

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-77265)

March 1, 2016

Order Granting Exemptions from Certain Provisions of Rule 613 Pursuant to Section 36(a)(1) of the Securities Exchange Act of 1934

I. Introduction

On July 11, 2012, the Securities and Exchange Commission (“Commission” or “SEC”) adopted Rule 613 under the Securities Exchange Act of 1934 (“Exchange Act” or “Act”) to require national securities exchanges and national securities associations (“self-regulatory organizations” or “SROs”) to jointly submit a national market system (“NMS”) plan to create, implement, and maintain a consolidated order tracking system, or consolidated audit trail (“CAT”), with respect to the trading of NMS securities, that would capture customer and order event information for orders in NMS securities, across all markets, from the time of order inception through routing, cancellation, modification, or execution (“CAT NMS Plan”).¹ Rule 613 required the SROs to file the CAT NMS Plan with the Commission on or before April 28, 2013. At the SROs’ request, the Commission granted exemptions extending the deadline for the filing of the CAT NMS Plan to December 6, 2013,² and then to September 30, 2014.³ The SROs filed a CAT NMS Plan on September 30, 2014.⁴ On January 30, 2015, the

¹ See Securities Exchange Act Release No. 67457 (July 18, 2012), 77 FR 45722 (August 1, 2012) (“Adopting Release”).

² See Securities Exchange Act Release No. 69060 (March 7, 2013), 78 FR 15771 (March 12, 2013); see also Letter from Robert L.D. Colby, Executive Vice President and Chief Legal Officer, FINRA, to Elizabeth M. Murphy, Secretary, Commission, dated February 7, 2013.

³ See Securities Exchange Act Release No. 71018 (December 6, 2013), 78 FR 75669 (December 12, 2013); see also Letter from Robert L.D. Colby, Executive Vice President and Chief Legal Officer, FINRA, to Elizabeth M. Murphy, Secretary, Commission, dated November 7, 2013.

SROs submitted the request for exemptive relief that is the subject of this Order.⁵ On February 27, 2015, the SROs filed the Amended and Restated CAT NMS Plan that assumes their request for exemptive relief would be granted.⁶ On April 3, 2015, the SROs filed a supplement to the Exemption Request.⁷ On September 2, 2015, the SROs filed a second supplement to the Exemption Request.⁸

Rule 613 sets forth certain minimum requirements for the CAT NMS Plan that, among other things, relate to its operation and administration, data recording and reporting, clock synchronization and time stamps, the Central Repository, surveillance, compliance, and expansion to other securities and transactions.⁹ Rule 613 also requires the CAT NMS Plan to discuss a number of more specific “considerations,” such as: the method by which data will be

⁴ See Letter from the SROs, to Brent J. Fields, Secretary, Commission, dated September 30, 2014.

⁵ See Letter from Robert Colby, FINRA, on behalf of the SROs, to Brent J. Fields, Secretary, Commission, dated January 30, 2015 (“Exemption Request Letter”).

⁶ See Letter from the SROs, to Brent J. Fields, Secretary, Commission, dated February 27, 2015 (“Amended and Restated CAT NMS Plan”). On December 24, 2015, the SROs submitted an Amendment to the CAT NMS Plan. See Letter from SROs to Brent J. Fields, Secretary, Commission, dated December 23, 2015 (the “Amendment”). On February 9, 2016, the SROs filed with the Commission an identical, but unmarked, version of the CAT NMS Plan, dated February 27, 2015, as modified by the Amendment, as well as a copy of the request for proposal issued by the SROs to solicit bids from parties interested in serving as the Plan Processor for the consolidated audit trail. Unless the context otherwise requires, the “CAT NMS Plan” shall refer to the CAT NMS Plan, as modified by the Amendment.

⁷ See Letter from Robert Colby, FINRA, on behalf of the SROs, to Brent J. Fields, Secretary, Commission, dated April 3, 2015 (“April 2015 Supplement”).

⁸ See Letter from the SROs to Brent J. Fields, Secretary, Commission, dated September 2, 2015 (“September 2015 Supplement”). Unless the context otherwise requires, the “Exemption Request” shall refer to the Exemptive Request Letter, as supplemented by the April 2015 Supplement and the September 2015 Supplement.

⁹ 17 CFR 242.613(b)–(i). Unless otherwise noted or defined in this Order, capitalized terms are used as defined in Rule 613 or the CAT NMS Plan.

reported to the Central Repository; how and when it will be made available to regulators; the reliability and accuracy of the data; the security and confidentiality of the data; cost estimates and the impact on competition, efficiency and capital formation; the views solicited by the SROs from their members and other appropriate parties and how the SROs took those views into account; and alternative approaches considered by the SROs.¹⁰

In connection with their preparation of the Amended and Restated CAT NMS Plan, including assessing the considerations and the views of their members and other market participants, the SROs reached the conclusion that additional flexibility in certain of the minimum requirements specified in Rule 613 would allow them to propose a more efficient and cost-effective approach without adversely affecting the reliability or accuracy of CAT Data, or its security and confidentiality. Accordingly, on January 30, 2015, the SROs filed an application, pursuant to Rule 0-12 under the Exchange Act,¹¹ requesting that the Commission grant exemptions, pursuant to its authority under Section 36 of the Exchange Act,¹² from the requirement to submit a CAT NMS Plan that meets certain reporting requirements specified in Rule 613(c) and (d) as described below.¹³ Specifically, the SROs' exemptive requests relate to: (1) the reporting of options market maker quotations, as required under Rule 613(c)(7)(ii) and (iv);¹⁴ (2) the reporting and use of the Customer-ID under Rule 613(c)(7)(i)(A), (iv)(F),

¹⁰ 17 CFR 242.613(a)(1).

¹¹ 17 CFR 240.0-12.

¹² 15 U.S.C. 78mm.

¹³ See 17 CFR 242.613(c)(7), (c)(8), (d)(3); see also Exemption Request Letter, supra note 5.

¹⁴ See 17 CFR 242.613(c)(7)(ii), (iv).

(viii)(B) and 613(c)(8);¹⁵ (3) the reporting of the CAT-Reporter-ID, as required under Rule 613(c)(7)(i)(C), (ii)(D), (ii)(E), (iii)(D), (iii)(E), (iv)(F), (v)(F), (vi)(B), and (c)(8);¹⁶ (4) the linking of executions to specific subaccount allocations, as required under Rule 613(c)(7)(vi)(A);¹⁷ and (5) the time stamp granularity requirement of Rule 613(d)(3)¹⁸ for certain manual order events subject to reporting under Rule 613(c)(7)(i)(E), (ii)(C), (iii)(C) and (iv)(C).¹⁹

Section 36 of the Exchange Act grants the Commission the authority, with certain limitations, to “conditionally or unconditionally exempt any person, security, or transaction . . . from any provision or provisions of [the Act] or of any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.”²⁰ For the reasons set forth below, this Order grants the SROs’ request for exemptions from the specified provisions of Rule 613.

II. Description and Discussion of Exemption Request

After reviewing the Exemption Request described below, the Commission believes that it is appropriate in the public interest and consistent with the protection of investors to grant the requested exemptive relief. As discussed more fully below, the Commission is persuaded to provide flexibility in the discrete areas discussed in the Exemption Request so that the alternative approaches can be included in the CAT NMS Plan and subject to notice and comment. Doing so

¹⁵ See 17 CFR 242.613(c)(7)(i)(A), (iv)(F), (viii)(B), (c)(8).

¹⁶ See 17 CFR 242.613(c)(7)(i)(C), (ii)(D), (ii)(E), (iii)(D), (iii)(E), (iv)(F), (v)(F), (vi)(B), and (c)(8).

¹⁷ See 17 CFR 242.613(c)(7)(vi)(A).

¹⁸ See 17 CFR 242.613(d)(3).

¹⁹ See 17 CFR 242.613(c)(7)(i)(E), (ii)(C), (iii)(C) and (iv)(C).

²⁰ 15 U.S.C. 78mm(a)(1).

could allow for more efficient and cost-effective approaches than otherwise would be permitted. The Commission at this stage is not deciding whether the proposed approaches detailed below are more efficient or effective than those in Rule 613.²¹ However, the Commission believes the proposed approaches should be within the permissible range of alternatives available to the SROs.

