finer increment. The proposed CAT Compliance Rules address the need for Industry Members to capture Manual Order Events in increments up to and including one second, provided that each Industry Member is required to record and report the Electronic Capture Time in milliseconds.

G. Clock Synchronization Rule Violation

The Commission finds that the proposed CAT Compliance Rules addressing clock synchronization rule violations are consistent with the Act as they implement the clock synchronization rule violation provisions of the CAT NMS Plan. Specifically, the Commission notes that the proposed CAT Compliance Rules describe potential violations of the clock synchronization time period requirements, and specifically state that an Industry Member that engages in a pattern or practice of reporting Reportable Events outside of the required clock synchronization time period without reasonable justification or exceptional circumstances may be considered in violation of these Rules.

H. Connectivity and Data Transmission

The Commission finds that the provisions of the proposed CAT Compliance Rules addressing connectivity and data transmission are consistent with the Act as they implement the connectivity and data transmission provisions of the CAT NMS Plan. The proposed CAT Compliance Rules require each Industry Member to transmit data as required under the CAT NMS Plan to the Central Repository utilizing such format(s) as may be provided by the Plan Processor and approved by the Operating Committee, and require each Industry Member to connect to the Central Repository using a secure method(s), including, but not limited to, private line(s) and virtual private network connection(s).

The proposed CAT Compliance Rules permit Industry Members to use CAT Reporting Agents to fulfill their data reporting obligations related to the CAT. The Commission notes that these provisions of the proposed CAT Compliance Rules are substantively similar to FINRA Rule 7450(c), which permits OATS Reporting Members to enter into agreements with Reporting Agents to fulfill the OATS obligations of the OATS Reporting Member, specifies responsibilities and procedures for maintaining such agreements between the OATS Reporting Member and the Reporting Members, and clarifies that an OATS Reporting Member remains primarily responsible for compliance with the OATS reporting rules.

I. Development and Testing

The Commission finds that the proposed CAT Compliance Rules addressing development and testing are consistent with the Act as they implement the development and testing provisions of the CAT NMS Plan. The proposed CAT Compliance Rules address Industry Members’ connectivity and testing requirements, including
connectivity and acceptance testing timelines. The proposed CAT Compliance Rules address the requirements relating to Industry Members’ reporting of Customer and Industry Member information, the submission of order data, including the Quote Sent time to be reported by Options Market Makers. The proposed CAT Compliance Rules also require that each Industry Member shall participate in the testing related to the Central Repository, including any industry-wide disaster recovery testing.

J. Recordkeeping

The Commission finds that the proposed CAT Compliance Rules addressing recordkeeping are consistent with the Act. The Commission notes that the proposed CAT Compliance Rules require each Industry Member to maintain and preserve, and specifies the manner in which such records must be maintained and preserved, information required to be recorded under each Exchange’s proposed CAT Compliance Rule for the period of time and accessibility specified in Rule 17a-4(b). Because the proposed CAT Compliance Rules incorporate Rule 17a-4(b) and implements the recordkeeping provision of the CAT NMS Plan, the Commission finds that the recordkeeping provisions of the proposed CAT Compliance Rules are consistent with the Act.

K. Timely, Accurate and Complete Data

The Commission finds that the proposed CAT Compliance Rules addressing timely, accurate and complete data are consistent with the Act as they implement the requirements for reporting data to the CAT as set forth in the CAT NMS Plan. The Exchanges note that the proposed CAT Compliance Rules implement the requirement in Rule 613 and the CAT NMS Plan that data reported to the CAT be timely, accurate and complete. Specifically, the proposed CAT Compliance Rules require that Industry Members record and report data to the Central Repository as required by each Exchange’s proposed CAT Compliance Rule in a manner that ensures the timeliness, accuracy, integrity and completeness of such data.

The proposed CAT Compliance Rules require Industry Members to accurately provide the LEIs in their records as required by each Exchange’s proposed CAT Compliance Rule and states that Industry Members may not knowingly submit inaccurate LEIs to the Central Repository. The proposed CAT Compliance Rules note, however, that this requirement does not impose any additional due diligence obligations on Industry Members with regard to LEIs for CAT purposes. The proposed CAT Compliance Rules also require Industry Members to be in compliance with the Error Rate as set forth in the CAT NMS Plan and the Compliance Thresholds as discussed in the CAT NMS Plan and determined by the Operating Committee. The proposed CAT Compliance Rules implement the CAT NMS Plan’s provisions.

