

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-80792; File No. SR-PEARL-2017-23]

### Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing of Proposed Rule Change To Eliminate Requirements That Will Be Duplicative of CAT

May 26, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 15, 2017, MIAX PEARL, LLC (“MIAX PEARL” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III 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 is filing a proposal to amend MIAX PEARL Rule 606, Securities Accounts and Orders of Market Makers (“Rule 606” or the “Position Reporting Rule”) by adding new Interpretation and Policy .02 to Rule 606, and MIAX PEARL Rule 804, Automated Submission of Trade Data (“Rule 804” or the “EBS Rule” and together with the Position Reporting Rule, the “CAT Duplicative Rules”) by adding new Interpretation and Policy .01 to Rule 804, as the CAT Duplicative Rules provide for the collection of information that is duplicative of the data collection requirements of the consolidated audit trail (“CAT”) adopted pursuant to the National Market System Plan Governing the Consolidated Audit Trail (the “CAT NMS Plan” or “Plan”).<sup>3</sup>

The text of the proposed rule change is available on the Exchange’s Web site at <http://www.miaxoptions.com/rule-filings/pearl>, at MIAX PEARL’s principal office, 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 the Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

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., Financial Industry Regulatory Authority, Inc. (“FINRA”), Investors’ Exchange LLC, Miami International Securities Exchange, LLC, MIAX PEARL, LLC, NASDAQ BX, Inc., Nasdaq GEMX, LLC, Nasdaq ISE, LLC, Nasdaq MRX, LLC,<sup>4</sup> NASDAQ PHLX LLC, The NASDAQ Stock Market LLC, New York Stock Exchange LLC, NYSE MKT LLC, NYSE Arca, Inc. and NYSE National, Inc.<sup>5</sup> (collectively, the “Participants”) filed with the Commission, pursuant to Section 11A of the Exchange Act<sup>6</sup> and Rule 608 of Regulation NMS thereunder,<sup>7</sup> the CAT NMS Plan.<sup>8</sup> The Participants filed the Plan to comply with Rule 613 of Regulation NMS under the Exchange Act. The Plan was published for comment in the **Federal**

<sup>4</sup> ISE Gemini, LLC, ISE Mercury, LLC and International Securities Exchange, LLC have been renamed Nasdaq GEMX, LLC, Nasdaq MRX, LLC, and Nasdaq ISE, LLC, respectively. See Securities Exchange Act Rel. No. 80248 (Mar. 15, 2017), 82 FR 14547 (Mar. 21, 2017); Securities Exchange Act Rel. No. 80326 (Mar. 29, 2017), 82 FR 16460 (Apr. 4, 2017); and Securities Exchange Act Rel. No. 80325 (Mar. 29, 2017), 82 FR 164FR45 (Apr. 4, 2017).

<sup>5</sup> National Stock Exchange, Inc. has been renamed NYSE National, Inc. See Securities Exchange Act Rel. No. 79902 (Jan. 30, 2017), 82 FR 9258 (Feb. 3, 2017).

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

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

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

Register on May 17, 2016,<sup>9</sup> and approved by the Commission, as modified, on November 15, 2016.<sup>10</sup> The Plan is designed to create, implement and maintain a CAT that would capture customer and order event information for orders in NMS Securities and OTC Equity Securities, across all markets, from the time of order inception through routing, cancellation, modification, or execution in a single consolidated data source. Pursuant to Appendix C of the CAT NMS Plan, each Participant is required to conduct analyses of which of its existing trade and order data rules and systems require the collection of information that is duplicative of information collected for the CAT.<sup>11</sup> In addition, among other things, Section C.9 of Appendix C to the Plan, as modified by the Commission, requires each Participant to “file with the SEC the relevant rule change filing to eliminate or modify its duplicative rules within six (6) months of the SEC’s approval of the CAT NMS Plan.”<sup>12</sup> The Plan notes that “the elimination of such rules and the retirement of such systems [will] be effective at such time as CAT Data meets minimum standards of accuracy and reliability.”<sup>13</sup> The Exchange has determined that the Position Reporting Rule and the EBS Rule is affected by the implementation of the CAT and, therefore, is filing this proposed rule change.

###### (1) The CAT Duplicative Rules

MIAX PEARL Rule 606, the Position Reporting Rule, is the Exchange’s rule requiring Market Makers to (a) keep current and file with the Exchange a list identifying specified accounts in which it may engage in trading activities or over which it exercises investment discretion (“MM account information”) and (b) report to the Exchange every order entered by the Market Maker for the purchase or sale of a security underlying options traded on the Exchange or convertible into or exercisable for such underlying security (“MM order information”), as well as opening and closing positions in all such securities held in each of the aforementioned specified accounts (“MM position information”), in each case in a manner prescribed by the Exchange.