The Commission also believes granting the requested exemptive relief is consistent with the protection of investors. Doing so will provide the public an opportunity to consider and comment on whether these proposed alternative approaches would indeed be more efficient and cost-effective than those otherwise required by Rule 613, and whether such approaches would adversely affect the reliability or accuracy of CAT Data or otherwise undermine the goals of Rule 613. Moreover, if—as the SROs represent—efficiency gains and cost savings would result from including the proposed approaches in the CAT NMS Plan without adverse effects, then the resultant benefits could potentially flow to investors (e.g., lower broker-dealer reporting costs resulting in fewer costs passed on to Customers).

The CAT NMS Plan has not yet been published for public comment. The Commission is not concluding at this time that a CAT NMS Plan incorporating the additional flexibility provided by the exemptive relief granted in this Order is necessary or appropriate in the public interest. That evaluation will be made only after the Commission considers the public comments, completes its economic analysis, and fully assesses the CAT NMS Plan. Instead, by granting the requested exemptive relief, the Commission only is providing the SROs more

²¹ The Commission notes that the public will have an opportunity to comment on the alternative approaches discussed in the Exemption Request, and permitted by this Order, when the CAT NMS Plan is published for notice and comment. For this reason, the Commission did not separately publish this Order for public comment prior to its issuance today.

latitude in proposing a CAT NMS Plan, in certain discrete areas, as specifically proposed in the Exemption Request.

A. Options Market Maker Quotes

1. The SROs' Proposed Approach to Options Market Maker Quotes

Rule 613(c)(7) provides that the CAT NMS Plan must require each national securities exchange, national securities association, and any member of such exchange or association (“CAT Reporter”) 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.²² Rule 613(j)(8) defines “order” to include “any bid or offer;” so that the details for each options market maker quotation must be reported to the Central Repository by both the options market maker and the exchange to which it routes its quote.²³ In the Exemption Request, the SROs request an exemption from Rule 613(c)(7)(ii) and (iv) and propose an approach whereby only options exchanges—but not options market makers—would be required to report information to the Central Repository regarding options market maker quotations.²⁴

The SROs do not believe that their proposed approach would have an adverse effect on the various ways in which, and purposes for which, regulators would use, access, and analyze CAT Data.²⁵ The SROs believe that the information contemplated by Rule 613 to be submitted by options market makers, as a practical matter, would be largely identical to the information to be submitted by the options exchanges. For each quote received by an options exchange, the

²² See 17 CFR 242.613(c)(7).

²³ See 17 CFR 242.613(j)(8).

²⁴ See Exemption Request Letter, *supra* note 5, at 4–5.

²⁵ See *id.* at 8; see also 17 CFR 242.613(a)(1)(ii) (consideration requiring discussion of the time and method by which the data in the Central Repository will be made available to regulators).

exchange would need to submit the CAT Order ID, the date and time the order is received, the CAT Reporter ID of the market maker and the exchange, and the material terms of the order.²⁶ For each quote routed by a market maker, the market maker would need to submit the CAT Order ID, the date and time the order is routed, the CAT Reporter ID of the market maker and the exchange to which the order is routed, and the material terms of the order.²⁷ The SROs note that the volume of options market maker quotes is larger than any other category of data to be reported to the CAT, generating approximately 18 billion daily records, and believe that requiring duplicative reporting of this already large amount of data would lead to a substantial increase in costs.²⁸

The one data element that would not be captured in the options market maker quoting data to be submitted by the options exchange is the time the market maker routes its quote, or any modification or cancellation thereof, to an exchange (“Quote Sent Time”).²⁹ Accordingly, to ensure that regulators would receive all of the information contemplated by Rule 613(c)(7), the approach proposed by the SROs would require that (1) members report to the relevant options exchange the Quote Sent Time along with any quotation, or any modification or cancellation

²⁶ See 17 CFR 242.613(c)(7)(iii).

²⁷ 17 CFR 242.613(c)(7)(ii). Rule 613(c)(7)(ii)(F) requires reporting of the identity and nature of the department or desk to which an order is routed internally at a broker-dealer. In the context of options market maker quoting, internal routing information is not applicable.

²⁸ See Exemption Request Letter, supra note 5, at 2. In the Exemption Request Letter, the SROs explain why options market makers generate a high volume of quotations. See id. at 5–6.

²⁹ See 17 CFR 242.613(c)(7)(ii)(C).

thereof; and (2) options exchanges submit the quotation data received from options market makers, including the Quote Sent Time, to the Central Repository without change.³⁰

The SROs, in consultation with their members, Bidders and the Development Advisory Group (“DAG”),³¹ believe that the proposed approach is “the most efficient and cost-effective way” to meet the Commission’s goals under Rule 613 and that the proposed approach would provide the Commission with options market maker quote data at a lower cost to market participants and at a lower cost to the CAT Plan Processor without compromising the goals of the CAT.³² In support, the SROs included a cost-benefit analysis of options data reporting approaches in the Exemption Request.³³ The SROs argue in their cost-benefit analysis that eliminating Rule 613(c)(7)’s requirement that both options market makers and options exchanges report nearly identical quotation data to the Central Repository has the potential effect of reducing the projected capacity requirements and other technological requirements for the Central Repository, which would result in significant cost savings.³⁴ The SROs estimate that requiring only options exchanges to report market maker quote information would reduce the size of data reported to CAT by 18 billion records per day.³⁵ The SROs represent that those entities that responded to the SROs’ Request for Proposal seeking to be the CAT Plan Processor (“Bidders”) indicated that the additional cost of dual reporting of options market maker quotes

³⁰ See id. at 3–4.

³¹ The DAG is an industry advisory group formed to advise the SROs on various aspects of the CAT and its development, including impact upon CAT participant firms and the broader industry.

³² See Exemption Request Letter, supra note 5, at 6.

³³ Id. at 6–7.

³⁴ See id. at 7.

³⁵ Id.

over five years would be between \$2 million and \$16 million for data storage and technical architecture.³⁶ Further, the SROs state that if options market makers are required to report quotation information, options market makers would incur direct costs for additional hardware to store and process the information, as well as costs to develop and maintain the new systems.³⁷

The SROs represent in the Exemption Request that they solicited the views of their members and other appropriate parties to ensure that the SROs considered a variety of informed views.³⁸ In particular, the SROs note that they and the industry discussed the results of a survey on options market makers reporting quotation information costs conducted by the Financial Information Forum (“FIF”), the Securities Industry and Financial Markets Association (“SIFMA”), and the Security Traders Association (“STA”). Based on survey responses, FIF, SIFMA, and STA estimated that over a five-year period it could cost between \$307.6 million and \$382 million for options market makers to comply with Rule 613(c)(7)’s reporting requirements.³⁹ According to the SROs, the survey found that a disproportionate amount of this

³⁶ Id. at 2.

³⁷ Id. at 7.

³⁸ See id. at 6. Rule 613(a)(1)(xi) provides that the SROs’ must discuss in the CAT NMS Plan the process by which the plan sponsors solicited views of their members and other appropriate parties regarding the creation, implementation, and maintenance of the consolidated audit trail, a summary of the views of such members and other parties, and how the plan sponsors took such views into account in preparing the national market system plan.

³⁹ See id. at 7. The SROs also note that SIFMA has stated that options market makers should not be required to report their quotes to the Central Repository due to the large volume of such quotes and the ability to obtain such quotation information from the options exchanges. Id. at 6. The estimate in the survey represents the cost for options market makers to fully comply with Rule 613(c)(7). However, the Commission notes that although the proposed approach eliminates the cost of such compliance, it adds the requirement to report Quote Sent Time.

cost would fall on smaller market maker firms.⁴⁰ FIF, SIFMA, and STA also noted that without an exemption, the industry could be subject to further indirect costs arising in connection with the infrastructure scaling required for the extra capacity necessary across processors, storage, network bandwidth, system performance, operations management in production, disaster recovery, development, and testing CAT systems to maintain the duplicative data.⁴¹

In their Exemption Request, the SROs represent that they do not believe that their proposed approach for reporting options market maker quotation information to the Central Repository would impact the reliability or accuracy of CAT Data,⁴² or its security and confidentiality.⁴³ Further, the SROs believe that by eliminating unnecessary duplication of reported information, their proposed approach would have a positive effect on competition, efficiency, and capital formation.⁴⁴ The SROs note that their proposed approach would provide regulators with the quote data necessary for the surveillance of options market makers and would not jeopardize the important goals of CAT.⁴⁵ Finally, the SROs state that in the course of considering the requirements of Rule 613 as they relate to options market maker quotations, they considered three primary alternative approaches: (1) complying with Rule 613 as written,

⁴⁰ See id. at 7. The survey showed that smaller market maker firms would bear 33% of the implementation costs while only accounting for 6%–7% of the volume. Id.

