

Mahagan; *Comments Due*: March 24, 2017.

6. *Docket No(s)*.: CP2017–138; *Filing Title*: Notice of United States Postal Service of Filing a Functionally Equivalent Global Expedited Package Services 7 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal; *Filing Acceptance Date*: March 15, 2017; *Filing Authority*: 39 CFR 3015.5; *Public Representative*: Erin Mahagan; *Comments Due*: March 23, 2017.

7. *Docket No(s)*.: CP2017–139; *Filing Title*: Notice of United States Postal Service of Filing a Functionally Equivalent Global Expedited Package Services 3 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal; *Filing Acceptance Date*: March 15, 2017; *Filing Authority*: 39 CFR 3015.5; *Public Representative*: Max E. Schnidman; *Comments Due*: March 23, 2017.

8. *Docket No(s)*.: CP2017–140; *Filing Title*: Notice of United States Postal Service of Filing a Functionally Equivalent Global Expedited Package Services 3 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal; *Filing Acceptance Date*: March 15, 2017; *Filing Authority*: 39 CFR 3015.5; *Public Representative*: Max E. Schnidman; *Comments Due*: March 24, 2017.

This notice will be published in the **Federal Register**.

**Stacy L. Ruble**,

*Secretary*.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–80256; File Nos. SR–BatsBYX–2017–02; SR–BatsBZX–2017–08; SR–BatsEDGA–2017–03; SR–BatsEDGX–2017–08; SR–BOX–2017–07; SR–C2–2017–007; SR–CBOE–2017–012; SR–CHX–2017–03; SR–ISE–2017–08; SR–IEX–2017–04; SR–ISEGemini–2017–04; SR–ISEMercury–2017–03; SR–MIAX–2017–03; SR–PEARL–2017–04; SR–NASDAQ–2017–008; SR–BX–2017–007; SR–PHLX–2017–07; SR–NYSE–2017–01; SR–NYSEArca–2017–03; SR–NYSEArca–2017–04; SR–NYSEMKT–2017–02; SR–NSX–2017–03]

**Self-Regulatory Organizations; Bats BYX Exchange Inc.; Bats BZX Exchange, Inc.; Bats EDGA Exchange, Inc.; Bats EDGX Exchange, Inc.; BOX Options Exchange LLC; C2 Options Exchange, Incorporated; Chicago Board Options Exchange, Incorporated; Chicago Stock Exchange, Inc.; International Securities Exchange, LLC; Investors Exchange LLC; ISE Gemini, LLC; ISE Mercury, LLC; Miami International Securities Exchange LLC; MIAX PEARL, LLC; The NASDAQ Stock Market LLC; NASDAQ BX, Inc.; NASDAQ PHLX, Inc.; New York Stock Exchange LLC; NYSE Arca, Inc.; NYSE MKT LLC; NYSE National, Inc.; Order Approving Proposed Rule Changes To Adopt Consolidated Audit Trail Compliance Rules**

March 15, 2017.

### I. Introduction

On January 17, 2017,<sup>1</sup> January 30, 2017,<sup>2</sup> January 31, 2017,<sup>3</sup> February 1, 2017,<sup>4</sup> and February 2, 2017,<sup>5</sup> 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”),

<sup>1</sup> The New York Stock Exchange LLC, NYSE Arca, Inc., and NYSE MKT LLC filed their proposed rule changes on January 17, 2017.

<sup>2</sup> Bats BYX Exchange, Inc., Bats BZX Exchange, Inc., Bats EDGA Exchange, Inc., Bats EDGX Exchange, Inc., C2 Options Exchange, Incorporated, Chicago Board Options Exchange, Incorporated, International Securities Exchange, LLC, Miami International Securities Exchange LLC, NASDAQ PHLX LLC and NYSE National Inc. filed their proposed rule changes on January 30, 2017.

<sup>3</sup> BOX Options Exchange LLC and The NASDAQ Stock Market LLC filed their proposed rule changes on January 31, 2017.

<sup>4</sup> Chicago Stock Exchange, Inc. and MIAX PEARL, LLC filed their proposed rule changes on February 1, 2017.

<sup>5</sup> International Securities Exchange, LLC, ISE Gemini, LLC, ISE Mercury, LLC and NASDAQ BX, Inc. filed their proposed rule changes on February 2, 2017.

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”) (f/k/a National Stock Exchange, Inc.)<sup>6</sup> (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”)<sup>7</sup> and Rule 19b–4 thereunder,<sup>8</sup> 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”)(“CAT Compliance Rules” or “Rules”).<sup>9</sup> On January 30, 2017, NYSE, NYSE Arca, and NYSE MKT each submitted amendments to their respective proposed rule filings.<sup>10</sup> Those proposed rule changes were published for comment in the **Federal Register** on February 6, 2017.<sup>11</sup> The proposed rule changes submitted by Bats BYX, Bats BZX, Bats EDGX, BOX, CBOE, CHX, IEX, MIAX, MIAX PEARL, NYSE National, NASDAQ, and NASDAQ PHLX were published for comment in the **Federal Register** on February 8, 2017.<sup>12</sup> The proposed rule

<sup>6</sup> NYSE National filed SR–NSX–2017–03 as the National Stock Exchange, Inc.

<sup>7</sup> 15 U.S.C. 78s(b)(1).

<sup>8</sup> 17 CFR 240.19b–4.

<sup>9</sup> 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.

<sup>10</sup> These amendments replaced the original proposed rule changes in their entirety prior to publication of these proposed rule changes for notice and comment.

<sup>11</sup> See Securities Exchange Act Release Nos. 79907 (January 31, 2017), 82 FR 9413 (“NYSE Notice”); 79911 (January 31, 2017), 82 FR 9435 (“NYSE MKT Notice”); 79909 (January 31, 2017) 82 FR 9464 (“NYSE Arca Notice 1”); 79908 (January 31, 2017), 82 FR 9450 (“NYSE Arca Notice 2”).

<sup>12</sup> See Securities Exchange Act Release Nos. 79944 (February 2, 2017), 82 FR 9846 (“Bats BYX Notice”); 79927 (February 2, 2017), 82 FR 9874 (February 8, 2017) (“Bats BZX Notice”); 79962 (February 3, 2017), 82 FR 10047 (“Bats EDGA

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.<sup>13</sup> On March 7, 2017, BX, ISE, ISE Gemini, ISE Mercury, NASDAQ and PHLX each filed an amendment to its respective proposed rule change.<sup>14</sup> The Commission received 3 comments in response to the proposed rule changes.<sup>15</sup> On March 15, the Participants<sup>16</sup> submitted a response to the comment letters.<sup>17</sup> This order approves the proposed rule changes.<sup>18</sup>

## 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, PHLX, NASDAQ, NYSE, NYSE MKT, NYSE Arca, and NYSE National (collectively, the “Participants”) filed with the Commission, pursuant to Section 11A of the Exchange Act<sup>19</sup> and Rule 608 of Regulation NMS thereunder,<sup>20</sup> the CAT

Notice”); 79949 (February 2, 2017), 82 FR 9765 (“Bats EDGX Notice”); 79932 (February 2, 2017), 82 FR 9819 (“BOX Notice”); 79950 (February 2, 2017), 82 FR 9916 (“CBOE Notice”); 79948 (February 2, 2017), 82 FR 9904 (“CHX Notice”); 79934 (February 2, 2017), 82 FR 9891 (“IEX Notice”); 79937 (February 2, 2017), 82 FR 9790 (“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 9831 (“NASDAQ Notice”); 79945 (February 2, 2017), 82 FR 9778 (“Phlx Notice”).

<sup>13</sup> See Securities Exchange Act Release Nos. 79960 (February 3, 2017), 82 FR 10159 (“BX Notice”); 79953 (February 3, 2017), 82 FR 9819 (“C2 Notice”); 79967 (February 3, 2017), 82 FR 10105 (“ISE Notice”); 79965 (February 3, 2017), 82 FR 10147 (“ISE Gemini Notice”); 79963 (February 3, 2017), 82 FR 10130 (“ISE Mercury Notice”).

<sup>14</sup> These amendments modified Section 2 of the Form 19b–4s submitted by BX, ISE, ISE Gemini, ISE Mercury, NASDAQ, and Phlx 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.

<sup>15</sup> See letters from William H. Herbert, Managing Director, Financial Information Forum, dated March 1, 2017 (“FIF 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 to SR–FINRA–2017–003, however the comments therein are applicable to all the CAT Compliance Rules, and therefore are discussed in this Order.

<sup>16</sup> See *infra* Section II.

<sup>17</sup> See Letter from Participants to Brent J. Fields, Secretary, Commission, dated March 15, 2017 (“Participants’ Response Letter”).

<sup>18</sup> 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.

<sup>19</sup> 15 U.S.C. 78k–1.

<sup>20</sup> 17 CFR 242.608.

NMS Plan.<sup>21</sup> The Participants filed the Plan to comply with Rule 613 of Regulation NMS under the Exchange Act.<sup>22</sup> The Plan was published for comment in the **Federal Register** on May 17, 2016,<sup>23</sup> and approved by the Commission, as modified, on November 15, 2016.<sup>24</sup>

The Plan is designed to create, implement and maintain a consolidated audit trail (“CAT”) that would capture customer and order event information for orders in NMS Securities and OTC Equity Securities, across all markets, from the time of order inception through routing, cancellation, modification, or execution in a single consolidated data source. Each Participant is required to enforce compliance by its Industry Members, as applicable, with the provisions of the Plan, by adopting a Compliance Rule applicable to their Industry Members.<sup>25</sup> The Exchanges’ proposed rules set forth Compliance Rules implementing provisions of the CAT NMS Plan that are applicable to their members.<sup>26</sup>

## III. Description of the Proposed Rule Changes

The proposed CAT Compliance Rules include twelve rules covering the following areas: (1) Definitions; (2) clock synchronization; (3) Industry Member Data reporting; (4) Customer information reporting; (5) Industry Member information reporting; (6) time stamps; (7) clock synchronization rule violations; (8) connectivity and data transmission; (9) development and testing; (10) recordkeeping; (11) timely, accurate and complete data; and (12) compliance dates.

<sup>21</sup> See Letter from the Participants to Brent J. Fields, Secretary, Commission, dated September 30, 2014; and Letter from Participants to Brent J. Fields, Secretary, Commission, dated February 27, 2015. On December 24, 2015, the Participants submitted an amendment to the CAT NMS Plan. See Letter from Participants to Brent J. Fields, Secretary, Commission, dated December 23, 2015. The CAT NMS Plan was approved by the Commission, with limited changes made by the Commission, on November 15, 2016. See *infra* note 24.

<sup>22</sup> 17 CFR 242.613.

<sup>23</sup> Securities Exchange Act Release No. 77724 (April 27, 2016), 81 FR 30614 (May 17, 2016).

<sup>24</sup> Securities Exchange Act Release No. 79318 (November 15, 2016), 81 FR 84696 (November 23, 2016) (“Approval Order”).

<sup>25</sup> See 17 CFR 242.613(g)(1).

<sup>26</sup> The Commission notes that the CAT NMS Plan defines an “Industry Member” as a member of a national securities exchange or a member of a national securities association. CAT NMS Plan, *supra* note 21, at Section 1.1. Because the Exchanges’ proposed CAT Compliance Rules implement the CAT NMS Plan, the term “Industry Member” is used throughout these Rules, and the term “Industry Member” means a member of the Exchange. The Commission notes that the individual Exchanges use different terms in their rulebooks to refer to an “Industry Member.”