<sup>9</sup> See Securities Exchange Act Release. No. 77724 (Apr. 27, 2016), 81 FR 30614 (May 17, 2016).

<sup>10</sup> See Securities Exchange Act Rel. No. 79318 (Nov. 15, 2016), 81 FR 84696 (Nov. 23, 2016) (“Approval Order”).

<sup>11</sup> Appendix C of CAT NMS Plan, Approval Order at 85010.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

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

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

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

MIAX PEARL Rule 804,<sup>14</sup> the EBS Rule, is the Exchange's rule requiring Members to submit requested trade data elements ("Member trade data") to the Exchange in such automated format as may be prescribed by the Exchange from time to time, in regard to a transaction(s) that is the subject of a particular request for information. Rule 804 contemplates using the Electronic Blue Sheet ("EBS") system for the automated submission of Member trade data as requested by the Exchange, including, among other information, clearing house number or alpha symbol, identifying symbol assigned to the security, options month and/or series, transaction execution date, number of option contracts for transaction and whether opening or closing purchase or sale, transaction price, account number and/or market center where executed.

Once broker-dealer reporting to the CAT has begun, the CAT will contain certain of the data the Participants would otherwise have requested via the Position Reporting Rule or via the EBS system for purposes of NMS Securities and OTC Equity Securities. Consequently, the Exchange will not need to use the Position Reporting Rule to obtain MM account information or MM order information (although Exchange still anticipates the need to obtain MM position information pursuant to Rule 606 because the CAT does not currently address position reporting) or use the EBS system to obtain Member trade data or request information pursuant to the CAT Duplicative Rules for NMS Securities or OTC Equity Securities for time periods after CAT reporting has begun if the appropriate accuracy and reliability thresholds are achieved, including an acceptable accuracy rate for customer and account information. However, the Position Reporting Rule cannot be completely eliminated immediately upon the CAT achieving the appropriate thresholds because Exchange staff will still need to request information

pursuant to the Position Reporting Rule regarding MM position information (because the CAT does not currently address position reporting), and Exchange staff may still need to request information pursuant to the Position Reporting Rule for MM account information and MM order information before a Market Maker was reporting to the CAT. Further, the EBS Rule cannot be completely eliminated immediately upon the CAT achieving the appropriate thresholds because Exchange staff may still need to request information pursuant to the EBS Rule for trading activity occurring before a Member was reporting to the CAT.<sup>15</sup>

The proposed rule change proposes to: (1) Add new Interpretation and Policy .02 to the Position Reporting Rule to clarify how the Exchange will request Market Maker account, order and position data under Rule 606 after MIAX PEARL Market Makers are reporting to the CAT, and (2) add new Interpretation and Policy .01 to the EBS Rule to clarify how the Exchange will request trade data under Rule 804 after MIAX PEARL Members are reporting to the CAT.

With respect to the Position Reporting Rule, proposed Interpretation and Policy .02 to Rule 606 will specifically permit the Exchange to request information under such rule only if the information is not available in the CAT because, for example, the transactions in question occurred before the Market Maker was reporting information to the CAT or relates to position information because the CAT does not currently address position reporting. In essence, under the new Interpretation and Policy .02 to Rule 606, the Exchange will make requests under Rule 606 if and only if the information is not otherwise available through the CAT.

With respect to the EBS Rule, proposed Interpretation and Policy .01 to Rule 804 will specifically permit the Exchange to request information under such rule only if the information is not available in the CAT because, for example, the transactions in question occurred before the Member was reporting information to the CAT. In essence, under the new Interpretation and Policy .01 to Rule 804, the Exchange will make requests under Rule 804 if and only if the information is not otherwise available through the CAT.

The CAT NMS Plan states, however, that the elimination of rules that are duplicative of the requirements of the CAT and the retirement of the related systems should be effective at such time as CAT Data meets minimum standards of accuracy and reliability.<sup>16</sup> Accordingly, as discussed in more detail below, the Exchange believes that MM account information and MM order information (but not MM position information) may be replaced by CAT Data at a date after all Industry Members are reporting to the CAT when the proposed error rate thresholds have been met, and MIAX PEARL has determined that its usage of the CAT Data has not revealed material issues that have not been corrected, confirmed that the CAT includes all data necessary to allow MIAX PEARL to continue to meet its surveillance obligations, and confirmed that the Plan Processor is sufficiently meeting all of its obligations under the CAT NMS Plan.