⁴¹ Id. The Commission notes that these items are not included in the estimates of costs of complying with Rule 613(c)(7) absent an exemption.

⁴² See id. at 7–8; see also 17 CFR 242.613(a)(1)(iii) (consideration requiring discussion of the reliability and accuracy of the proposed approach).

⁴³ See Exemption Request Letter, supra note 5, at 7–8; see also 17 CFR 242.613(a)(1)(iv) (consideration requiring discussion of the security and confidentiality issues of the proposed approach).

⁴⁴ See Exemption Request Letter, supra note 5, at 8; see also 17 CFR 242.613(a)(1)(viii) (consideration requiring discussion of competition, efficiency, and capital formation).

⁴⁵ See Exemption Request Letter, supra note 5, at 6.

(2) requiring options market makers to submit their Quote Sent Times directly to the Central Repository, and (3) the proposed approach, and found the proposed approach to be preferred.⁴⁶

2. Discussion of the SROs' Proposed Approach to Options Market Maker Quotes

The Commission has carefully considered the information provided by the SROs in support of the SROs' exemption request from Rule 613(c)(7)(ii) and (iv)⁴⁷ with respect to the reporting of options market maker quotes. The Commission believes it is appropriate to provide sufficient flexibility so as not to preclude the approach described by the SROs in the Exemption Request.

Based on the information provided by the SROs in the Exemption Request, the Commission is persuaded to grant exemptive relief to provide flexibility such that the alternative approach to collecting options market maker quotations described in the Exemption Request can be included in the CAT NMS Plan and subject to notice and comment. The SROs' describe an approach that could result in Options Market Maker quotation data, including Quote Sent Time, being reported to the Central Repository singly by the options exchanges rather than dually by both the options exchanges and Options Market Makers. To the extent the options exchanges would report the same data otherwise reported by Options Market Makers in an efficient, accurate and reliable manner, then the ability of the Commission and the SROs to access and use CAT Data should not be adversely affected. Moreover, the potentially lower cost associated with eliminating duplicative reporting and storage of such data represents a possible benefit.

⁴⁶ See *id.* at 8; see also 17 CFR 242.613(a)(1)(xii) (consideration requiring discussion of alternatives considered).

⁴⁷ 17 CFR 242.613(c)(7)(ii) and (iv).

Therefore, the Commission finds it is appropriate in the public interest and consistent with the protection of investors to exempt the SROs from Rule 613(c)(7)(ii) and (iv). The Commission notes that the proposed approach described in the Exemption Request would require that: (1) options market makers report to the relevant options exchange the Quote Sent Time along with any quotation, or any modification or cancellation thereof; and (2) the options exchange submits the quotation data received from options market makers, including the Quote Sent Time, to the Central Repository without change.

B. Customer ID

1. The SROs' Proposed Approach to Customer ID

i. Customer Information Approach

Rule 613(c)(7)(i)(A) requires that for the original receipt or origination of an order, a CAT Reporter report the “Customer-ID(s) for each Customer.”⁴⁸ “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.”⁴⁹ Rule 613(c)(8) further requires that “[a]ll plan sponsors and their members shall use the same Customer-ID and CAT-Reporter-ID for each customer and broker-dealer.”⁵⁰ In the Exemption Request, the SROs request an exemption from the requirements in Rule 613(c)(7)(i)(A) and Rule 613(c)(8) that Customer-IDs be reported to the Central Repository upon the original receipt

⁴⁸ See 17 CFR 242.613(c)(7)(i)(A).

⁴⁹ See 17 CFR 242.613(j)(5).

⁵⁰ See 17 CFR 242.613(c)(8).

or origination of an order and propose using the “Customer Information Approach.”⁵¹

The SROs state that they do not believe that the Customer Information Approach, described below, would have an adverse effect on the various ways in which, and purposes for which, regulators would use, access, and analyze the audit trail data reported under Rule 613.⁵² In particular, the SROs do not believe that the Customer Information Approach will compromise the linking of order events, alter the time and method by which regulators may access the data, or limit the use of the CAT audit trail data because the unique nature of the existing identifiers to be used under the Customer Information Approach would allow the Plan Processor to create customer linkages with the same level of accuracy as the Customer-ID.⁵³

The SROs also note that the Bidders, each of whom incorporated the Customer Information Approach in its Bid, asserted that the Customer Information Approach, described below, would allow all events pertaining to an order to be reliably and accurately linked together in a manner that allows regulators efficient access to complete order information.⁵⁴ Similarly, the SROs note that according to the Bidders, the Customer Information Approach would not impact the time and method by which linked data in the Central Repository would be made available to regulators.⁵⁵ Further, the SROs believe that because the Plan Processor will create

⁵¹ Because the Plan Processor will still assign a Customer-ID to each Customer under the Customer Information Approach, the SROs are not requesting an exemption from Rule 613(j)(5).

⁵² See Exemption Request Letter, supra note 5, at 15.

⁵³ Id.

⁵⁴ Id.

⁵⁵ Id. at 15–16.

and maintain unique Customer-IDs upon receipt of data from CAT Reporters, regulators would still be able to access CAT Data through unique Customer-IDs.⁵⁶

Under the Customer Information Approach, instead of requiring a universal Customer-ID for each Customer to be used for all orders, the CAT NMS Plan would require each broker-dealer to assign a unique firm-designated identifier (“FDI”) to each trading account.⁵⁷ Broker-dealers would be permitted to use an account number or any other identifier defined by the firm as the FDI, 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). In addition, the CAT NMS Plan would require broker-dealers to submit an initial set of information identifying the Customer to the Central Repository, including, but not limited to, the account type, account effective date (as applicable), the Customer’s name, address, date of birth, tax identification number or social security number, individual’s role in the account (e.g., primary holder, joint holder, guardian, trustee, person with the power of attorney), Legal Entity Identifier (“LEI”)⁵⁸ (if applicable), and Large Trader ID (if applicable).⁵⁹ Using the FDI and the other information identifying the Customer that would be reported to the Central Repository, the Plan Processor would then assign a unique Customer-ID to each Customer.⁶⁰ Under the Customer

⁵⁶ Id. at 16.

⁵⁷ Id. at 9–10.

⁵⁸ The SROs further note in the Exemption Request where a validated LEI is available for a Customer or entity, it may obviate the need to report other identifier information (e.g., customer name, address, TIN). See id. at 10 n.28.

⁵⁹ See id. at 9–10. The Commission notes that the SROs have not requested an exemption from the requirement that the “customer type” (e.g., retail, mutual fund, broker-dealer proprietary) be reported to the Central Repository. See Rule 613(c)(viii)(B) and Rule 613(j)(4).

⁶⁰ See Exemption Request Letter, supra note 5, at 10.

Information Approach and as set forth in the Exemption Request, upon original receipt or origination of an order, broker-dealers would only be required to report the FDI on each new order, rather than a Customer-ID as required by Rule 613(c)(7)(i)(A). In addition, under the Customer Information Approach, all broker-dealers would not be reporting the same Customer-ID for the Customer, as would be required by Rule 613(c)(8). The Customer-ID generated by the Plan Processor would remain within the Central Repository; it would not be sent back to the broker-dealers.⁶¹

To ensure that the data elements relating to the identity of every Customer in the Central Repository is complete and accurate, the SROs represent in their Exemption Request that broker-dealers would be required to submit to the Central Repository daily updates for reactivated accounts, newly established or revised FDIs, or reportable Customer identifying information.⁶² The SROs add that because reporting to the Central Repository is on an end-of-day basis, intra-day changes to information could be captured as part of the daily updates to the information.⁶³ In addition to daily updates, broker-dealers would be required to submit periodic, full refreshes of Customer information to the Central Repository.⁶⁴ The SROs represent that the scope of the “full” Customer information refresh would need to be defined to determine the extent to which inactive or otherwise terminated accounts would need to be reported.⁶⁵ Daily updates would

⁶¹ Id. Under Rule 613, broker-dealers would have to obtain a Customer-ID for each customer from the Central Repository. Then, when reporting the origination of an order to the Central Repository, the broker-dealer would have to include the Customer-ID in the report. See 17 CFR 242.613(c)(7)(i)(A).