## A. Definitions

The proposed CAT Compliance Rules set forth the definitions for the terms used in each Exchange’s proposed CAT Compliance Rule.<sup>27</sup> 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,<sup>28</sup> 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.”<sup>29</sup> Rule 613(c)(8) requires Industry Members to use the same Customer-ID for each Customer.<sup>30</sup> 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.<sup>31</sup> 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

<sup>27</sup> See proposed Bats BYX Rule 4.5; Bats BZX Rule 4.5; Bats EDGA Rule 4.5; Bats EDGX Rule 4.5; BX Rule 900 and Chapter IX, Section 8, paragraph (a); BOX Rule 16010; C2 Chapter 6, Section F; CBOE Rule 6.85; CHX Article 23, Rule 1; IEX Rule 11.610; ISE Rule 900; ISE Gemini Rule 900; ISE Mercury Rule 900; MIAx Rule 1701; MIAx PEARL Chapter XVII; Nasdaq Rules 6810 and Chapter IX, Section 8, paragraph (a); NYSE Rule 6810; NYSE Arca Equities Rule 6.6810; NYSE Arca Options Rule 11.6810; NYSE MKT Rule 6810; NYSE National Rule 14.1; Phlx Rule 910A.

<sup>28</sup> 17 CFR 242.613(c)(7)(i)(A).

<sup>29</sup> 17 CFR 242.613(j)(5).

<sup>30</sup> 17 CFR 242.613(c)(8).

<sup>31</sup> See Securities Exchange Act Release No. 77265 (March 1, 2016), 81 FR 11856 (March 7, 2016) (“Exemption Order”). See also Letter from Participants to Brent J. Fields, Secretary, Commission, dated January 30, 2015 (“Exemptive Request Letter”).

any given date).<sup>32</sup> 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 Exchanges note 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(j)(4) to "include, but not be limited to, account number, account type, customer type, date account opened, and large trader identifier (if applicable)." <sup>33</sup> Therefore, when reporting Customer Account Information, an Industry Member is required to report the date an account was opened. The Exchanges note 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.<sup>34</sup> 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 Exchanges state 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.<sup>35</sup>

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, the date an account was established at the relevant Industry Member, either directly or via transfer.<sup>36</sup>

The proposed CAT Compliance Rules state that an "Account Effective Date" means, 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.<sup>37</sup>

The proposed CAT Compliance Rules state that "Account Effective Date" means, 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.<sup>38</sup>

The proposed CAT Compliance Rules state that an "Account Effective Date" means, 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: (1) The date established for the account in the Industry Member or in a system of the

<sup>36</sup> See proposed Bats BYX Rule 4.5(a)(2); Bats BZX Rule 4.5(a)(2); Bats EDGA Rule 4.5(a)(2); Bats EDGX Rule 4.5(a)(2); BX Rules 6810(a)(2) and Chapter IX, Section 8, paragraph (a)(i)(2); BOX Rule 16010(a)(2); C2 Chapter 6, Section F; CBOE Rule 6.85(a)(ii); CHX Article 23, Rule 1(a)(2); IEX Rule 11.610(a)(2); ISE Rule 900(a)(1); ISE Gemini Rule 900(a)(1); ISE Mercury 900(a)(1); MIAx Rule 1701(a)(2); MIAx PEARL Chapter XVII; NASDAQ Rules 6810(a)(2) and Chapter IX, Section 8, paragraph (a)(i)(2); NYSE Rule 6810(a)(2); NYSE Arca Equities Rule 6.6810(a)(2); NYSE Arca Options Rule 11.6810(a)(2); NYSE MKT Rule 6810(a)(2); NYSE National Rule 14.1(a)(2); Phlx Rule 910(a)(2).

<sup>37</sup> See proposed Bats BYX Rule 4.5(a)(3); Bats BZX Rule 4.5(a)(3); Bats EDGA Rule 4.5(a)(3); Bats EDGX Rule 4.5(a)(3); BX Rules 6810(a)(3) and Chapter IX, Section 8, paragraph (a)(i)(3); BOX Rule 16010(a)(3); C2 Chapter 6, Section F; CBOE Rule 6.85(a)(iii); CHX Article 23, Rule 1(a)(3); IEX Rule 11.610(a)(3); ISE Rule 900(a)(3); ISE Gemini Rule 900(a)(3); ISE Mercury 900(a)(3); MIAx Rule 1701(a)(3); MIAx PEARL Chapter XVII; NASDAQ Rule 6810(a)(3) and Chapter IX Section 8, paragraph (a)(i)(3); NYSE Rule 6810(a)(3); NYSE Arca Equities Rule 6.6810(a)(3); NYSE Arca Options Rule 11.6810(a)(3); NYSE MKT Rule 6810(a)(3); NYSE National Rule 14.1(a)(3); Phlx Rule 910A(a)(3).

<sup>38</sup> See proposed Bats BYX Rule 4.5(a)(4); Bats BZX Rule 4.5(a)(4); Bats EDGA Rule 4.5(a)(4); Bats EDGX Rule 4.5(a)(4); BX Rules 6810(a)(4) and Chapter IX, Section 8, paragraph (a)(i)(4); BOX Rule 16010(a)(4); C2 Chapter 6, Section F; CBOE Rule 6.85(a)(iv); CHX Article 23, Rule 1(a)(4); IEX Rule 11.610(a)(4); ISE Rule 900(a)(4); ISE Gemini Rule 900(a)(4); ISE Mercury 900(a)(4); MIAx Rule 1701(a)(4); MIAx PEARL Chapter XVII; NASDAQ Rule 6810(a)(4) and Chapter IX Section 8, paragraph (a)(i)(4); NYSE Rule 6810(a)(4); NYSE Arca Equities Rule 6.6810(a)(4); NYSE Arca Options Rule 11.6810(a)(4); NYSE MKT Rule 6810(a)(4); NYSE National Rule 14.1(a)(4); Phlx Rule 910A(a)(4).

<sup>32</sup> See *infra* Section III.A.17 for a discussion of the application of the term "Firm Designated ID."

<sup>33</sup> 17 CFR 242.613(j)(4).

<sup>34</sup> On September 2, 2015, the Participants filed a supplement to the Exemptive Request Letter. See Letter from the Participants to Brent J. Fields, Secretary, Commission, dated September 2, 2015. This supplement to the Exemptive Request Letter further addressed the use of an "effective date" in lieu of a "date account opened."

<sup>35</sup> See proposed Bats BYX Rule 4.5(a)(1); Bats BZX Rule 4.5(a)(1); Bats EDGA Rule 4.5(a)(1); Bats EDGX Rule 4.5(a)(1); BX Rules 6810(a)(1) and Chapter IX, Section 8, paragraph (a)(i)(1); BOX Rule 16010(a)(1); C2 Chapter 6, Section F; CBOE Rule 6.85(a)(i); CHX Article 23, Rule 1(a)(1); IEX Rule 11.610(a)(1); ISE Rule 900(a)(1); ISE Gemini Rule 900(a)(1); ISE Mercury 900(a)(1); MIAx Rule 1701(a)(1); MIAx PEARL Chapter XVII; NASDAQ Rule 6810(a)(1) and Chapter IX Section 8, paragraph (a)(i)(1); NYSE Rule 6810(a)(1); NYSE Arca Equities Rule 6.6810(a)(1); NYSE Arca Options Rule 11.6810(a)(1); NYSE MKT Rule 6810(a)(1); NYSE National Rule 14.1(a)(1); Phlx Rule 910A(a)(1).

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).<sup>39</sup>

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;<sup>40</sup> (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;<sup>41</sup> (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;<sup>42</sup> 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);<sup>43</sup> 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.<sup>44</sup>

## 2. Active Accounts

Under the Customer Information Approach, Industry Members are

<sup>39</sup> See proposed Bats BYX Rule 4.5(a)(5); Bats BZX Rule 4.5(a)(5); Bats EDGA Rule 4.5(a)(5); Bats EDGX Rule 4.5(a)(5); BX Rules 6810(a)(5) and Chapter IX, Section 8, paragraph (a)(i)(5); BOX Rule 16010(a)(5); C2 Chapter 6, Section F; CBOE Rule 6.85(a)(v); CHX Article 23, Rule 1(a)(5); IEX Rule 11.610(a)(5); ISE Rule 900(a)(5); ISE Gemini Rule 900(a)(5); ISE Mercury 900(a)(5); MIA X Rule 1701(a)(5); MIA X PEARL Chapter XVII; NASDAQ Rule 6810(a)(5) and Chapter IX Section 8, paragraph (a)(i)(5); NYSE Rule 6810(a)(5); NYSE Arca Equities Rule 6.6810(a)(5); NYSE Arca Options Rule 11.6810(a)(5); NYSE MKT Rule 6810(a)(5); NYSE National Rule 14.1(a)(5); Phlx Rule 910A(a)(5).

<sup>40</sup> See *supra* note 36.

<sup>41</sup> See *supra* note 37.

<sup>42</sup> See *supra* note 38.

<sup>43</sup> See *supra* note 39.

<sup>44</sup> *Id.*

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.<sup>45</sup> The Exchanges state 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 subaccounts to which the execution is allocated (in whole or in part).”<sup>46</sup> The Exchanges note that the Participants requested and received from the Commission exemptive relief from Rule 613 for an alternative to this approach (“Allocation Report Approach”).<sup>47</sup> The Allocation Report Approach permits Industry Members to record and report to the Central Repository an Allocation Report that includes, among other things, the Firm Designated ID for any account(s) to which executed shares are allocated when an execution is allocated in whole or part in lieu of requiring the reporting of the account number for any subaccount to which an execution is allocated, as is required by Rule 613.<sup>48</sup> Under Rule 613, regulators would be able to link the subaccount to which an allocation was made to a specific order. In contrast, under the Allocation Report Approach, regulators would only be able to link an allocation to the account to which it was made, and not to a specific order.

### (b) Definition of Allocation Report

To assist in implementing the Allocation Report Approach, the proposed CAT Compliance Rules define

<sup>45</sup> See proposed Bats BYX Rule 4.5(b); Bats BZX Rule 4.5(b); Bats EDGA Rule 4.5(b); Bats EDGX Rule 4.5(b); BX Rules 6810(b) and Chapter IX, Section 8, paragraph (a)(ii); BOX Rule 16010(b); C2 Chapter 6, Section F; CBOE Rule 6.85(b); CHX Article 23, Rule 1(b); IEX Rule 11.610(b); ISE Rule 900(b); ISE Gemini Rule 900(b); ISE Mercury 900(b); MIA X Rule 1701(b); MIA X PEARL Chapter XVII; NASDAQ Rules 6810(b) and Chapter IX Section 8, paragraph (a)(ii); NYSE Rule 6810(b); NYSE Arca Equities Rule 6.6810(b); NYSE Arca Options Rule 11.6810(b); NYSE MKT Rule 6810(b); NYSE National Rule 14.1(b); and Phlx Rule 910A(b).

<sup>46</sup> 17 CFR 242.613(c)(7)(vi)(A).

<sup>47</sup> On April 3, 2015, the Participants filed a supplement related to their Exemptive Request Letter. See Letter from Robert Colby, FINRA, on behalf of the Participants, to Brent J. Fields, Secretary, Commission, dated April 3, 2015. This supplement provided examples of how the proposed relief related to allocations would operate.