The Exchange further believes, as discussed in more detail below, that the EBS data may be replaced by CAT Data at a date after all Industry Members are reporting to the CAT when the proposed error rate thresholds have been met, and MIAX PEARL has determined that its usage of the CAT Data has not revealed material issues that have not been corrected, confirmed that the CAT includes all data necessary to allow MIAX PEARL to continue to meet its surveillance obligations, and confirmed that the Plan Processor is sufficiently meeting all of its obligations under the CAT NMS Plan.

MIAX PEARL believes CAT Data should not be used in place of MM account information and MM order information or EBS data until all Participants and Industry Members are reporting data to CAT. In this way, MIAX PEARL will continue to have access to the necessary data to perform its regulatory duties.

The CAT NMS Plan requires that a rule filing to eliminate a duplicative rule address whether "the availability of certain data from Small Industry Members two years after the Effective Date would facilitate a more expeditious retirement of duplicative systems."<sup>17</sup> The Exchange believes that MM account information and MM order information reporting should not be eliminated until all Participants and Industry Members that report such information are reporting comparable data to the CAT. The Exchange further believes that the EBS system should not be retired until all Participants and Industry Members

<sup>14</sup> MIAX PEARL Rule 804 is incorporated by reference from the rules contained in Miami International Securities Exchange, LLC Rule Book Chapter VIII, as such rules may be in effect from time to time (the "Chapter VIII Rules"), and is thus a MIAX PEARL Rule and thereby applicable to MIAX PEARL Members. MIAX PEARL Members shall comply with the Chapter VIII Rules as though such rules were fully-set forth in the MIAX PEARL Rule Book. All defined terms, including any variations thereof, contained in Chapter VIII Rules shall be read to refer to the MIAX PEARL related meaning of such term. See Securities Exchange Act Release No. 79543 (December 13, 2016), 81 FR 92901 (December 20, 2016) (Order pursuant to Section 36 of the Exchange Act granting application by MIAX PEARL for exemption from the rule filing requirements of Section 19(b) of the Exchange Act with respect to certain rules incorporated by reference) at 92916.

<sup>15</sup> Firms are required to maintain the trade information for pre-CAT transactions in equities and options pursuant to applicable rules, such as books and records retention requirements, for the relevant time period, which is generally three or six years depending upon the record. See 17 CFR 240.17a-3(a), 240.17a-4.

<sup>16</sup> *Id.* [sic]

<sup>17</sup> *Id.*

that report EBS data to the EBS system are reporting comparable data to the CAT. While the early submission of data to the CAT by Small Industry Members could expedite the replacement of MM account information, MM order information and EBS data with CAT Data, the Exchange believes that it is premature to consider such a change and that additional analysis would be necessary to determine whether such early reporting by Small Industry Members would be feasible.

The CAT NMS Plan requires that this rule filing address “whether individual Industry Members can be exempted from reporting to duplicative systems once their CAT reporting meets specified accuracy and reliability standards, including, but not limited to, ways in which establishing cross-system regulatory functionality or integrating data from existing systems and the CAT would facilitate such Individual Industry Member exemptions.”<sup>18</sup> The Exchange believes that a single cut-over from current reporting systems to CAT is highly preferable to a firm-by-firm approach and is not proposing to exempt Members from the Position Reporting Rule or EBS Rule requirements on a firm-by-firm basis. The Exchange believes that providing such individual exemptions to Industry Members would be inefficient, more costly, and less reliable than the single cut-over. Providing individual exemptions would require the exchanges to create, for a brief temporary period, a cross-system regulatory function and to integrate data from current reporting systems and the CAT to avoid creating any regulatory gaps as a result of such exemptions. Such a function would be costly to create and would give rise to a greater likelihood of data errors or other issues. Given the limited time in which such exemptions would be necessary, the Exchange does not believe that such exemptions would be an appropriate use of limited resources.

The CAT NMS Plan also requires that a rule filing to eliminate a duplicative rule to provide “specific accuracy and reliability standards that will determine when duplicative systems will be retired, including, but not limited to, whether the attainment of a certain Error Rate should determine when a system duplicative of the CAT can be retired.”<sup>19</sup> The Exchange believes that it is critical that the CAT Data be sufficiently accurate and reliable for the Exchange to perform the regulatory functions that it now performs via

current reporting systems. Accordingly, the Exchange believes that the CAT Data should meet specific quantitative error rates, as well as certain qualitative requirements.