⁶² See Exemption Request Letter, supra note 5, at 10 & n.29.

⁶³ Id. at 10.

⁶⁴ Id.

⁶⁵ Id.

consist of new account information and changes to existing account data, such as changes to name or address information.⁶⁶ Periodic full refreshes would require CAT Reporters to submit a complete dataset of all Customer Account Information, and would be used as a consistency check to help ensure completeness, consistency, and accuracy of information previously submitted to the account database.⁶⁷

The Exemption Request describes the process by which the SROs solicited views of their members and other appropriate parties regarding the Customer Information Approach.⁶⁸ The SROs held technical committee meetings to discuss particular items related to the Customer Information Approach and sought the input of the Bidders on the use of Customer-IDs.⁶⁹ The SROs also had numerous discussions with the DAG, which, according to the SROs, strongly supports the Customer Information Approach.⁷⁰ The SROs note that the DAG believes that the Customer Information Approach satisfies the Commission's goal of associating order information reported to the CAT with individual Customers, while minimizing the technological burden on broker-dealers and the associated costs by permitting broker-dealers to leverage existing methods of identifying Customers.⁷¹ In addition, the SROs note in the Exemption

⁶⁶

Id.

⁶⁷

Id. The SROs also note that the specific formats in which information is provided to the Central Repository that must be submitted for the required Customer information would be developed by the CAT Plan Processor and approved by the SROs. Id. at 10.

⁶⁸

See id. at 14.

⁶⁹

The SROs also note that the Request for Proposal ("RFP") and supporting RFP concepts document included a description of the Customer Information Approach. Id.

⁷⁰

Id. at 14 (citing to the FIF CAT Working Group: FIF Response to CAT NMS Plan, November 2014 Letter at 3; SIFMA Industry Recommendations).

⁷¹

The SROs also note in support of the Customer Information Approach that there are many instances in which multiple Customers may be stakeholders in an order. For example, if an investment club has twenty members with each member being an owner of

Request that the Customer Information Approach is consistent with the views expressed by industry associations such as FIF and SIFMA; both associations objected to the use of unique Customer identifiers and recommended that alternatives to this requirement be considered, including the use of existing identifiers.⁷²

The SROs believe that the reliability and accuracy of the data reported to the Central Repository under the Customer Information Approach is the same as under the approach outlined in Rule 613 with regard to Customer-IDs because the identifiers used under the proposed Customer Information Approach are also unique identifiers.⁷³ In some cases, the SROs believe that the Customer Information Approach may result in more accurate data because errors may be minimized since broker-dealers will not have to adjust their systems to capture and maintain the additional Customer-ID data element, and only a single entity will have to perform the mapping of firm-designated account information to Customer-ID.⁷⁴ Thus, according to the SROs, the reliability and accuracy of the audit trail data reported under Rule 613 would not be compromised during: (1) its transmission and receipt from market participants; (2) data

a single account and where each member is authorized to provide the broker-dealer with trading instructions for the club account, and the club places an order for that account with a broker-dealer, under Rule 613 the broker-dealer would have an obligation to provide a unique Customer-ID on the related order report for each member of the investment club. The SROs represent that multiple Customer-IDs would significantly increase the data footprint and, in turn, the data storage costs. However, under the Customer Information Approach, the SROs state that such broker-dealer would simply provide on its order report an FDI for the account held by the investment club which the Plan Processor would use to identify each Customer with an ownership interest in that account. See id. at 14–15.

⁷² See id. at 15.

⁷³ Id.

⁷⁴ Id.

extraction, transformation, and loading at the Central Repository; (3) data maintenance and management at the Central Repository; or (4) use by regulators.⁷⁵

The SROs believe that the Customer Information Approach would strengthen the security and confidentiality of the information reported to the Central Repository, thereby maintaining the efficacy of the Central Repository and the confidence of the market participants.⁷⁶ The SROs note DAG members’ concerns about potential data breaches, including the increased risk of identity theft, caused by the use of a single universal Customer-ID that is maintained across all CAT Reporters and all order events.⁷⁷ The SROs also note that a universal identifier that is tied to personally identified information (“PII”) could create a substantial risk of misuse and of possible identify theft as the universal identifiers are passed between the Plan Processor and each CAT Reporter.⁷⁸ The SROs further state that individual firms may not have consistent levels of data security, and the widespread use of Customer-IDs across multiple firms would mean that if a Customer-ID was compromised at one firm, it would be compromised at all firms, increasing the associated risk of identity theft and data privacy loss issues.⁷⁹ The SROs note that this differs from the Customer Information Approach, where CAT Reporters would use existing identifiers that are not shared across firms and Customer-IDs would reside solely in the Central Repository, known only to the Plan Processor and regulatory staff of the Commission and SROs.⁸⁰

Additionally, the SROs note that for CAT Reporters who report events in real-time, the risk and

⁷⁵ Id.

⁷⁶ See id. at 16.

⁷⁷ Id.

⁷⁸ Id.

⁷⁹ Id.

⁸⁰ Id.

impact of a universal Customer-ID being stolen or misused would be magnified when compared to a FDI.⁸¹ According to the SROs, under the Customer Information Approach, the responsibility to secure information relating to every Customer would essentially lie with a single entity—the Plan Processor—instead of with all CAT Reporters, who may have varying degrees of technical sophistication and resources to maintain the security and confidentiality of CAT Data.⁸²

The SROs also believe that the Customer Information Approach would be a more efficient and cost-effective method of identifying Customers and therefore would have a positive impact on competition, efficiency, and capital formation.⁸³ Among other things, the SROs note that Rule 613’s Customer-ID requirement would necessitate significant infrastructure changes to existing broker-dealer business processes, which could inhibit smaller broker-dealers and make it more difficult for them to enter or compete in the market.⁸⁴ The SROs also note that requiring each CAT Reporter to report a unique Customer-ID may hinder new customer onboarding times.⁸⁵ The SROs state that the exemption would eliminate Rule 613’s requirement that the Plan Processor distribute Customer-IDs to broker-dealers, increasing efficiency because a single entity—the Plan Processor—would be responsible for mapping, monitoring, and verifying the accuracy of the Customer-IDs and effecting corrections, rather than all CAT Reporters plus the

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Id.

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Id.

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Id.

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Id.

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The SROs explained that “the customer onboarding process is often time-critical as new customers want to initiate business transactions immediately,” and that under Rule 613’s requirements, “new customers would have a longer wait time for a new account as broker-dealers would be required to submit new customer information to the CAT Plan Processor in order to receive a unique Customer-ID.” Id.

Plan Processor.⁸⁶ In addition, the SROs note that the DAG emphasized that the Customer Information Approach would significantly reduce the costs to broker-dealers by permitting them to leverage their current technology to report to the Central Repository.⁸⁷

In support of their request, the SROs also provide the costs to implement the Customer-ID requirement approach as set forth in Rule 613 in their Exemption Request.⁸⁸ The SROs note that industry members informed the SROs that the cost to implement the Customer-ID as required in Rule 613 for the top 250 broker-dealers that will be reporting to the CAT (“Top 3 Tiers of CAT Reporters”) would be at least \$195 million.⁸⁹ To establish this cost estimate, the industry members considered the costs associated with activities required to implement the Customer-ID, as required in Rule 613, including: (1) the analysis of the impact of implementation on broker-dealer systems; (2) the cost of capturing and storing the additional Customer data; (3) the implementation of workflow and system changes; (4) the maintenance and management of Customer-IDs; and (5) the education of staff.⁹⁰ Industry members estimated that these activities would require on average 10 person months⁹¹ of business analysis, and a total implementation time of 30 person months at a staff cost of \$1,200 per day, accounting for a per-firm cost of \$780,120.⁹² The SROs believe that this cost estimate is conservative given that

⁸⁶ Id. at 17.