<sup>48</sup> See Exemptive Request Letter, *supra* note 31, at 26–27; Exemption Order, *supra* note 31.

an “Allocation Report.” Specifically, an “Allocation Report” means a report made to the Central Repository by an Industry Member that identifies the Firm Designated ID for any account(s), including subaccount(s), to which executed shares are allocated and provides the security that has been allocated, the identifier of the firm reporting the allocation, the price per share of shares allocated, the side of shares allocated, the number of shares allocated to each account, and the time of the allocation; provided, for the avoidance of doubt, any such Allocation Report shall not be required to be linked to particular orders or executions.<sup>49</sup> The Exchanges state that this is the same definition as set forth in Section 1.1 of the CAT NMS Plan.

## 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.<sup>50</sup> The Exchanges state that this is the same definition as set forth in Section 1.1 of the CAT NMS 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 Exchanges state that this change is intended to recognize that the Industry Members’ obligations with regard to the CAT are set forth in

<sup>49</sup> See proposed Bats BYX Rule 4.5(c); Bats BZX Rule 4.5(c); Bats EDGA Rule 4.5(c); Bats EDGX Rule 4.5(c); BX Rules 6810(c) and Chapter IX, Section 8, paragraph (a)(iii); BOX Rule 16010(c); C2 Chapter 6, Section F; CBOE Rule 6.85(c); CHX Article 23, Rule 1(c); IEX Rule 11.610(c); ISE Rule 900(c); ISE Gemini Rule 900(c); ISE Mercury 900(c); MIA X Rule 1701(c); MIA X PEARL Chapter XVII; NASDAQ Rules 6810(c) and Chapter IX Section 8, paragraph (a)(iii); NYSE Rule 6810(c); NYSE Arca Equities Rule 6.6810(c); NYSE Arca Options Rule 11.6810(c); NYSE MKT Rule 6810(c); NYSE National Rule 14.1(c); Phlx Rule 910A(c).

<sup>50</sup> See proposed Bats BYX Rule 4.5(d); Bats BZX Rule 4.5(d); Bats EDGA Rule 4.5(d); Bats EDGX Rule 4.5(d); BX Rules 6810(d) and Chapter IX, Section 8, paragraph (a)(iv); BOX Rule 16010(d); C2 Chapter 6, Section F; CBOE Rule 6.85(d); CHX Article 23, Rule 1(d); IEX Rule 11.610(d); ISE Rule 900(d); ISE Gemini Rule 900(d); ISE Mercury 900(d); MIA X Rule 1701(d); MIA X PEARL Chapter XVII; NASDAQ Rules 6810(d) and Chapter IX Section 8, paragraph (a)(iv); NYSE Rule 6810(d); NYSE Arca Equities Rule 6.6810(d); NYSE Arca Options Rule 11.6810(d); NYSE MKT Rule 6810(d); NYSE National Rule 14.1(d); and Phlx Rule 910A(d).

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.<sup>51</sup> 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.<sup>52</sup>

#### 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 that allows the Central Repository to efficiently and accurately link all Reportable Events for an order, and all orders that result from the

<sup>51</sup> See proposed Bats BYX Rule 4.5(e); Bats BZX Rule 4.5(e); Bats EDGA Rule 4.5(e); Bats EDGX Rule 4.5(e); BX Rules 6810(e) and Chapter IX, Section 8, paragraph (a)(v); BOX Rule 16010(e); C2 Chapter 6, Section F; CBOE Rule 6.85(e); CHX Article 23, Rule 1(e); IEX Rule 11.610(e); ISE Rule 900(e); ISE Gemini Rule 900(e); ISE Mercury 900(e); MIAAX Rule 1701(e); MIAAX PEARL Chapter XVII; NASDAQ Rules 6810(e) and Chapter IX Section 8, paragraph (a)(iv); NYSE Rule 6810(e); NYSE Arca Equities Rule 6.6810(e); NYSE Arca Options Rule 11.6810(e); NYSE MKT Rule 6810(e); NYSE National Rule 14.1(e); and Phlx Rule 910A(e).

<sup>52</sup> See proposed Bats BYX Rule 4.5(f); Bats BZX Rule 4.5(f); Bats EDGA Rule 4.5(f); Bats EDGX Rule 4.5(f); BX Rules 6810(f) and Chapter IX, Section 8, paragraph (a)(vi); BOX Rule 16010(f); C2 Chapter 6, Section F; CBOE Rule 6.85(f); CHX Article 23, Rule 1(f); IEX Rule 11.610(f); ISE Rule 900(f); ISE Gemini Rule 900(f); ISE Mercury 900(f); MIAAX Rule 1701(f); MIAAX PEARL Chapter XVII; NYSE Rule 6810(f); NYSE Arca Equities Rule 6.6810(f); NYSE Arca Options Rule 11.6810(f); NYSE MKT Rule 6810(f); NYSE National Rule 14.1(f); and Phlx Rule 910A(f).

aggregation or disaggregation of such order.<sup>53</sup> The Exchanges state that this is the same definition as set forth in Rule 613(j)(1), and Section 1.1 of the CAT NMS Plan defines "CAT-Order-ID" by reference to Rule 613(j)(1).<sup>54</sup>

#### 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 Member.<sup>55</sup> 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,<sup>56</sup> as that term is used in the CAT NMS Plan. Therefore, the proposed CAT Compliance Rules define the term "CAT Reporting Agent" <sup>57</sup> 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.<sup>58</sup>

#### 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

<sup>53</sup> See proposed Bats BYX Rule 4.5(g); Bats BZX Rule 4.5(g); Bats EDGA Rule 4.5(g); Bats EDGX Rule 4.5(g); BX Rules 6810(g) and Chapter IX, Section 8, paragraph (a)(vii); BOX Rule 16010(g); C2 Chapter 6, Section F; CBOE Rule 6.85(g); CHX Article 23, Rule 1(g); IEX Rule 11.610(g); ISE Rule 900(g); ISE Gemini Rule 900(g); ISE Mercury 900(g); MIAAX Rule 1701(g); MIAAX PEARL Chapter XVII; NASDAQ Rules 6810(g) and Chapter IX Section 8, paragraph (a)(vii); NYSE Rule 6810(g); NYSE Arca Equities Rule 6.6810(g); NYSE Arca Options Rule 11.6810(g); NYSE MKT Rule 6810(g); NYSE National Rule 14.1(g); and Phlx Rule 910A(g).

<sup>54</sup> See 17 CFR 242.613(j)(1).

<sup>55</sup> See CAT NMS Plan, *supra* note 21, at Appendix C, Section A.1(a).

<sup>56</sup> See *infra* Section III.A.14 defining "Data Submitter."

<sup>57</sup> The Exchanges also note that this definition is based on FINRA's definition of a "Reporting Agent" as set forth in FINRA's Order Audit Trail System ("OATS") rules. Specifically, FINRA Rule 7410(n) defines a "Reporting Agent" as a third party that enters into any agreement with a member pursuant to which the Reporting Agent agrees to fulfill such FINRA member's reporting obligations under FINRA Rule 7450. The Exchanges represent that the Reporting Agent for OATS fulfills a similar role to the CAT Reporting Agent.

<sup>58</sup> See proposed Bats BYX Rule 4.5(h); Bats BZX Rule 4.5(h); Bats EDGA Rule 4.5(h); Bats EDGX Rule 4.5(h); BX Rules 6810(h) and Chapter IX, Section 8, paragraph (a)(viii); BOX Rule 16010(h); C2 Chapter 6, Section F; CBOE Rule 6.85(h); CHX Article 23, Rule 1(h); IEX Rule 11.610(h); ISE Rule 900(h); ISE Gemini Rule 900(h); ISE Mercury 900(h); MIAAX Rule 1701(h); MIAAX PEARL Chapter XVII; NASDAQ Rules 6810(h) and Chapter IX, Section 8, paragraph (a)(viii); NYSE Rule 6810(h); NYSE Arca Equities Rule 6.6810(h); NYSE Arca Options Rule 11.6810(h); NYSE MKT Rule 6810(h); NYSE National Rule 14.1(h); and Phlx Rule 910A(h).

all information reported to the CAT pursuant to Rule 613 of Regulation NMS and the CAT NMS Plan.<sup>59</sup> 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 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.<sup>60</sup> The proposed CAT Compliance Rules define the Industry Member-specific rate noted as the term "Compliance Threshold."<sup>61</sup> 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

<sup>59</sup> See proposed Bats BYX Rule 4.5(i); Bats BZX Rule 4.5(i); Bats EDGA Rule 4.5(i); Bats EDGX Rule 4.5(i); BX Rules 6810(i) and Chapter IX, Section 8, paragraph (a)(ix); BOX Rule 16010(i); C2 Chapter 6, Section F; CBOE Rule 6.85(i); CHX Article 23, Rule 1(i); IEX Rule 11.610(i); ISE Rule 900(i); ISE Gemini Rule 900(i); ISE Mercury 900(i); MIAAX Rule 1701(i); MIAAX PEARL Chapter XVII; NYSE Rule 6810(i); NYSE Arca Equities Rule 6.6810(i); NYSE Arca Options Rule 11.6810(i); NYSE MKT Rule 6810(i); NYSE National Rule 14.1(i); and Phlx Rule 910A(i).

<sup>60</sup> See proposed Bats BYX Rule 4.15(d); Bats BZX Rule 4.15(d); Bats EDGA Rule 4.15(d); Bats EDGX Rule 4.15(d); BX Rules 6893(d) and Chapter IX, Section 8, subparagraph (k)(iv); BOX Rule 16093(d); C2 Chapter 6, Section F; CBOE Rule 6.95(d); CHX Article 23, Rule 11(d); IEX Rule 11.693(d); MIAAX Rule 1711(d); MIAAX PEARL Chapter XVII; ISE Rule 910(d); ISE Gemini Rule 910(d); ISE Mercury Rule 910(d); NASDAQ Rules 6893(d) and Chapter IX, Section 8, subparagraph (k)(iv); NYSE Rule 6893(d); NYSE Arca Equities Rule 6.6893(d); NYSE Arca Options Rule 11.6893(d); NYSE MKT Rule 6893(d); NYSE National Rule 14.11(d); and Phlx Rule 993A(d).

<sup>61</sup> See proposed Bats BYX Rule 4.5(j); Bats BZX Rule 4.5(j); Bats EDGA Rule 4.5(j); Bats EDGX Rule 4.5(j); BX Rules 6810(j) and Chapter IX, Section 8, paragraph (a)(x); BOX Rule 16010(j); C2 Chapter 6, Section F; CBOE Rule 6.85(j); CHX Article 23, Rule 1(j); IEX Rule 11.610(j); ISE Rule 900(j); ISE Gemini Rule 900(j); ISE Mercury 900(j); MIAAX Rule 1701(j); MIAAX PEARL Chapter XVII; NASDAQ Rules 6810(j) and Chapter IX, Section 8, paragraph (a)(x); NYSE Rule 6810(j); NYSE Arca Equities Rule 6.6810(j); NYSE Arca Options Rule 11.6810(j); NYSE MKT Rule 6810(j); NYSE National Rule 14.1(j); and Phlx Rule 910A(j).