The Exchange believes that, before CAT Data may be used in place of MM account information and MM order information or EBS data, the CAT would need to achieve a sustained error rate for a period of at least 180 days of 5% or lower measured on a pre-correction or as-submitted basis, and 2% or lower on a post-correction basis (measured at T+5).<sup>20</sup> The Exchange proposes to measure the 5% pre-correction and 2% post-correction thresholds by averaging the error rate across the period, not require a 5% pre-correction and 2% post-correction maximum each day for 180 consecutive days. The Exchange believes that measuring each of the thresholds over the course of 180 days will ensure that the CAT consistently meets minimum accuracy and reliability thresholds while also ensuring that single-day measurements do not unduly affect the overall measurements. The Exchange proposes to measure the appropriate error rates in the aggregate, rather than firm-by-firm. The 2% and 5% error rates are in line with the proposed retirement threshold for other systems, such as FINRA’s Order Audit Trail System (“OATS”) and the consolidated options audit trail system (“COATS”).

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

If the Commission approves the proposed rule change, the Exchange will announce the implementation date for

the proposed rule change in a Regulatory Circular that will be published once the Exchange concludes the thresholds for accuracy and reliability described above have been met and that the Plan Processor is sufficiently meeting all of its obligations under the CAT NMS Plan.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b)(5) of the Exchange Act,<sup>21</sup> which require, among other things, that the Exchange rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, and not designed to permit unfair discrimination between customers, issuers, brokers and dealers. The Exchange believes that this proposal is consistent with the Exchange Act because it fulfills the obligation in the CAT NMS Plan for the Exchange to submit a proposed rule change to eliminate or modify duplicative rules. In approving the Plan, the SEC noted that the Plan “is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act.”<sup>22</sup> As this proposal implements the Plan, the Exchange believes that this proposal furthers the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Exchange Act.

Moreover, the purpose of the proposed rule change is to amend rules that require the submission of duplicative data to the Exchange. The elimination of such duplicative requirements will reduce unnecessary costs and other compliance burdens for the Exchange and its Members, and therefore, will enhance the efficiency of the securities markets. Furthermore, the Exchange believes that the approach set forth in the proposed rule change strikes the appropriate balance between ensuring that the Exchange is able to continue to fulfill its statutory obligation to protect investors and the public interest by ensuring its surveillance of market activity remains accurate and effective while also establishing a reasonable timeframe for elimination or modification of its rules that will be rendered duplicative after implementation of the CAT.

<sup>20</sup> The Plan requires that the Plan Processor must ensure that regulators have access to corrected and linked order and Customer data by 8:00 a.m. Eastern Time on T+5. See CAT NMS Plan, at C-15.

<sup>21</sup> 15 U.S.C. 78f(b)(5).

<sup>22</sup> Approval Order at 84697.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

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

Section 6(b)(8) of the Exchange Act<sup>23</sup> requires that Exchange rules not impose any burden on competition that is not necessary or appropriate. The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The Exchange notes that the proposed rule change implements the requirements of the CAT NMS Plan approved by the Commission regarding the elimination of rules and systems that are duplicative of the CAT, and is designed to assist the Exchange in meeting its regulatory obligations pursuant to the Plan. Similarly, all exchanges and FINRA are proposing the elimination of their EBS and other CAT duplicative rules to implement the requirements of the CAT NMS Plan. Therefore, this is not a competitive rule filing and, therefore, it does not raise competition issues between and among the self-regulatory organizations and/or their members.

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

Written comments were neither solicited nor received.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) By order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

### IV. Solicitation of Comments

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

#### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or

- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-PEARL-2017-23 on the subject line.

#### Paper Comments

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

All submissions should refer to File Number SR-PEARL-2017-23. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-PEARL-2017-23, and should be submitted on or before June 22, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>24</sup>

**Eduardo A. Aleman,**

*Assistant Secretary.*

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### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-80794; File No. SR-NYSEMKT-2017-30]

### Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing of Proposed Rule Change To Eliminate Requirements That Will Be Duplicative of CAT

May 26, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 22, 2017, NYSE MKT LLC ("NYSE MKT" or the "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III 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 delete the Order Audit Trail System ("OATS") rules in the Rule 7400—Equities Series (Order Audit Trail System) and amend Rule 8211 of the Office Rules (Automated Submission of Trading Data Requested by the Exchange) governing submission of Electronic Blue Sheet trading data ("EBS") as these Rules provide for the collection of information that is duplicative of the data collection requirements of the CAT once the Financial Industry Regulatory Authority ("FINRA") publishes a notice announcing the date that it will retire its OATS and EBS rules. The proposed rule change is available on the Exchange's Web site at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below,

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

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

<sup>23</sup> 15 U.S.C. 78f(b)(8).

<sup>24</sup> 17 CFR 200.30-3(a)(12).