⁸⁷ Id.

⁸⁸ See id. at 17–18.

⁸⁹ See id. at 18.

⁹⁰ Id.

⁹¹ The SROs represent that a person month is the amount of effort expended by one person working one month. See id. at 18 n.43.

⁹² Industry members assumed 21.67 person days per person month (52 weeks * 5 work days per week, divided by 12 months): 30 person months * 21.67 person days/person month * \$1,200 daily rate. See id. at 18 n.44.

it only includes the costs for 250 broker-dealers (11% of the total broker-dealers that are expected to report to the Central Repository).⁹³ The SROs believe that the Customer Information Approach would impose less costs than the Customer-ID approach but do not provide estimated costs of implementing the Customer Information Approach for comparison.⁹⁴

The SROs note that they considered a variety of possible alternative approaches to complying with Rule 613, in addition to the Customer Information Approach.⁹⁵ For example, the SROs considered an approach that would have solely utilized account numbers, rather than account numbers and other unique identifying information, but concluded that relying solely on account numbers may raise issues regarding duplicate numbers under certain circumstances. After weighing the merits of these various approaches, the SROs concluded that the Customer Information Approach was the best option.⁹⁶

ii. Modification and Cancellation

Rule 613(c)(7)(iv)(F) requires that “[t]he CAT-Reporter-ID of the broker-dealer or Customer-ID of the person giving the modification or cancellation instruction” be reported to the Central Repository.⁹⁷ In the Exemption Request, the SROs request an exemption from the requirement that CAT Reporters report the Customer-ID of the person giving the modification or cancellation instruction to the Central Repository so that CAT Reporters are instead allowed to

⁹³ See id. at 18.

⁹⁴ The Commission notes that although the Exemption Request provided a cost-benefit analysis for compliance with the Customer-ID reporting requirement under Rule 613, it did not provide such an analysis for the proposed approaches described below in subsections II.B.1.ii (Modification and Cancellation) and II.B.1.iii (Effective Date vs. Account Opening Date).

⁹⁵ See Exemption Request Letter, supra note 5, at 18.

⁹⁶ See id.

⁹⁷ 17 CFR 242.613(c)(7)(iv)(F) (emphasis added).

report whether a modification or cancellation instruction was given by the Customer associated with the order, or was initiated by the broker-dealer or exchange associated with the order.⁹⁸

According to the SROs, for regulatory purposes it is most critical to ascertain whether the modification or cancellation instruction was given by the Customer or was instead initiated by the broker-dealer or exchange, rather than capturing the specific person who gave the instruction.⁹⁹ The SROs also note that because Rule 613 only requires the reporting of the Customer-ID upon order origination, the Central Repository will not have the identity of the specific Customer who originated an order for an account with multiple owners, but rather the identity of all account holders and persons authorized to give trading instructions for that account.¹⁰⁰ Thus, according to the SROs, requiring the reporting of the individual person providing the modification or cancellation instruction would result in an inconsistent level of granularity between the Reportable Events of origination or receipt of an order, and the modification or cancellation of the order.¹⁰¹ The SROs note that SRO and Commission staff could, if needed, ascertain the specific individual who submitted a modification or cancellation instruction in an account with multiple authorized account holders by requesting this information from the broker-dealer in the same manner they would be able to for the original receipt or origination of an order.¹⁰²

⁹⁸ See Exemption Request Letter, supra note 5, at 12.

⁹⁹ Id.

¹⁰⁰ Id.

¹⁰¹ Id.

¹⁰² See id. at 12–13.

iii. Effective Date vs. Account Opening Date

Rule 613(c)(7)(viii)(B) requires broker-dealers to report to the Central Repository “Customer Account Information.”¹⁰³ The term “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).”¹⁰⁴ In the Exemption Request and in the September 2015 Supplement,¹⁰⁵ the SROs request an exemption from the requirement in Rule 613(c)(7)(viii)(B) to report the “date [the] account [was] opened” and instead propose that an “effective date”¹⁰⁶ be reported in lieu of an account open date in certain limited circumstances, described below.¹⁰⁷

The first circumstance for which the SROs propose to permit reporting of an effective date in lieu of an account open date is where a relationship identifier—rather than a parent account—has been established for an institutional Customer relationship.¹⁰⁸ The SROs explain that when a trading relationship is established at a broker-dealer for an institutional Customer,

¹⁰³ 17 CFR 242.613(c)(7)(viii)(B).

¹⁰⁴ 17 CFR 242.613(j)(4).

¹⁰⁵ See September 2015 Supplement, supra note 8, at 4.

¹⁰⁶ The term “effective date” herein has the same meaning set forth in the September 2015 Supplement. See infra, notes 118–119 and accompanying text, 129–131 and accompanying text. The September 2015 Supplement states that to the extent there are any inconsistencies between it and the Exemption Request Letter regarding the use of an “effective date” in lieu of the “date account opened,” the terms of the September 2015 Supplement shall control. September 2015 Supplement, supra note 8, at 1.

¹⁰⁷ See Exemption Request Letter, supra note 5, at 11; September 2015 Supplement, supra note 8, at 4. The SROs note that this request for an exemption is limited to the requirements of Rule 613(c)(7)(viii)(B) noted herein, and does not pertain to other requirements of the Act, the rules thereunder, or SRO rules requiring account opening date, account number or account type information. September 2015 Supplement, supra note 8, at 4 n.6.

¹⁰⁸ September 2015 Supplement, supra note 8, at 4–5.

the broker-dealer typically creates a parent account, under which additional subaccounts are created.¹⁰⁹ However, according to the SROs, in some cases the broker-dealer establishes the parent relationship for an institutional Customer using a relationship identifier as opposed to an actual parent account.¹¹⁰ According to the SROs, the relationship identifier could be any of a variety of identifiers, such as the LEI or a short name for the relevant institution.¹¹¹ This relationship identifier is established prior to any trading for the institutional Customer.¹¹² The SROs state that if a relationship identifier has been established rather than a parent account, and an order is placed on behalf of the institutional Customer, any executed trades will be kept in a firm account (e.g., a facilitation or average price account) until they are allocated to the proper “subaccount(s),” i.e., the accounts associated with the parent relationship identifier connecting them to the institutional Customer.¹¹³

¹⁰⁹ Id. at 5.

¹¹⁰ Id.

¹¹¹ Id.

¹¹² Id. The SROs state that a relationship identifier is typically established when the relationship is entered into a firm’s system(s) (e.g., a trading system, a reference data system, etc.) but note that the practice may vary across the industry, as some firms may create relationship identifiers during the onboarding process. Id.

¹¹³ Id. The SROs explain that the order would originate from a parent relationship using the relationship identifier, rather than the subaccount that ultimately will receive the allocation. Id. According to the SROs, subaccounts may be established before or simultaneously with order origination; even when a subaccount exists before the order is transmitted, there may be multiple subaccounts for a given institutional relationship and the broker-dealer may not know which subaccount will receive the allocation for a trade at the time of order origination. Id. Also, the SROs state that a subaccount receiving the allocation may not exist at the time of order origination, and provide an example where two subaccounts may exist prior to order origination, but a third subaccount that may receive an allocation may be added after the order is submitted. Id. The SROs note that information about allocations to subaccounts will be submitted with Allocation Reports. Id.; see infra notes 213–217 and accompanying text.