“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).<sup>62</sup> The Exchanges state that this is the same definition as set forth in Rule 613(j)(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 of terms used in each Exchange’s proposed CAT Compliance Rule.<sup>63</sup> The Exchanges also note that Section 1.1 of the CAT NMS Plan defines “Customer” by reference to Rule 613(j)(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 trader identifier (if applicable).<sup>64</sup> 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.”<sup>65</sup> 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.<sup>66</sup> 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.

<sup>65</sup> See proposed Bats BYX Rule 4.5(l)(1); Bats BZX Rule 4.5(l)(1); Bats EDGA Rule 4.5(l)(1); Bats EDGX Rule 4.5(l)(1); C2 Chapter 6, Section F; CBOE Rule 6.85(l)(i); BX Rules 6810(l)(1) and Chapter IX, Section 8, paragraph (a)(xii)(1); BOX Rule 16010(l)(1); CHX Article 23, Rule 1(l)(1); IEX Rule 11.610(l)(1); ISE Rule 900(l)(1); ISE Gemini Rule 900(l)(1); ISE Mercury 900(l)(1); MIAx Rule 1701(l)(1); MIAx PEARL Chapter XVII; NASDAQ Rules 6810(l)(1) and Chapter IX, Section 8, paragraph (a)(xii)(1); NYSE Rule 6810(l)(1); NYSE Arca Equities Rule 6.6810(l)(1); NYSE Arca Options Rule 11.6810(l)(1); NYSE MKT Rule 6810(l)(1); NYSE National Rule 14.1(l)(1); and Phlx Rule 910A(l)(1).

<sup>66</sup> See proposed Bats BYX Rule 4.5(l)(2); Bats BZX Rule 4.5(l)(2); Bats EDGA Rule 4.5(l)(2); Bats EDGX Rule 4.5(l)(2); BX Rules 6810(l)(2) and Chapter IX, Section 8, paragraph (a)(xii)(2); BOX Rule 16010(l)(2); C2 Chapter 6, Section F; CBOE Rule 6.85(l)(ii); CHX Article 23, Rule 1(l)(2); IEX Rule 11.610(l)(2); ISE Rule 900(l)(2); ISE Gemini Rule 900(l)(2); ISE Mercury 900(l)(2); MIAx Rule 1701(l)(2); MIAx PEARL Chapter XVII; Nasdaq Rules 6810(l)(2) and Chapter IX, Section 8, paragraph (a)(xii)(2); NYSE Rule 6810(l)(2); NYSE Arca Equities Rule 6.6810(l)(2); NYSE Arca Options Rule 11.6810(l)(2); NYSE MKT Rule 6810(l)(2); NYSE National Rule 14.1(l)(2); and Phlx Rule 910A(l)(2).

<sup>62</sup> See proposed Bats BYX Rule 4.5(k); Bats BZX Rule 4.5(k); Bats EDGA Rule 4.5(k); Bats EDGX Rule 4.5(k); BX Rules 6810(k) and Chapter IX, Section 8, paragraph (a)(xi); BOX Rule 16010(k); C2 Chapter 6, Section F; CBOE Rule 6.85(k); CHX Article 23, Rule 1(k); IEX Rule 11.610(k); ISE Rule 900(k); ISE Gemini Rule 900(k); ISE Mercury 900(k); MIAx Rule 1701(k); MIAx PEARL Chapter XVII; NASDAQ Rules 6810(k) and Chapter IX, Section 8, paragraph (a)(xi); NYSE Rule 6810(k); NYSE Arca Equities Rule 6.6810(k); NYSE Arca Options Rule 11.6810(k); NYSE MKT Rule 6810(k); NYSE National Rule 14.1(k); and Phlx Rule 910A(k).

<sup>63</sup> 17 CFR 242.613(j)(3).

<sup>64</sup> See proposed Bats BYX Rule 4.5(l); Bats BZX Rule 4.5(l); Bats EDGA Rule 4.5(l); Bats EDGX Rule 4.5(l); BX Rules 6810(l) and Chapter IX, Section 8, paragraph (a)(xii); BOX Rule 16010(l); C2 Chapter 6, Section F; CBOE Rule 6.85(l); CHX Article 23, Rule 1(l); ISE Rule 900(l); ISE Gemini Rule 900(l); ISE Mercury 900(l); IEX Rule 11.610(l); MIAx Rule 1701(l); MIAx PEARL Chapter XVII; NASDAQ Rules 6810(l) and Chapter IX, Section 8, paragraph (a)(xii); NYSE Rule 6810(l); NYSE Arca Equities Rule 6.6810(l); NYSE Arca Options Rule 11.6810(l); NYSE MKT Rule 6810(l); NYSE National Rule 14.1(l); and Phlx Rule 910A(l).

## 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.<sup>67</sup> 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.<sup>68</sup> 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

<sup>67</sup> See proposed Bats BYX Rule 4.5(m); Bats BZX Rule 4.5(m); Bats EDGA Rule 4.5(m); Bats EDGX Rule 4.5(m); BX Rules 6810(m) and Chapter IX, Section 8, paragraph (a)(xiii); BOX Rule 16010(m); C2 Chapter 6, Section F; CBOE Rule 6.85(m); CHX Article 23, Rule 1(m); IEX Rule 11.610(m); ISE Rule 900(m); ISE Gemini Rule 900(m); ISE Mercury 900(m); MIAx Rule 1701(m); MIAx PEARL Chapter XVII; NASDAQ Rules 6810(m) and Chapter IX, Section 8, paragraph (a)(xiii); NYSE Rule 6810(m); NYSE Arca Equities Rule 6.6810(m); NYSE Arca Options Rule 11.6810(m); NYSE MKT Rule 6810(m); NYSE National Rule 14.1(m); and Phlx Rule 910A(m).

<sup>68</sup> See CAT NMS Plan, *supra* note 21 at Appendix C, Section A.1(a).

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.<sup>69</sup>

#### 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.<sup>70</sup> 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 monthly 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

<sup>69</sup> 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 Chapter 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; NASDAQ Rules 6810(n) and Chapter IX, Section 8, paragraph (a)(xiv); NYSE Rule 6810(n); NYSE Arca Equities Rule 6.6810(n); NYSE Arca Options Rule 11.6810(n); NYSE MKT Rule 6810(n); NYSE National Rule 14.1(n); and Phlx Rule 910A(n).

<sup>70</sup> See proposed Bats BYX Rule 4.5(o); Bats BZX Rule 4.5(o); Bats EDGA Rule 4.5(o); Bats EDGX Rule 4.5(o); BX Rules 6810(o) and Chapter IX, Section 8, paragraph (a)(xv); BOX Rule 16010(o); C2 Chapter 6, Section F; CBOE Rule 6.85(o); CHX Article 23, Rule 1(o); IEX Rule 11.610(o); ISE Rule 900(o); ISE Gemini Rule 900(o); ISE Mercury 900(o); MIAx Rule 1701(o); MIAx PEARL Chapter XVII; NYSE Rule 6810(o); NYSE Arca Equities Rule 6.6810(o); NYSE Arca Options Rule 11.6810(o); NYSE MKT Rule 6810(o); NYSE National Rule 14.1(o); and Phlx Rule 910A(o).

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.<sup>71</sup>

##### (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.<sup>72</sup> 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).<sup>73</sup>

##### (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.<sup>74</sup> The Operating Committee would review and reset the maximum Error Rate, at least annually.<sup>75</sup> 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.<sup>76</sup> 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

<sup>71</sup> Approval Order, *supra* note 24, at 84718.

<sup>72</sup> 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)(xvii); BOX Rule 16010(p); C2 Chapter 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)(xvi); NYSE Rule 6810(p); NYSE Arca Equities Rule 6.6810(p); NYSE Arca Options Rule 11.6810(p); NYSE MKT Rule 6810(p); NYSE National Rule 14.1(p); and Phlx Rule 910A(p).

<sup>73</sup> 17 CFR 242.613(j)(6).

<sup>74</sup> CAT NMS Plan, *supra* note 21, at Section 6.5(d)(i).

<sup>75</sup> CAT NMS Plan, *supra* note 21, at Appendix C, Section A.3(b).

<sup>76</sup> CAT NMS Plan, *supra* note 21, at Appendix C, Section A.3(b); 17 CFR 242.613(g)–(h).

obligations.<sup>77</sup> The CAT NMS Plan sets the initial Error Rate at 5%.<sup>78</sup> 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.<sup>79</sup>

#### 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.<sup>80</sup> 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).

<sup>77</sup> CAT NMS Plan, *supra* note 21, at Appendix C, Section A.3(b).

<sup>78</sup> CAT NMS Plan, *supra* note 21, at Section 6.5(d)(i).

<sup>79</sup> CAT NMS Plan, *supra* note 21, at Appendix C, Section A.3(b).

<sup>80</sup> 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)(xvii); BOX Rule 16010(q); C2 Chapter 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)(xvii); NYSE Rule 6810(q); NYSE Arca Equities Rule 6.6810(q); NYSE Arca Options Rule 11.6810(q); NYSE MKT Rule 6810(q) (NYSE MKT proposed adding a rule reference, in NYSE MKT Rule 0—Equities, to make clear due to the organization of its rulebook that “the proposed [CAT Compliance Rules] would apply to Industry Members of the Exchange’s equities and options markets.”); 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.”<sup>81</sup> 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.<sup>82</sup> 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.<sup>83</sup> The Exchanges state that this is the same definition as set forth in Section 1.1 of the CAT NMS Plan.

<sup>81</sup> See proposed Bats BYX Rule 4.5(r); Bats BZX Rule 4.5(r); Bats EDGA Rule 4.5(r); Bats EDGX Rule 4.5(r); BX Rules 6810(r) and Chapter IX, Section 8, paragraph (a)(xviii); BOX Rule 16010(r); C2 Chapter 6, Section F; CBOE Rule 6.85(r); CHX Article 23, Rule 1(r); IEX Rule 11.610(r); ISE Rule 900(r); ISE Gemini Rule 900(r); ISE Mercury 900(r); MIA X Rule 1701(r); MIA X PEARL Chapter XVII; NASDAQ Rules 6810(r) and Chapter IX, Section 8, paragraph (a)(xviii); NYSE Rule 6810(r); NYSE Arca Equities Rule 6.6810(r); NYSE Arca Options Rule 11.6810(r); NYSE MKT Rule 6810(r); NYSE National Rule 14.1(r); Phlx Rule 910A(r).

<sup>82</sup> See proposed Bats BYX Rule 4.5(s); Bats BZX Rule 4.5(s); Bats EDGA Rule 4.5(s); Bats EDGX Rule 4.5(s); BX Rules 6810(s) and Chapter IX, Section 8, paragraph (a)(xix); BOX Rule 16010(s); C2 Chapter 6, Section F; CBOE Rule 6.85(s); CHX Article 23, Rule 1(s); IEX Rule 11.610(s); ISE Rule 900(s); ISE Gemini Rule 900(s); ISE Mercury 900(s); MIA X Rule 1701(s); MIA X PEARL Chapter XVII; NASDAQ Rules 6810(s) and Chapter IX, Section 8, paragraph (a)(xix); NYSE Rule 6810(s); NYSE Arca Equities Rule 6.6810(s); NYSE Arca Options Rule 11.6810(s); NYSE MKT Rule 6810(s); NYSE National Rule 14.1(s); and Phlx Rule 910A(s).