L. Compliance Dates

The Commission finds that the compliance dates in the proposed CAT Compliance Rules are consistent with the Act, as they implement the compliance dates for reporting data to the CAT as set forth in the CAT NMS Plan and an exemptive order issued by the Commission. The proposed CAT Compliance Rules state that, except as otherwise set forth in each Exchange’s proposed CAT Compliance Rule, the compliance date for the proposed CAT Compliance Rules will be the date of Commission approval of the proposed CAT Compliance Rules.

The proposed CAT Compliance Rules state that each Industry Member that captures time in milliseconds shall comply with the provisions of each Exchange’s proposed Rule regarding Business Clock synchronization on or before February 19, 2018. The Commission notes that the compliance date for Industry Members regarding Business Clocks that do not capture time in milliseconds reflects the exemptive relief requested by the Participants and granted by the Commission with regard to the clock synchronization requirements related to Business Clocks that do not capture time in milliseconds.

The proposed CAT Compliance Rules also require each Industry Member (other than Small Industry Members) to record and report the Industry Member Data to the Central Repository by November 15, 2018, and each Industry Member that is a Small Industry Member to record and report the Industry Data to the Central Repository by November 15, 2019.

The proposed CAT Compliance Rules implement the CAT NMS Plan’s provisions regarding the reporting of Industry Member data to the Central Repository.

The Commission notes that one commenter also requested that the Exchanges classify all firms currently exempt from reporting to OATS to be classified as a “Small Industry Member” as defined by the CAT NMS Plan. The commenter notes that some OATS exempt firms would be classified as Large Industry Members but really should be subject to the three year implementation timeframe for Small Industry Members. The Participants responded that the definition of “Small Industry Member” is appropriate because it is an existing regulatory standard. The Commission believes that the Exchanges’ proposed rule changes’ use of the “Small Industry Member” definition is consistent with the CAT NMS Plan.

The Commission notes that a commenter suggested that a cost/benefit analysis be performed to review the impact of CAT on firms currently exempt from reporting to OATS. The Participants responded that the Commission had already undertaken into account the impact of CAT on firms currently exempt from OATS. The Commission likewise notes that it took into account the impact of the Plan on firms currently exempt from reporting to OATS when it approved the CAT NMS Plan.

VI. Conclusion


201 See supra note 142.
202 See supra note 143.
203 See supra note 144.
204 Such compliance dates are consistent with the compliance dates set forth in SEC Rule 613(a)(3)(v) and (vi), and Sections 6.7(a)(v) and (vi) of the CAT NMS Plan.
205 Wachtel Letter at 1.
For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.207
Eduardo A. Aleman,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations; ISE Gemini, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Rename the Exchange

March 15, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),1 and Rule 19b–4 thereunder,2 notice is hereby given that on March 7, 2017, ISE Gemini, LLC (“ISE Gemini” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. 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 amend its Constitution, Second Amended and Restated LLC Agreement, Rule Book, and Fee Schedule to rename itself Nasdaq GEMX, LLC.

The text of the proposed rule change is available on the Exchange’s Web site at www.ise.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 Exchange 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 these 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 aspects of such statements.

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

1. Purpose

The purpose of the proposed rule change is to rename the Exchange to reflect its new placement within the Nasdaq, Inc. corporate structure in connection with the March 9, 2016 acquisition by Nasdaq of the capital stock of U.S. Exchange Holdings, and the thereby indirectly acquiring all of the interests of the International Securities Exchange, LLC, ISE Gemini, LLC and ISE Mercury, LLC.3 Specifically, all references in the Constitution, Second Amended and Restated LLC Agreement, Rule Book and Fee Schedule to “ISE Gemini, LLC” shall be amended to “Nasdaq GEMX, LLC.”

The Exchange proposes to amend its name on April 3, 2017.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,4 in general, and furthers the objectives of Section 6(b)(5) of the Act,5 in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest by renaming the Exchange to reflect its current ownership.

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 not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impact the intense competition that exists in the options market. The name change will reflect the current ownership structure and unify the options markets operated by Nasdaq, Inc.

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

No written comments were either solicited or received.

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

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 for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act6 and Rule 19b–4(f)(6) thereunder.7

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)9 permits the Commission to 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 Exchange may amend its name as of April 3, 2017, to coincide with the full symbol migration to INET, a Nasdaq, Inc. supported architecture.10 The Exchange stated that it began a six week symbol rollout to INET on February 27, 2017, and that all symbols will have migrated on April 3, 2017. The Commission believes the waiver of the operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the operative delay and

7 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.