The SROs explain that, in the above circumstance, no account open date is available for the parent relationship because there is no parent account.¹¹⁴ For the same reason, no account number or account type is available.¹¹⁵ Further, the SROs state that historically, broker-dealers have not maintained the date such relationships began in a uniform manner; some broker-dealers have maintained the date the relationship was first established in the broker dealer’s system, whereas others may have maintained the date trading began using the relationship identifier.¹¹⁶

Thus, the SROs propose in the above circumstance to permit broker-dealer CAT Reporters to report the effective date of the relationship identifier in lieu of an account open date. Where such institutional Customer relationships were established before CAT’s implementation,¹¹⁷ the effective date would be either (i) the date the broker-dealer established the relationship identifier, or (ii) the date when trading began—i.e., the date the first order is received—using the relevant relationship identifier.¹¹⁸ Where such relationships were established after CAT’s implementation, the effective date would be the date the broker-dealer established the relationship identifier and would be no later than the date the first order was received; the SROs further state that a uniform definition of effective date would be included in the CAT technical specifications to ensure consistent usage by all CAT Reporters going forward.¹¹⁹ For such relationships established before or after CAT’s implementation, the SROs

¹¹⁴ September 2015 Supplement, supra note 8, at 5.

¹¹⁵ Id. at 6.

¹¹⁶ Id. at 5.

¹¹⁷ In this subsection, CAT “implementation” refers to the implementation date of the CAT NMS Plan applicable to the relevant CAT Reporter, as set forth in Rule 613(a)(3)(v) and (vi). See id.

¹¹⁸ Id. at 6.

¹¹⁹ Id.

additionally request an exemption from Rule 613(c)(7)(viii)(B)'s requirement to report the "account number" and "account type"¹²⁰ and instead propose permitting broker-dealers to report the relationship identifier in place of the account number, and identify the "type" as a "relationship" in place of the account type.¹²¹ The SROs do not request exemptive relief concerning reporting of the account open date of the subaccount(s) associated with the parent relationship identifier, as account open dates would be available for such subaccounts.¹²²

The second circumstance for which the SROs propose to permit reporting of an effective date in lieu of an account open date is where particular legacy system data issues may prevent a broker-dealer from providing an account open date for any type of account (i.e., institutional, proprietary or retail) established before CAT's implementation.¹²³ According to the SROs, those legacy system data issues may arise because:

- (1) A broker-dealer has switched back office providers or clearing firms and the new back office/clearing firm system identifies the account open date as the date the account was opened on the new system;¹²⁴

¹²⁰ See supra notes 103–104 and accompanying text and 115 and accompanying text.

¹²¹ September 2015 Supplement, supra note 8, at 6.

¹²² See id. at 5. However, if there were an applicable legacy system data issue with the relevant subaccount, as described below, then an exemption may apply.

¹²³ Id. at 6–8. The SROs note that they have identified these legacy system data issues based on discussions with the DAG and understand that the term "account opening date" has not been clearly defined as a historical matter. Id. at 6–7. The SROs further note that given the lack of guidance on the definition of account opening date, as well as systems issues, a broker-dealer may not have an account opening date, and/or may have used an alternative date to indicate when an account was established. Id. at 7.

¹²⁴ The SROs state that the manner in which accounts are transferred from one system to another may impact the account opening date field. Id. at 7.

- (2) A broker-dealer is acquired and the account open date becomes the date that an account was opened on the post-merger back office/clearing firm system;
- (3) Certain broker-dealers maintain multiple dates associated without accounts in their systems and do not designate in a consistent manner which date constitutes the account open date, as the parameters of each date are determined by the individual broker-dealer;¹²⁵ or
- (4) No account open date exists for a proprietary account of a broker-dealer.¹²⁶

Thus, for accounts established before CAT's implementation, the SROs propose that when legacy systems data issues arise due to one of the four reasons above and no account open date is available, broker-dealers would be permitted to report an effective date in lieu of an account open date.¹²⁷ When the legacy systems data issues and lack of account open date are attributable to above reasons (1) or (2), the effective date would be the date the account was established, either directly or via a system transfer,¹²⁸ at the relevant broker-dealer.¹²⁹ When the legacy systems data issues and lack of account open date are attributable to above reason (3), the

¹²⁵ The SROs note that such variation among broker-dealers also occurs with respect to the account status change date (i.e., the effective date of when accounts are established for trading). Id. at 7.

¹²⁶ The SROs state that, historically, the account opening date was not required for a broker-dealer's proprietary accounts, if it was not available. Id. The SROs further note that according to regulatory guidance regarding Blue Sheet submissions, the "date account opened" should be provided for proprietary accounts "if it is known"; otherwise the field should be left blank. Id.

¹²⁷ Id. at 8.

¹²⁸ The SROs note that such system transfer could occur, for example, using "ACATS." Id. "ACATS" is the Automated Customer Account Transfer Service, a system that automates and standardizes procedures for the transfer of assets in a customer account from one brokerage firm and/or bank to another. See <http://www.dtcc.com/clearing-services/equities-clearing-services/acats.aspx>.

¹²⁹ September 2015 Supplement, supra note 8, at 8.

effective date would be the earliest available date.¹³⁰ When the legacy systems data issues and lack of account open date are attributable to above reason (4), the effective date would be (i) the date established for the proprietary account in the broker-dealer or its system(s), 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.¹³¹

The SROs note that they do not seek exemptive relief concerning legacy systems data issues where a “date account opened” is available.¹³² Moreover, because these are legacy system data issues, the SROs do not seek exemptive relief with respect to such issues for accounts established after CAT’s implementation, as the SROs understand that after CAT’s implementation, CAT Reporters will report the account open date as required under Rule 613(c)(7)(viii)(B) in such circumstances.¹³³

2. Discussion of the SROs’ Proposed Approach to Customer ID

The Commission has carefully considered the information provided by the SROs in support of their request for exemptions from Rule 613(c)(7)(i)(A);¹³⁴ 613(c)(7)(iv)(F);¹³⁵ 613(c)(7)(viii)(B);¹³⁶ and 613(c)(8) applicable to the reporting of Customer-IDs.¹³⁷ The

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Id.

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Id. The SROs note that in all cases, the effective date would be a date no later than the date proprietary trading occurs at the broker-dealer or in its system. Id.

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Id. The SROs provide an example where an account is transferred to a new broker-dealer and is deemed to be a new account. The SROs state that in such a case, the account opening date and the date the account was established at the relevant broker-dealer are the same, and no exemptive relief would be necessary. Id.

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Id. at 8–9.

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17 CFR 242.613(c)(7)(A).

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17 CFR 242.613(c)(7)(iv)(F).

136

17 CFR 242.613(c)(7)(viii)(B).

137

17 CFR 242.613(c)(8).

Commission believes that it is appropriate to provide sufficient flexibility so as to not preclude the approach described by the SROs in the Exemption Request.

Based on the information provided by the SROs in the Exemption Request, the Commission is persuaded to grant exemptive relief to provide flexibility such that the proposed approach described in the Exemption Request can be included in the CAT NMS Plan and subject to notice and comment. Specifically, the SROs describe a Customer Information Approach that could result in the linking, within the Central Repository, of FDIs to the appropriate Customer-ID and, ultimately, to the Customer. To the extent such data is linked in an efficient, accurate, reliable, and secure manner, the ability of the Commission and the SROs to access and use CAT Data should not be adversely affected. Additionally, the potentially lower cost of allowing broker-dealers to leverage their existing methods of identifying Customers represents a possible benefit. With respect to the reporting of the Customer providing the modification or cancellation instruction, and not the individual person doing so, the Commission recognizes that requiring the reporting of the individual person providing the modification or cancellation instruction would result in an inconsistent level of granularity between the Reportable Events of origination or receipt of an order, and the modification or cancellation of the order. With respect to reporting the account effective date in lieu of the account open date in the two particular circumstances described above (and lack of an “account number” and “account type” in the first of those circumstances¹³⁸), the Commission believes that the SROs’ proposed approach may not meaningfully impact the quality or usefulness of the information available to regulators.

Therefore, the Commission finds that it is appropriate in the public interest and consistent with the protection of investors to exempt the SROs from Rule 613(c)(7)(i)(A), (c)(7)(iv)(F),

¹³⁸ See supra notes 115 and accompanying text, 120–121 and accompanying text.