<sup>83</sup> See proposed Bats BYX Rule 4.5(t); Bats BZX Rule 4.5(t); Bats EDGA Rule 4.5(t); Bats EDGX Rule 4.5(t); BX Rules 6810(t) and Chapter IX, Section 8, paragraph (a)(xx); BOX Rule 16010(t); C2 Chapter 6, Section F; CBOE Rule 6.85(t); CHX Article 23, Rule 1(t); IEX Rule 11.610(t); ISE Rule 900(t); ISE Gemini Rule 900(t); ISE Mercury 900(t); MIA X Rule 1701(t); MIA X PEARL Chapter XVII; NASDAQ Rules 6810(t) and Chapter IX, Section 8, paragraph (a)(xx); NYSE Rule 6810(t); NYSE Arca Equities Rule 6.6810(t); NYSE Arca Options Rule 11.6810(t); NYSE MKT Rule 6810(t); NYSE National Rule 14.1(t); and Phlx Rule 910A(t).

## 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.<sup>84</sup> 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.”<sup>85</sup> 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.<sup>86</sup> 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

<sup>84</sup> See proposed Bats BYX Rule 4.5(u); Bats BZX Rule 4.5(u); Bats EDGA Rule 4.5(u); Bats EDGX Rule 4.5(u); BX Rules 6810(u) and Chapter IX, Section 8, paragraph (a)(xxi); BOX Rule 16010(u); C2 Chapter 6, Section F; CBOE Rule 6.85(u); CHX Article 23, Rule 1(u); IEX Rule 11.610(u); ISE Rule 900(u); ISE Gemini Rule 900(u); ISE Mercury 900(u); MIA X Rule 1701(u); MIA X PEARL Chapter XVII; NASDAQ Rules 6810(u) and Chapter IX, Section 8, paragraph (a)(xxi); NYSE Rule 6810(u); NYSE Arca Equities Rule 6.6810(u); NYSE Arca Options Rule 11.6810(u); NYSE MKT Rule 6810(u); NYSE National Rule 14.1(u); and Phlx Rule 910A(u).

<sup>85</sup> 17 CFR 242.600(b)(35).

<sup>86</sup> See Exemption Order, *supra* note 31.

to 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.<sup>87</sup> 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 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.<sup>88</sup> The

<sup>87</sup> See proposed Bats BYX Rule 4.5(v); Bats BZX Rule 4.5(v); Bats EDGA Rule 4.5(v); Bats EDGX Rule 4.5(v); BX Rules 6810(v) and Chapter IX, Section 8, paragraph (a)(xxii); BOX Rule 16010(v); C2 Chapter 6, Section F; CBOE Rule 6.85(v); CHX Article 23, Rule 1(v); IEX Rule 11.610(v); ISE Rule 900(v); ISE Gemini Rule 900(v); ISE Mercury 900(v); MIA X Rule 1701(v); MIA X PEARL Chapter XVII; NASDAQ Rules 6810(v) and Chapter IX, Section 8, paragraph (a)(xxii); NYSE Rule 6810(v); NYSE Arca Equities Rule 6.6810(v); NYSE Arca Options Rule 11.6810(v); NYSE MKT Rule 6810(v); NYSE National Rule 14.1(v); and Phlx Rule 910A(v).

<sup>88</sup> See proposed Bats BYX Rule 4.5(w); Bats BZX Rule 4.5(w); Bats EDGA Rule 4.5(w); Bats EDGX Rule 4.5(w); BX Rules 6810(w) and Chapter IX, Section 8, paragraph (a)(xxiii); BOX Rule 16010(w); C2 Chapter 6, Section F; CBOE Rule 6.85(w); CHX Article 23, Rule 1(w); IEX Rule 11.610(w); ISE Rule 900(w); ISE Gemini Rule 900(w); ISE Mercury



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.<sup>89</sup> 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,<sup>90</sup> Listed Options, OTC Equity Securities, and any other securities that are included as Eligible Securities from time to time.<sup>91</sup> Accordingly, the Exchanges propose to define the term “NMS Stock” to mean any NMS Security other than an option.<sup>92</sup> The Exchanges state that this is the same definition as set forth in Rule 600(b)(47) of Regulation NMS.<sup>93</sup>

900(w); MIAx Rule 1701(w); MIAx PEARL Chapter XVII; NASDAQ Rules 6810(w) and Chapter IX, Section 8, paragraph (a)(xxiii); NYSE Rule 6810(w); NYSE Arca Equities Rule 6.6810(w); NYSE Arca Options Rule 11.6810(w); NYSE MKT Rule 6810(w); NYSE National Rule 14.1(w); and Phlx Rule 910A(w).

<sup>89</sup> See proposed Bats BYX Rule 4.5(x); Bats BZX Rule 4.5(x); Bats EDGA Rule 4.5(x); Bats EDGX Rule 4.5(x); BX Rules 6810(x) and Chapter IX, Section 8, paragraph (a)(xxiv); BOX Rule 16010(x); C2 Chapter 6, Section F; CBOE Rule 6.85(x); CHX Article 23, Rule 1(x); IEX Rule 11.610(x); ISE Rule 900(x); ISE Gemini Rule 900(x); ISE Mercury 900(x); MIAx Rule 1701(x); MIAx PEARL Chapter XVII; NASDAQ Rules 6810(x) and Chapter IX, Section 8, paragraph (a)(xxv); NYSE Rule 6810(x); NYSE Arca Equities Rule 6.6810(x); NYSE Arca Options Rule 11.6810(x); NYSE MKT Rule 6810(x); NYSE National Rule 14.1(x); and Phlx Rule 910A(x).

<sup>90</sup> 17 CFR 242.600(b)(47).

<sup>91</sup> See CAT NMS Plan, *supra* note 21, at Section 1.1 (defining “Trading Day”).

<sup>92</sup> See proposed Bats BYX Rule 4.5(y); Bats BZX Rule 4.5(y); Bats EDGA Rule 4.5(y); Bats EDGX Rule 4.5(y); BX Rules 6810(y) and Chapter IX, Section 8, paragraph (a)(xxv); BOX Rule 16010(y); C2 Chapter 6, Section F; CBOE Rule 6.85(y); CHX Article 23, Rule 1(y); IEX Rule 11.610(y); ISE Rule 900(y); ISE Gemini Rule 900(y); ISE Mercury 900(y); MIAx Rule 1701(y); MIAx PEARL Chapter XVII; NASDAQ Rules 6810(y) and Chapter IX, Section 8, paragraph (a)(xxv); NYSE Rule 6810(y); NYSE Arca Equities Rule 6.6810(y); NYSE Arca Options Rule 11.6810(y); NYSE MKT Rule 6810(y); NYSE National Rule 14.1(y); and Phlx Rule 910A(y).

<sup>93</sup> 17 CFR 242.600(b)(47).

#### 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.<sup>94</sup> 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.<sup>95</sup> Rule 613(j)(8) defines “order” to include “any bid or offer.”<sup>96</sup> 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.<sup>97</sup> 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.

<sup>94</sup> See proposed Bats BYX Rule 4.5(z); Bats BZX Rule 4.5(z); Bats EDGA Rule 4.5(z); Bats EDGX Rule 4.5(z); BX Rules 6810(z) and Chapter IX, Section 8, paragraph (a)(xxvi); BOX Rule 16010(z); C2 Chapter 6, Section F; CBOE Rule 6.85(z); CHX Article 23, Rule 1(z); IEX Rule 11.610(z); ISE Rule 900(z); ISE Gemini Rule 900(z); ISE Mercury 900(z); MIAx Rule 1701(z); MIAx PEARL Chapter XVII; NYSE Rule 6810(z); NASDAQ Rules 6810(z) and Chapter IX, Section 8, paragraph (a)(xxvii); NYSE Arca Equities Rule 6.6810(z); NYSE Arca Options Rule 11.6810(z); NYSE MKT Rule 6810(z); NYSE National Rule 14.1(z); and Phlx Rule 910A(z).

<sup>95</sup> 17 CFR 242.613(c)(7).

<sup>96</sup> 17 CFR 242.613(j)(8).

<sup>97</sup> See Exemptive Request Letter, *supra* note 31, at 2; Exemption Order, *supra* note 31.

#### (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 a broker-dealer registered with an exchange for the purpose of making markets in options contracts traded on the exchange.<sup>98</sup> 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.<sup>99</sup> The Exchanges state that this is the same definition as set forth in Rule 613(j)(8),<sup>100</sup> 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

<sup>98</sup> See proposed Bats BYX Rule 4.5(aa); Bats BZX Rule 4.5(aa); Bats EDGA Rule 4.5(aa); Bats EDGX Rule 4.5(aa); BX Rules 6810(aa) and Chapter IX, Section 8, paragraph (a)(xxvii); BOX Rule 16010(aa); C2 Chapter 6, Section F; CBOE Rule 6.85(aa); CHX Article 23, Rule 1(aa); IEX Rule 11.610(aa); ISE Rule 900(aa); ISE Gemini Rule 900(aa); ISE Mercury 900(aa); MIAx Rule 1701(aa); MIAx PEARL Chapter XVII; BX Rules 6810(aa) and Chapter IX, Section 8, paragraph (a)(xxvii); NYSE Rule 6810(aa); NYSE Arca Equities Rule 6.6810(aa); NYSE Arca Options Rule 11.6810(aa); NYSE MKT Rule 6810(aa); NYSE National Rule 14.1(aa); and Phlx Rule 910A(aa).

<sup>99</sup> See proposed Bats BYX Rule 4.5(bb); Bats BZX Rule 4.5(bb); Bats EDGA Rule 4.5(bb); Bats EDGX Rule 4.5(bb); BX Rules 6810(bb) and Chapter IX, Section 8, paragraph (a)(xxviii); BOX Rule 16010(bb); C2 Chapter 6, Section F; CBOE Rule 6.85(bb); CHX Article 23, Rule 1(bb); IEX Rule 11.610(bb); ISE Rule 900(bb); ISE Gemini Rule 900(bb); ISE Mercury 900(bb); MIAx Rule 1701(bb); MIAx PEARL Chapter XVII; NASDAQ Rules 6810(bb) and Chapter IX, Section 8, paragraph (a)(xxviii); NYSE Rule 6810(bb); NYSE Arca Equities Rule 6.6810(bb); NYSE Arca Options Rule 11.6810(bb); NYSE MKT Rule 6810(bb); NYSE National Rule 14.1(bb); and Phlx Rule 910A(bb).

<sup>100</sup> See 17 CFR 242.613(j)(8).

reported to one of such association's equity trade reporting facilities.<sup>101</sup> 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"<sup>102</sup> 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.<sup>103</sup> 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 heirs, executors, administrators, legal representatives, successors and assigns of such Person where the context so permits.<sup>104</sup> The Exchanges state that this is the same

<sup>101</sup> 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)(xxix); BOX Rule 16010(cc); C2 Chapter 6, Section F; CBOE Rule 6.85(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)(xxix); 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 14.1(cc); and Phlx Rule 910A(cc).

<sup>102</sup> 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).

<sup>103</sup> 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)(xxx); BOX Rule 16010(dd); C2 Chapter 6, Section F; CBOE Rule 6.85(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 XVII; NASDAQ Rules 6810(dd) and Chapter IX, Section 8, paragraph (a)(xxx); 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).

<sup>104</sup> See proposed Bats BYX Rule 4.5(ee); Bats BZX Rule 4.5(ee); Bats EDGA Rule 4.5(ee); Bats EDGX Rule 4.5(ee); BX Rules 6810(ee) and Chapter IX, Section 8, paragraph (a)(xxxi); BOX Rule 16010(ee); C2 Chapter 6, Section F; CBOE Rule 6.85(ee); CHX Article 23, Rule 1(ee); IEX Rule 11.610(ee); ISE Rule 900(ee); ISE Gemini Rule 900(ee); ISE Mercury 900(ee); MIAX Rule 1701(ee); MIAX PEARL Chapter XVII; NASDAQ Rules 6810(ee) and Chapter IX, Section 8, paragraph (a)(xxxi); NYSE Rule 6810(ee); NYSE Arca Equities Rule 6.6810(ee); NYSE Arca Options Rule 11.6810(ee); NYSE MKT Rule 6810(ee); NYSE National Rule 14.1(ee); and Phlx Rule 910A(ee).

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.<sup>105</sup>

### 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.<sup>106</sup> 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.<sup>107</sup> The

<sup>105</sup> See proposed Bats BYX Rule 4.5(ff); Bats BZX Rule 4.5(ff); Bats EDGA Rule 4.5(ff); Bats EDGX Rule 4.5(ff); BX Rules 6810(ff) and Chapter IX, Section 8, paragraph (a)(xxxii); BOX Rule 16010(ff); C2 Chapter 6, Section F; CBOE Rule 6.85(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)(xxxii); 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).

<sup>106</sup> See proposed Bats BYX Rule 4.5(gg); Bats BZX Rule 4.5(gg); Bats EDGA Rule 4.5(gg); Bats EDGX Rule 4.5(gg); BX Rules 6810(gg) and Chapter IX, Section 8, paragraph (a)(xxxiii); BOX Rule 16010(gg); C2 Chapter 6, Section F; CBOE Rule 6.85(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)(xxxiii); 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).

<sup>107</sup> See proposed Bats BYX Rule 4.5(hh); Bats BZX Rule 4.5(hh); Bats EDGA Rule 4.5(hh); Bats EDGX Rule 4.5(hh); BX Rules 6810(hh) and Chapter IX, Section 8, paragraph (a)(xxxiv); BOX Rule 16010(hh); C2 Chapter 6, Section F; CBOE Rule 6.85(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,

Exchanges state that this definition has the same substantive meaning as the definition set forth in Section 1.1 of the CAT NMS Plan.

### 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 or origination, modification, cancellation, routing, execution (in whole or in part) and allocation of an order, and receipt of a routed order.<sup>108</sup> 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.<sup>109</sup> 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

paragraph (a)(xxxiii); 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).

<sup>108</sup> See 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); BX Rules 6810(ii) and Chapter IX, Section 8, paragraph (a)(xxxv); BOX Rule 16010(ii); C2 Chapter 6, Section F; CBOE Rule 6.85(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)(xxxv); 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).

<sup>109</sup> See 15 U.S.C. 78c(a)(26); proposed Bats BYX Rule 4.5(jj); Bats BZX Rule 4.5(jj); Bats EDGA Rule 4.5(jj); Bats EDGX Rule 4.5(jj); BX Rules 6810(jj) and Chapter IX, Section 8, paragraph (a)(xxxvi); BOX Rule 16010(jj); C2 Chapter 6, Section F; CBOE Rule 6.85(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)(xxxvi); 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).<sup>110</sup> 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 orders 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.<sup>111</sup> The Exchanges state that this is the same definition as set

<sup>110</sup> See Exemptive Request Letter, *supra* note 31, at 19; Exemption Order, *supra* note 31 at 40–41.

<sup>111</sup> For example, an Industry Member would be permitted to use any existing SRO-Assigned Market Participant Identifier (e.g., FINRA MPID, NASDAQ MPID, NYSE Mnemonic, CBOE User Acronym and CHX Acronym) when reporting order information to the Central Repository. See 15 U.S.C. 78c(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); BX Rules 6810(kk) and Chapter IX, Section 8, paragraph (a)(xxxvii); BOX Rule 16010(kk); C2 Chapter 6, Section F; CBOE Rule 6.85(kk); CHX Article 23, Rule 1(kk); IEX Rule 11.610(kk); ISE Rule 900(kk); ISE Gemini Rule 900(kk); ISE Mercury 900(kk); MIAx Rule 1701(kk); MIAx PEARL Chapter XVII; NASDAQ Rules 6810(kk) and Chapter IX, Section 8, paragraph (a)(xxxvii); NYSE Rule 6810(kk); NYSE Arca Equities Rule 6.6810(kk); NYSE Arca Options Rule 11.6810(kk); NYSE MKT Rule 6810(kk); NYSE National Rule 14.1(kk); and Phlx Rule 910A(kk).

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).<sup>112</sup> 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.<sup>113</sup> For the avoidance of doubt, the Exchanges

<sup>112</sup> 17 CFR 240.0–10(c); proposed Bats BYX Rule 4.5(ll); Bats BZX Rule 4.5(ll); Bats EDGA Rule 4.5(ll); Bats EDGX Rule 4.5(ll); BX Rules 6810(ll) and Chapter IX, Section 8, paragraph (a)(xxxviii); BOX Rule 16010(ll); C2 Chapter 6, Section F; CBOE Rule 6.85(ll); CHX Article 23, Rule 1(ll); IEX Rule 11.610(ll); ISE Rule 900(ll); ISE Gemini Rule 900(ll); ISE Mercury 900(ll); MIAx Rule 1701(ll); MIAx PEARL Chapter XVII; NASDAQ Rules 6810(ll) and Chapter IX, Section 8, paragraph (a)(xxxviii); NYSE Rule 6810(ll); NYSE Arca Equities Rule 6.6810(ll); NYSE Arca Options Rule 11.6810(ll); NYSE MKT Rule 6810(ll); NYSE National Rule 14.1(ll); and Phlx Rule 910A(ll).

<sup>113</sup> See proposed Bats BYX Rule 4.5(mm); Bats BZX Rule 4.5(mm); Bats EDGA Rule 4.5(mm); Bats EDGX Rule 4.5(mm); BX Rules 6810(mm) and Chapter IX, Section 8, paragraph (a)(xxxix); BOX Rule 16010(mm); C2 Chapter 6, Section F; CBOE Rule 6.85(mm); CHX Article 23, Rule 1(mm); IEX Rule 11.610(mm); ISE Rule 900(mm); ISE Gemini Rule 900(mm); ISE Mercury 900(mm); MIAx Rule 1701(mm); MIAx PEARL Chapter XVII; NASDAQ Rules 6810(mm) and Chapter IX, Section 8, paragraph (a)(xxxix); NYSE Rule 6810(mm); NYSE Arca Equities Rule 6.6810(mm); NYSE Arca Options Rule 11.6810(mm); NYSE MKT Rule 6810(mm); NYSE National Rule 14.1(mm); and Phlx Rule 910A(mm).

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

Rule 613(d)(1) of Regulation NMS requires Industry Members to synchronize their Business Clocks to the time maintained by NIST, consistent with industry standards.<sup>114</sup> To comply with this provision, Section 6.8 of the Plan sets forth the clock synchronization requirements for Industry Members.<sup>115</sup> 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.<sup>116</sup>

##### 1. Clock Synchronization

The proposed CAT Compliance Rules set forth the manner in which Industry Members must synchronize their Business Clocks. The Rules require each Industry Member to synchronize its Business Clocks, other than such Business Clocks used solely for Manual Order Events or 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 6.8(a)(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

<sup>114</sup> 17 CFR 242.613(d)(1). 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 Section 6.7(a)(ii) of the CAT NMS Plan and in the proposed CAT Compliance Rules. See *infra* note 161. The Commission granted the Participants’ exemption request. See *infra* note 163.

<sup>115</sup> In addition, Section 6.7(a)(ii) of the Plan sets forth the timeline for CAT Reporters to comply with the clock synchronization requirements.

<sup>116</sup> See proposed Bats BYX Rule 4.6; Bats BZX Rule 4.6; Bats EDGA Rule 4.6; Bats EDGX Rule 4.6; BX Rule 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; ISE Rule 901; ISE Gemini Rule 901; ISE Mercury Rule 901; MIAx Rule 1702; MIAx PEARL Chapter XVII; Nasdaq Rule 6820 and Section IX, Section 8, subparagraph (b); NYSE Rule 6820; NYSE Arca Equities Rule 6.6820; NYSE Arca Options Rule 11.6820; NYSE MKT Rule 6820; NYSE National Rule 14.2; and Phlx Rule 920A.

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)(iii) 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.<sup>117</sup> 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 requirement 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.<sup>118</sup>

## 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.<sup>119</sup>

## 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.<sup>120</sup> 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.<sup>121</sup> The proposed CAT Compliance Rules have

<sup>118</sup> The Exchanges will do so via Regulatory Circular, Regulatory Information Circular, Information Circular, Circular, Information Memorandum or Trader Update, as applicable.

<sup>119</sup> *Id.*

<sup>120</sup> See 17 CFR 242.613(c).

<sup>121</sup> See proposed Bats BYX Rule 4.7; Bats BZX Rule 4.7; Bats EDGA Rule 4.7; Bats EDGX Rule 4.7; BX Rule 6830 and Section IX, Section 8, subparagraph (c); BOX Rule 16030; C2 Chapter 6, Section F; CBOE Rule 6.87(b); CHX Article 23, Rule 3; IEX Rule 11.630; ISE Rule 902; ISE Gemini Rule 902; ISE Mercury Rule 902; MIAx Rule 1703; MIAx PEARL Chapter XVII; Nasdaq Rule 6830 and Section IX, Section 8, subparagraph (c); NYSE Rule 6830; NYSE Arca Equities Rule 6.6830; NYSE Arca Options Rule 11.6830; NYSE MKT Rule 6830; NYSE National Rule 14.3; Phlx Rule 930A.

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<sup>122</sup>); 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<sup>123</sup>); (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

<sup>122</sup> See *infra* note 135.

<sup>123</sup> *Id.*

<sup>117</sup> 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.

pursuant to the proposed Rules<sup>124</sup>); (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<sup>125</sup>); (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<sup>126</sup>); (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 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 Account 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.<sup>127</sup> 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 Received 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.<sup>128</sup> 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 Symbolology

The proposed CAT Compliance Rules describe the security symbolology 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 symbolology format of the exchange listing the security.<sup>129</sup> 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 symbolology 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 symbolology format. Moreover, to date,

<sup>128</sup> See proposed Bats BYX Rule 4.7(c); Bats BZX Rule 4.7(c); Bats EDGA Rule 4.7(c); Bats EDGX Rule 4.7(c); BX Rule 6830(c) and Section IX, Section 8, subparagraph (c)(iii); BOX Rule 16030(c); C2 Chapter 6, Section F; CBOE Rule 6.87(c); CHX Article 23, Rule 3(c); IEX Rule 11.630(c); ISE Rule 902(c); ISE Gemini Rule 902(c); ISE Mercury Rule 902(c); MIAX Rule 1703(c); MIAX PEARL Chapter XVII; Nasdaq Rule 6830(c) and Section IX, Section 8, subparagraph (c); NYSE Rule 6830(c)(iii); NYSE Rule 6830(c); NYSE Arca Equities Rule 6.6830(c); NYSE Arca Options Rule 11.6830(c); NYSE MKT Rule 6830(c); NYSE National Rule 14.3(c); and Phlx Rule 930A(c).