(c)(7)(viii)(B), and (c)(8). The Commission notes that the proposed Customer Information Approach described in the Exemption Request would require that: (1) for the original receipt or origination of an order, broker-dealers report an FDI for the Customer, rather than a Customer-ID, and that each FDI is unique across the firm for each business date; (2) broker-dealers submit an initial set of information to the Central Repository identifying the Customer, including the account type, account effective date, Customer's name, address, date of birth, tax identification number or social security number, an individual's role in the account (e.g., primary holder, joint holder, guardian, trustee, person with the power of attorney), LEI (if applicable), and Large Trader ID (if applicable); (3) there be a secure method and process for ensuring that broker-dealers provide daily or periodic updates—as described above—to the information used to identify a Customer to assure that the information is complete and accurate; and (4) the Plan Processor is able to efficiently, accurately and reliably assign and track a unique Customer-ID to each Customer, based on the FDI and other information identifying the Customer reported by a broker-dealer, and link reported FDIs to the appropriate Customer-IDs.

The Commission additionally notes that, with respect to reporting on modification or cancellation instructions, the proposed approach described in the Exemption Request would require that: (1) CAT Reporters report whether a modification or cancellation instruction was given by the Customer associated with the order, or was initiated by the broker-dealer or exchange associated with the order; and (2) SRO and Commission regulatory staff have the ability to identify the Customer, broker-dealer or exchange that modified or cancelled the order.

The Commission further notes that the proposed approach allowing CAT Reporters to report an effective date¹³⁹ in lieu of an account open date as described in the Exemption Request

¹³⁹ See supra notes 106, 118–119 and accompanying text, 129–131 and accompanying text.

and in the September 2015 Supplement would be limited to the following two circumstances where no account open date is available: First, where a relationship identifier has been established for an institutional Customer relationship rather than a parent account,¹⁴⁰ and second, where legacy system data issues prevent a broker-dealer from providing an account open date, for any type of account established before¹⁴¹ CAT’s implementation, for one of the four specific reasons¹⁴² detailed above. The Commission also notes that the proposed approach would require that the effective dates reported in these two circumstances would be those specifically described above and in the September 2015 Supplement.¹⁴³

C. CAT Reporter ID

1. The SROs’ Proposed Approach to CAT Reporter ID

A CAT-Reporter-ID is “a code that uniquely and consistently identifies [a CAT Reporter] for purposes of providing data to the central repository.”¹⁴⁴ Subparagraphs (c)(7)(i)(C), (ii)(D), (ii)(E), (iii)(D), (iii)(E), (iv)(F), (v)(F), (vi)(B), and (c)(8) of Rule 613 provide that the CAT NMS Plan must require CAT Reporters to report CAT-Reporter-IDs to the Central Repository

¹⁴⁰ The Commission notes that the proposed approach would also require reporting of the relationship identifier in place of the account number, and identification of the “type” as a “relationship” in place of the account type. See supra notes 113 and accompanying text, 120–121 and accompanying text. The Commission additionally notes that no exemptive relief is requested or granted concerning reporting of the account open date of the “subaccount(s)” associated with the parent relationship identifier. See supra note 120 and accompanying text.

¹⁴¹ The Commission notes that no exemptive relief is requested or granted concerning legacy systems data issues for accounts established after CAT’s implementation. See supra note 133 and accompanying text.

¹⁴² See supra notes 124–126 and accompanying text.

¹⁴³ See supra notes 118–119 and accompanying text, 129–131 and accompanying text.

¹⁴⁴ 17 CFR 242.613(j)(2).

for orders and certain Reportable Events.¹⁴⁵ Specifically, these provisions provide that the CAT NMS Plan must require reporting of CAT-Reporter-IDs of: the broker-dealer receiving or originating an order;¹⁴⁶ the broker-dealer or national securities exchange from which (or to which) an order is being routed;¹⁴⁷ the broker-dealer or national securities exchange receiving (or routing) a routed order;¹⁴⁸ the broker-dealer, if applicable, giving a modification or cancellation instruction, if an order is modified or cancelled;¹⁴⁹ the national securities exchange or broker-dealer executing an order, if an order is executed;¹⁵⁰ and the clearing broker or prime broker, if applicable, if an order is executed.¹⁵¹ Additionally, Rule 613(c)(8) requires that CAT Reporters use the same CAT-Reporter-ID for each broker-dealer.¹⁵² In the Exemption Request, the SROs request an exemption from the requirements in the above-noted provisions that broker-dealer CAT-Reporter-IDs be reported to the Central Repository on orders and Reportable Events and instead propose using the “Existing Identifier Approach.”¹⁵³

The SROs state that they do not believe the Existing Identifier Approach, described below, would negatively impact regulators’ access, use, and analysis of CAT Data, and that it

¹⁴⁵ 17 CFR 242.613(c)(7)(i)(C), (ii)(D), (ii)(E), (iii)(D), (iii)(E), (iv)(F), (v)(F), (vi)(B), and (c)(8).

¹⁴⁶ 17 CFR 242.613(c)(7)(i)(C).

¹⁴⁷ 17 CFR 242.613(c)(7)(ii)(D) and (E). If the order is routed to a national securities association, then the CAT-Reporter-ID of that national securities association must be reported. 17 CFR 242.613(c)(7)(ii)(E).

¹⁴⁸ 17 CFR 242.613(c)(7)(iii)(D) and (E). If a national securities association receives the routed order, then the CAT-Reporter-ID of that national securities association must be reported. 17 CFR 242.613(c)(7)(iii)(D).

¹⁴⁹ 17 CFR 242.613(c)(7)(iv)(F).

¹⁵⁰ 17 CFR 242.613(c)(7)(v)(F).

¹⁵¹ 17 CFR 242.613(c)(7)(vi)(B).

¹⁵² 17 CFR 242.613(c)(8).

¹⁵³ See Exemption Request Letter, supra note 5, at 19.

could even allow “additional levels of granularity compared to the CAT-Reporter-ID approach . . . without imposing additional requirements and associated costs on both CAT Reporters and the CAT Plan Processor.”¹⁵⁴ The SROs believe that the Existing Identifier Approach could collect information of more use to regulators than the approach mandated by Rule 613 through the reporting of MPIDs that identify not just a broker-dealer, but departments, businesses, or trading desks within a broker-dealer.¹⁵⁵ Additionally, the SROs note that many SRO surveillances “run off of these existing identifiers . . . and inclusion of these identifiers will help facilitate the retirement of the OATS system because regulators would have access to such identifiers through the CAT.”¹⁵⁶ The SROs also assert that the Existing Identifier Approach would “increase linkage capabilities,” explaining that “firms have a greater ability to uniquely identify firms within a single Existing Identifier than across an entire large firm with multiple desks and departments.”¹⁵⁷

Under the Existing Identifier Approach, instead of reporting a universal CAT-Reporter-ID for each broker dealer to be used across all SROs for orders and Reportable Events, as described above, a broker-dealer would be permitted to report its existing SRO-assigned market participant identifier (“MPID”) used by the relevant SRO specifically for transactions occurring at that SRO (e.g., FINRA MPID, Nasdaq MPID, NYSE Mnemonic, CBOE User Acronym, and CHX Acronym) when reporting information to the Central Repository.¹⁵⁸ Similarly, an exchange would report the MPIDs used by the broker-dealers on that exchange or its systems, in

¹⁵⁴ Id. at 23.

¹⁵⁵ See id. at 23, 26.

¹⁵⁶ Id. at 23.

¹⁵⁷ Id. at 25.

¹⁵⁸ Id. at 19–20.

lieu of reporting universal CAT-Reporter-IDs for broker-dealers. Over-the-counter (“OTC”) orders and Reportable Events would be reported with broker-dealers’ FINRA MPIDs.¹⁵⁹

According to the SROs, the Existing Identifier Approach would allow regulators to identify the broker-dealer associated with order information or a Reportable Event by linking those orders and Reportable Events to MPIDs, which in turn would be linked to a corresponding CAT-Reporter-ID generated by the Central Repository for internal use, and ultimately linked to the responsible broker-dealer.¹⁶⁰ This would ensure that each Reportable Event would be linked to the broker-dealer associated with the event, as required by Rule 613.¹⁶¹ To accomplish this linkage, the Plan Processor would create and maintain a database in the Central Repository that would map the MPIDs to the appropriate CAT-Reporter-ID and broker-dealer.¹⁶² A broker-dealer would be required to provide information to identify itself (e.g., its CRD number or LEI) to the Central Repository¹⁶³ and each SRO would be required to submit all of the MPIDs used by its members on the SRO to the Central Repository on a daily basis.¹⁶⁴ The Central Repository would match these reported MPIDs with the associated broker-dealer CAT-Reporter-IDs using

¹⁵⁹ The SROs explain that this is how broker-dealers currently report order information to FINRA’s “Order Audit Trail System” and report OTC trades to a FINRA trade reporting facility. Id. at 20.