<sup>129</sup> See proposed Bats BYX Rule 4.7(d); Bats BZX Rule 4.7(d); Bats EDGA Rule 4.7(d); Bats EDGX Rule 4.7(d); BX Rule 6830(d) and Section IX, Section 8, subparagraph (c)(iv); BOX Rule 16030(d); C2 Chapter 6, Section F; CBOE Rule 6.87(d); CHX Article 23, Rule 3(d); IEX Rule 11.630(d); ISE Rule 902(d); ISE Gemini Rule 902(d); ISE Mercury Rule 902(d); MIAX Rule 1703(d); MIAX PEARL Chapter XVII; NASDAQ Rule 6830(d) and Section IX, Section 8, subparagraph (c)(iv); NYSE Rule 6830(d); NYSE Arca Equities Rule 6.6830(d); NYSE Arca Options Rule 11.6830(d); NYSE MKT Rule 6830(d); NYSE National Rule 14.3(d); and Phlx Rule 930A(d).

<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

<sup>126</sup> *Id.*

<sup>127</sup> See proposed Bats BYX Rule 4.7(b); Bats BZX Rule 4.7(b); Bats EDGA Rule 4.7(b); Bats EDGX Rule 4.7(b); BX Rule 6830(b) and Section IX, Section 8, subparagraph (c)(ii); BOX Rule 16030(b); C2 Chapter 6, Section F; CBOE Rule 6.87(b); CHX Article 23, Rule 3(b); IEX Rule 11.630(b); ISE Rule 902(b); ISE Gemini Rule 902(b); ISE Mercury Rule 902(b); MIAX Rule 1703(b); MIAX PEARL Chapter XVII; NASDAQ Rule 6830(b) and Section IX, Section 8, subparagraph (c)(ii); NYSE Rule 6830(b); NYSE Arca Equities Rule 6.6830(b); NYSE Arca Options Rule 11.6830(b); NYSE MKT Rule 6830(b); NYSE National Rule 14.3(b); and Phlx Rule 930A(b).

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.<sup>130</sup>

#### 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 Exchanges propose CAT Compliance Rules regarding Customer information reporting to implement this provision of the CAT NMS Plan with regard to their Industry Members.<sup>131</sup>

#### 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 on a daily basis.

#### 3. Periodic Updates to Complete Set of Customer Information

The proposed CAT Compliance Rules also require each Industry Member, on a periodic basis as designated by the Plan Processor and approved by the Operating Committee, to submit to the Central Repository a complete set of Firm Designated IDs, 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.<sup>132</sup>

#### 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, in accordance with the Existing Identifier Approach discussed

above. The proposed CAT Compliance Rules require each Industry Member 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.<sup>133</sup> 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.<sup>134</sup> 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.<sup>135</sup>

#### 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 systems utilize 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

<sup>133</sup> See proposed Bats BYX Rule 4.9; Bats BZX Rule 4.9; Bats EDGA Rule 4.9; Bats EDGX Rule 4.9; BX Rules 6850 and Chapter IX, Section 8, subparagraph (e); BOX Rule 16050; C2 Chapter 6, Section F; CBOE Rule 6.89; CHX Article 23, Rule 5; IEX Rule 11.650; ISE Rule 904; ISE Gemini Rule 904; ISE Mercury Rule 904; MIAx Rule 1705; MIAx PEARL Chapter XVII; NASDAQ Rule 6850 and Chapter IX, Section 8, subparagraph (e); NYSE Rule 6850; NYSE Arca Equities Rule 6.6850; NYSE Arca Options Rule 11.6850; NYSE MKT Rule 6850; NYSE National Rule 14.5; and Phlx Rule 950A.

<sup>134</sup> 17 CFR 242.613(d)(3).

<sup>135</sup> See proposed Bats BYX Rule 4.10; Bats BZX Rule 4.10; Bats EDGA Rule 4.10; Bats EDGX Rule 4.10; BX Rules 6850 and Chapter IX, Section 8, subparagraph (f); BOX Rule 16060; C2 Chapter 6, Section F; CBOE Rule 6.90; CHX Article 23, Rule 6; IEX Rule 11.660; MIAx Rule 1706; MIAx PEARL Chapter XVII; NASDAQ Rule 6850 and Chapter IX, Section 8, subparagraph (f); NYSE Rule 6860; NYSE Arca Equities Rule 6.6860; NYSE Arca Options Rule 11.6860; NYSE MKT Rule 6860; NYSE National Rule 14.6; and Phlx Rule 960A.

<sup>130</sup> See *supra* note 118.

<sup>131</sup> 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 903; ISE Gemini Rule 903; ISE Mercury Rule 903; MIAx Rule 1704; MIAx PEARL Chapter XVII; 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.

<sup>132</sup> See *supra* note 118.

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.<sup>136</sup> 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.<sup>137</sup>

<sup>136</sup> See proposed Bats BYX Rule 4.11; Bats BZX Rule 4.11; Bats EDGA Rule 4.11; Bats EDGX Rule 4.11; BX Rules 6865 and Chapter IX, Section 8, subparagraph (g); BOX Rule 16065; C2 Chapter 6, Section F; CBOE 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 Rules 6865 and Chapter IX, Section 8, subparagraph (g); NYSE Rule 6865; NYSE Arca Equities Rule 6.6865; NYSE Arca Options Rule 11.6865; NYSE MKT Rule 6865; NYSE National Rule 14.7; and Phlx Rule 965A.

<sup>137</sup> See proposed Bats BYX Rule 4.12; Bats BZX Rule 4.12; Bats EDGA Rule 4.12; Bats EDGX Rule 4.12; BX Rules 6870 and Chapter IX, Section 8, subparagraph (h); BOX Rule 16070; C2 Chapter 6, Section F; CBOE Rule 6.92; CHX Article 23, Rule

## 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.<sup>138</sup> 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

8; IEX Rule 11.670; ISE Rule 907; ISE Gemini Rule 907; ISE Mercury 907; MIAX Rule 1708; MIAX PEARL Chapter XVII; NASDAQ Rules Chapter IX, Section 8, subparagraph (h); NYSE Rule 6870; NYSE Arca Equities Rule 6.6870; NYSE Arca Options Rule 11.6870; NYSE MKT Rule 6870; NYSE National Rule 14.8; and Phlx Rule 970A.

<sup>138</sup> 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.

requirements for Industry Members related to CAT development and testing.<sup>139</sup>

## 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.<sup>140</sup> 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

<sup>139</sup> See proposed Bats BYX Rule 4.13; Bats BZX Rule 4.13; Bats EDGA Rule 4.13; Bats EDGX Rule 4.13; BX Rules 6880 and Chapter IX, Section 8, subparagraph (i); BOX Rule 16080; C2 Chapter 6, Section F; CBOE 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 6880 and Chapter IX, Section 8, subparagraph (i); NYSE Rule 6880; NYSE Arca Equities Rule 6.6880; NYSE Arca Options Rule 11.6880; NYSE MKT Rule 6880; NYSE National Rule 14.9; and Phlx Rule 980A.

<sup>140</sup> 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); BX Rules 6880(a)(2) and Chapter IX, Section 8, subparagraph (i)(i)(2); BOX Rule 16080(a)(2); C2 Chapter 6, Section F; CBOE Rule 6.93(a)(i); CHX Article 23, Rule 9(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 6880(a)(2) and Chapter IX, Section 8, subparagraph (i)(i)(2); NYSE Rule 6880(a)(2); NYSE Arca Equities Rule 6.6880(a)(2); NYSE Arca Options Rule 11.6880(a)(2); NYSE MKT Rule 6880(a)(2); NYSE National Rule 14.9(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 its Industry Members the schedule established pursuant to the CAT NMS Plan.<sup>141</sup>

### J. Recordkeeping

The proposed CAT Compliance Rules set forth the recordkeeping obligations related to the CAT for Industry Members.<sup>142</sup> 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).<sup>143</sup> 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)<sup>144</sup> or by means of “electronic storage media” as defined in Exchange Act Rule 17a-4(f)(1)(ii)<sup>145</sup> that meet the conditions set forth in Exchange Act Rule 17a-4(f)<sup>146</sup> 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.<sup>147</sup> 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.<sup>148</sup> 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

information associated with LEIs. Although Industry Members will not be required to perform additional due diligence with regard to the LEIs for CAT purposes, Industry Members will be required to accurately provide the LEIs in their records and may not knowingly submit inaccurate LEIs to the CAT. The Exchanges believe that these proposed Rules are consistent with the Approval Order for the CAT NMS Plan regarding an Industry Member’s obligations regarding LEIs.<sup>149</sup>

#### 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.<sup>150</sup>

#### 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.<sup>151</sup> 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

<sup>141</sup> See *supra* note 118.

<sup>142</sup> 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; ISE Rule 909; ISE Gemini Rule 909; ISE Mercury Rule 909; MIAx Rule 1710; MIAx PEARL Chapter XVII; NASDAQ Rule 6890 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.

<sup>143</sup> 17 CFR 240.17a-4(b).

<sup>144</sup> 17 CFR 240.17a-4(f)(1)(i).

<sup>145</sup> 17 CFR 240.17a-4(f)(1)(ii).

<sup>146</sup> 17 CFR 240.17a-4(f).

<sup>147</sup> See 17 CFR 242.613(e)(4)(i)(D)(ii); and CAT NMS Plan, *supra* note 21, at Section 6.5(d).

<sup>148</sup> See proposed Bats BYX Rule 4.15; Bats BZX Rule 4.15; Bats EDGA Rule 4.15; Bats EDGX Rule 4.15; BX Rule 6893 and Chapter IX, Section 8, subparagraph (k); BOX Rule 16093; C2 Chapter 6, Section F; CBOE Rule 6.95; CHX Article 23, Rule 11; IEX Rule 11.693; ISE Rule 910; ISE Gemini Rule 910; ISE Mercury Rule 910; MIAx Rule 1711; MIAx PEARL Chapter XVII; Nasdaq Rule 6893 and Chapter IX, Section 8, subparagraph (k) NYSE Rule 6893; NYSE Arca Equities Rule 6.6893; NYSE Arca Options Rule 11.6893; NYSE MKT Rule 6893; NYSE National Rule 14.11; and Phlx Rule 993A.

<sup>149</sup> See Approval Order, *supra* note 24, at 84745.

<sup>150</sup> See *supra* note 118.

<sup>151</sup> See CAT NMS Plan, *supra* note 21, at Appendix C.



Member has violated the proposed Rules.

#### L. Compliance Dates

##### 1. General

The proposed CAT Compliance Rules set forth the compliance dates for the various provisions of the proposed Rules.<sup>152</sup> The proposed Rules state that, except otherwise set forth in the proposed Rules, the compliance date for the proposed CAT Compliance Rules will be the date of Commission approval of the proposed rule changes.

##### 2. Clock Synchronization

The proposed CAT Compliance Rules establish the compliance dates for the clock synchronization requirements. The proposed CAT Compliance Rules state that each Industry Member shall comply with the Rules with regard to Business Clocks that capture time in milliseconds commencing on or before March 15, 2017. The proposed Rules also state that each Industry Member shall comply with the Rules with regard to Business Clocks that do not capture time in milliseconds commencing on or before February 19, 2018. The compliance date set forth in the proposed CAT Compliance Rules reflects the exemptive relief granted by the Commission with regard to the clock synchronization requirements related to Business Clocks that do not capture time in milliseconds.<sup>153</sup>

##### 3. CAT Data Reporting

The proposed CAT Compliance Rules establish the compliance dates for the data recording and reporting requirements for Industry Members. The proposed Rules 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. The proposed Rules require that each Industry Member that is a Small

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),<sup>154</sup> 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.<sup>155</sup> Two commenters raised concerns about the clock synchronization requirements for Allocation Reports.<sup>156</sup> 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.<sup>157</sup> 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.”<sup>158</sup> 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.<sup>159</sup>

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.<sup>160</sup> However, the Participants noted that, on January 17, 2017, they filed with the Commission a request for exemptive relief from Section 6.7(a)(ii) of the CAT NMS Plan (the “Clock Synchronization Exemption Request”).<sup>161</sup> 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.<sup>162</sup> On March 2, 2017, the Commission granted the Exemption Request.<sup>163</sup>

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).<sup>164</sup> 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.<sup>165</sup>

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.<sup>166</sup> The Participants noted that the Technical Specifications also will define the “time of the 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,

<sup>152</sup> 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; CBOE Rule 6.96; 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 XVII; NASDAQ Rule 6895 and Chapter IX, Section 8, subparagraph (I); NYSE Rule 6895; NYSE Arca Equities Rule 6.6895; NYSE Arca Options Rule 11.6895; NYSE MKT Rule 6895; NYSE National Rule 14.12; and Phlx Rule 995A.

<sup>153</sup> 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(e) 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).

<sup>154</sup> 17 CFR 242.613(a)(3)(v), (vi).

<sup>155</sup> See *supra* note 17.

<sup>156</sup> Thomson Reuters Letter at 1; FIF Letter at 1.

<sup>157</sup> Thomson Reuters Letter at 1.

<sup>158</sup> Thomson Reuters Letter at 1–2. See also FIF Letter at 2.

<sup>159</sup> FIF Letter at 1, 2.

<sup>160</sup> Participants’ Response Letter at 2.

<sup>161</sup> See Letter from Participants to Brent J. Fields, Secretary, Commission, dated January 17, 2017 (“Clock Synchronization Exemption Request Letter”).

<sup>162</sup> *Id.*

<sup>163</sup> See Order Granting Limited Exemptive Relief, Pursuant to Rule 608(e) 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, Securities Exchange Act Release No. 80142 (March 2, 2017), 82 FR 13034 (March 8, 2017) (“Clock Synchronization Exemption Order”).

<sup>164</sup> Participants’ Response Letter at 2.

<sup>165</sup> *Id.* at 3.

<sup>166</sup> *Id.*

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.<sup>167</sup> This commenter noted that “retention of a complete log of clock synchronization events is an additional business cost without providing compensatory regulatory benefit.”<sup>168</sup> 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.<sup>169</sup> 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.<sup>170</sup>

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.<sup>171</sup> 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 “[do] not contain any definition of clock synchronization certification procedures and schedules, reporting procedures for violation notification or any specifics regarding documentation requirements.”<sup>172</sup> 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.”<sup>173</sup>

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.<sup>174</sup> 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.<sup>175</sup>

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.<sup>176</sup> 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.”<sup>177</sup> 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.<sup>178</sup>

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.<sup>179</sup> 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

<sup>176</sup> Participants’ Response Letter at 5. The Participants noted that Bats BZX Exchange, Inc.’s proposed Rule 4.7(a)(1)(A)(i) and 4.7(a)(2)(C) refers to “Customer” rather than “account.” *See, e.g.*, Bats BZX Exchange, Inc.’s Proposed Compliance Rule Notice of Filing of a Proposed Rule Change to Adopt Rules 4.5 Through 4.16 to Implement the Compliance Rule Regarding the National Market System Plan Governing the Consolidated Audit Trail, Securities Exchange Act Release No. 79927 (February 2, 2017), 82 FR 9874 (February 8, 2017).

<sup>177</sup> Wachtel Letter at 1.

<sup>178</sup> Wachtel Letter at 1, 3.

<sup>179</sup> Participants’ Response Letter at 6.

<sup>167</sup> FIF Letter at 2.

<sup>168</sup> FIF Letter at 2.

<sup>169</sup> FIF Letter at 2.

<sup>170</sup> FIF Letter at 2.

<sup>171</sup> Participants’ Response Letter at 4.

<sup>172</sup> FIF Letter at 3.

<sup>173</sup> FIF Letter at 3.

<sup>174</sup> Participants’ Response Letter at 5.

<sup>175</sup> FIF Letter at 3–4; Thomson Reuters Letter at 2–5.

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.<sup>180</sup> 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.”<sup>181</sup> 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.<sup>182</sup> 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

<sup>180</sup> Rule 0–10(c) defines a “small broker-dealer” as one that has total capital of less than \$500,000 on the date in the prior fiscal year as of which its audited financial statements were filed (or on the last business day of the preceding fiscal year if not required to file such statements), and those not affiliated with any other person that is not a small business or small organization. See Rule 0–10(c).

<sup>181</sup> See Approval Order, *supra* note 24 at 45722, 45804.

<sup>182</sup> Participants’ Response Letter at 6. The Participants added that “[s]eparately, the Commission explained that the CAT NMS Plan “attempts to mitigate its impact on [OATS-exempt or excluded broker-dealers or limited purpose broker-dealers] by proposing to follow a cost allocation formula that should charge lower fees to smaller broker-dealers.” Accordingly, the Participants stated that they do not believe that an additional cost-benefit analysis is necessary at this time. Participants’ Response Letter at 7.

securities exchanges.<sup>183</sup> Specifically, the Commission finds that the proposed rule changes are consistent with Section 6(b)(5) of the Act,<sup>184</sup> 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,<sup>185</sup> 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.”<sup>186</sup> 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.

<sup>183</sup> In approving these proposed rule changes, the Commission has considered the proposed rules’ impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>184</sup> 15 U.S.C. 78(f)(b)(5).

<sup>185</sup> 15 U.S.C. 78(f)(b)(8).

<sup>186</sup> 17 CFR 242.608(c).

## A. Definitions

The Commission finds that proposed CAT Compliance Rules addressing definitions<sup>187</sup> 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<sup>188</sup> 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.<sup>189</sup>

<sup>187</sup> 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.

<sup>188</sup> See *supra* note 116.

<sup>189</sup> 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 log; 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.<sup>190</sup> 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<sup>191</sup> 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,<sup>192</sup> and (5) error correction requirements.

<sup>190</sup> Participants’ Response Letter at 3. *See also* Clock Synchronization Exemption Request Letter, *supra* note 161, and Clock Synchronization Order, *supra* note 163.

<sup>191</sup> *See supra* note 121.

<sup>192</sup> The Commission notes that, with respect to the security symbology that must be reported by an Industry Member for an Eligible Security that is not Exchange-listed, the proposed CAT Compliance Rules state that an Industry Member should use the symbology format approved by the Operating Committee. The Exchanges represent that for such securities, there is no listing exchange to provide

### 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<sup>193</sup> 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,<sup>194</sup> 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<sup>195</sup> 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<sup>196</sup> are consistent with the Act as they implement the clock

the symbology format and that the requisite symbology format has not been determined at this time.

<sup>193</sup> *See supra* note 131.

<sup>194</sup> *See supra* note 133.

<sup>195</sup> *See supra* note 135.

<sup>196</sup> *See supra* note 136.

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<sup>197</sup> 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<sup>198</sup> 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

<sup>197</sup> *See supra* note 137.

<sup>198</sup> *See supra* note 139.

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<sup>199</sup> 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).<sup>200</sup> 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<sup>201</sup> 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 the 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.<sup>202</sup>

#### L. Compliance Dates

The Commission finds that the compliance dates in the proposed CAT Compliance Rules<sup>203</sup> 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 March 15, 2017. Also, the proposed CAT Compliance Rules state that each Industry Member that does not capture 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.<sup>204</sup>

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 Member Data to the Central Repository by November 15, 2019.<sup>205</sup>

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.<sup>206</sup> 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 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

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act, that the proposed rule changes (SR-BatsBYX-2017-02; SR-BatsBZX-2017-08; SR-BatsEDGA-2017-03; SR-BatsEDGX-2017-08; SR-BOX-2017-07; SR-C2-2017-007; SR-CBOE-2017-012; SR-CHX-2017-03; SR-ISE-2017-08; SR-IEX-2017-04; SR-ISEGemini-2017-04; SR-ISEMercury-2017-03; SR-MIAX-2017-03; SR-PEARL-2017-04; SR-NASDAQ-2017-008; SR-BX-2017-007; SR-PHLX-2017-07; SR-NYSE-2017-01; SR-NYSEArca-2017-03; SR-NYSEArca-2017-04; SR-NYSEMKT-2017-02; SR-NSX-2017-03) are approved.

<sup>205</sup> 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.

<sup>206</sup> Wachtel Letter at 1.

<sup>199</sup> See *supra* note 142.

<sup>200</sup> 17 CFR 240.17a-4(b). The Exchanges also note that the recordkeeping provisions of the proposed CAT Compliance Rules are based on FINRA Rule 7440(a)(5), which sets forth the recordkeeping requirements related to OATS.

<sup>201</sup> See *supra* note 148.

<sup>202</sup> See CAT NMS Plan, Sections 6.4; 6.5(d); Appendix C, Section A.3(b).

<sup>203</sup> See *supra* note 152.

<sup>204</sup> See *supra* note 163.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>207</sup>

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2017-05505 Filed 3-20-17; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-80248; File No. SR-ISEGemini-2017-13]

### 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"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> 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](http://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.<sup>3</sup>

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,<sup>4</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>5</sup> 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.

<sup>3</sup> See Securities Exchange Act Release No. 78119 (June 27, 2016), 81 FR 41611 (SR-ISE-2016-11; SR-ISE Gemini-2016-05; SR-ISE Mercury-2016-10) (Order Granting Accelerated Approval of Proposed Rule Changes, Each as Modified by Amendment No. 1 Thereto, Relating to a Corporate Transaction in Which Nasdaq, Inc. Will Become the Indirect Parent of ISE, ISE Gemini, and ISE Mercury).

<sup>4</sup> 15 U.S.C. 78f(b).

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

#### 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 Act<sup>6</sup> and Rule 19b-4(f)(6) thereunder.<sup>7</sup>

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>8</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)<sup>9</sup> 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.<sup>10</sup> 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

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>7</sup> 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.

<sup>8</sup> 17 CFR 240.19b-4(f)(6).

<sup>9</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>10</sup> See Securities Exchange Act Release No. 80011 (February 10, 2017), 82 FR 10927 (February 16, 2017) (order approving SR-ISEGemini-2016-17). The Commission notes that the Exchange was previously approved to become a subsidiary of Nasdaq, Inc. See Securities Exchange Act Release No. 78119 (June 21, 2016), 81 FR 41611 (June 27, 2016) (SR-ISE-2016-11; SR-ISE Gemini-2016-05; SR-ISE Mercury-2016-10) (Order Granting Accelerated Approval of Proposed Rule Changes, Each as Modified by Amendment No. 1 Thereto, Relating to a Corporate Transaction in Which Nasdaq, Inc. Will Become the Indirect Parent of ISE, ISE Gemini, and ISE Mercury).

<sup>207</sup> 17 CFR 200.30-3(a)(12).

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

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