¹⁶⁰ Id. at 20–21. The SROs explain that the CAT-Reporter-ID generated by the Central Repository for each CAT Reporter would be linked to SRO-assigned identifiers reported on orders and Reportable Events. Regulators could access information on the CAT Reporter based on either the CAT-Reporter-ID or by another identifier—for example, a market participant identifier used by an ATS that is operated by the CAT Reporter. Id. at 20.

¹⁶¹ Id. at 19–20.

¹⁶² Id. at 20.

¹⁶³ Id. at 19.

¹⁶⁴ Id. at 20.

the CAT-Reporter-ID database.¹⁶⁵ When reporting its own CAT-Reporter-ID to the Central Repository, an SRO would use the one assigned to it by the Plan Processor.¹⁶⁶

The Exemption Request describes the process by which the SROs solicited the views of their members and other appropriate parties regarding the Existing Identifier Approach.¹⁶⁷ The SROs requested the Bidders' and the DAG's input on the use of CAT-Reporter-IDs and note that the Bidders proposed system functionality was consistent with the Existing Identifier Approach and the Bidders did not indicate that it would be more costly or burdensome than Rule 613's CAT-Reporter-ID approach.¹⁶⁸ The SROs also indicate that the DAG members recommended using existing MPIDs for CAT-Reporter-IDs, rather than new identifiers.¹⁶⁹ The SROs state that they and the DAG believe the proposed approach would reduce their costs of complying with Rule 613, specifically by "minimizing the effect on current real-time business processes, practices, and data flows" and that the proposed approach "may facilitate the ability of the CAT Reporters to report information to the Central Repository by reducing the number of systems changes necessary to report to the Central Repository by adopting a new identifier."¹⁷⁰

The SROs believe the reliability and accuracy of CAT Data under the proposed Existing Identifier Approach would not change from the approach mandated by Rule 613 and would not negatively impact "the accuracy with which the CAT Plan Processor would be able to link

¹⁶⁵

Id.

¹⁶⁶

Id. at 20 n.53.

¹⁶⁷

Id. at 22.

¹⁶⁸

Id.

¹⁶⁹

Id. According to the SROs, SIFMA recommends use of the LEI as the CAT-Reporter-ID. See id. at 22. SIFMA also recommends that the Existing Identifier Approach only be used when a CAT Reporter does not have an LEI. Id.

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Id. at 24.

transactions.”¹⁷¹ The SROs represent that the Bidders believe the Existing Identifier Approach could result in fewer errors and would result in reliable and accurate linkage of order information, allowing regulators to submit queries and run surveillance analyses using the CAT-Reporter-ID.¹⁷² The SROs note that the Bidders did not indicate that use of the Existing Identifier Approach would compromise the reliability and accuracy of CAT Data during: (1) its transmission and receipt from market participants; (2) data extraction, transformation and loading at the Central Repository; (3) data maintenance and management at the Central Repository; or (4) use by regulators.¹⁷³

The SROs also believe that the proposed approach would not adversely impact the security and confidentiality of the information reported to the Central Repository.¹⁷⁴ They state that none of the Bidders have indicated that the Existing Identifier Approach would create new or different security or confidentiality concerns when compared with the CAT-Reporter-ID approach mandated by Rule 613.¹⁷⁵

The SROs also believe that the Existing Identifier Approach would have a positive impact on competition, efficiency and capital formation by reducing costs, technology, and other burdens on CAT Reporters while still meeting the Commission’s goals for the CAT.¹⁷⁶

The SROs set forth various reasons the Existing Identifier Approach would be an efficient and cost-effective way to identify each CAT Reporter responsible for an order or

¹⁷¹ Id. at 22, 23.

¹⁷² Id.

¹⁷³ Id. at 23.

¹⁷⁴ Id.

¹⁷⁵ Id.

¹⁷⁶ Id. at 24.

Reportable Event.¹⁷⁷ The SROs believe it would reduce the cost and implementation burdens on the SROs and broker-dealers to comply with Rule 613,¹⁷⁸ as it would allow them to continue using their current business practices and data flows instead of building new infrastructure to support the CAT-Reporter-ID requirement.¹⁷⁹ The SROs believe Rule 613’s approach, by comparison, would require many changes to the operation of broker-dealers and would impose “several potential technical implementation difficulties for the CAT Reporters and the CAT Plan Processor” by necessitating the adoption of infrastructure to comply with the recording, reporting, gathering, and maintenance of CAT-Reporter-IDs.¹⁸⁰ The SROs note that broker-dealers with multiple MPIDs would be required under Rule 613’s approach to consolidate them into one CAT-Reporter-ID, necessitating “substantial system and process updates” by the broker-dealers and SROs.¹⁸¹ Additionally, the SROs explain that some broker-dealers generate order identifiers that are tied to the specific MPIDs used by their trading desks. For these firms, to consolidate all of a broker-dealer’s MPIDs into one CAT-Reporter-ID would complicate the generation of order identifiers and require significant changes to these broker-dealers’ systems.¹⁸² The SROs believe that the Existing Identifier Approach would “minimize the effect on current real-time business processes, practices and data flows,” and “reduc[e] the systems changes necessary for broker-dealers to begin reporting information to the Central Repository”

¹⁷⁷ Id.

¹⁷⁸ Id. at 21, 24.

¹⁷⁹ Id. at 24.

¹⁸⁰ Id. at 26.

¹⁸¹ Id. at 24.

¹⁸² Id.

by requiring an existing identifier be reported, rather than a new identifier (i.e., the CAT-Reporter-ID).¹⁸³

In support of their request, the SROs provide cost information in the Exemption Request for implementing the CAT-Reporter-ID requirement mandated by Rule 613.¹⁸⁴ The SROs note that industry members estimated that the cost for the Top 3 Tiers of CAT Reporters to implement the CAT-Reporter-ID as required by Rule 613 would be \$78 million, or \$312,048 per firm.¹⁸⁵ The SROs state that the industry members established this cost estimate by considering the costs of the activities required to implement the CAT-Reporter-ID requirement, which include: (1) the analysis of the impact of implementation on broker-dealer processes if broker-dealers maintained the current identification mechanisms; (2) the required changes to FIX messaging and matching engines; (3) the required changes to trading center order entry specifications; (4) the cost of capturing and storing the additional CAT-Reporter-IDs; and (5) the increase in CAT error processing costs as a result of the change.¹⁸⁶ The SROs state that these activities would require, on average, an estimated 4 person months of business analysis, and a total implementation time of 12 person months, at a staff cost of \$1,200 per day, accounting for a per firm cost of \$312,048.¹⁸⁷ The SROs represent that this cost estimate only includes the costs for 11% of the broker-dealers that will be reporting to CAT.¹⁸⁸

¹⁸³ Id. at 19.

¹⁸⁴ See id. at 24–25.

¹⁸⁵ Id. at 25.

¹⁸⁶ Id. at 24–25.

¹⁸⁷ Id. at 25.

¹⁸⁸ Id.

The SROs also state that industry members estimated that the cost for the Top 3 Tiers of CAT Reporters to implement the CAT-Reporter-ID requirement, “if it is required to be supplied on every route and destination interface used by the broker-dealers,” is \$244 million, or \$975,150 per firm.¹⁸⁹ The industry members considered the costs of the following activities to implement the CAT-Reporter-ID: (1) the analysis of the impact of implementation on the routing and trading infrastructure for each execution; (2) the required changes to FIX messaging and matching engines; (3) the required changes to trading center order entry specifications; (4) the cost of capturing and storing the additional CAT-Reporter-IDs; and (5) the increase in Central Repository error processing costs as a result of this change.¹⁹⁰ The SROs state that these activities would require an estimated 12.5 person months of business analysis and a total implementation time of 37.5 person months, at a staff cost of \$1,200 per day, resulting in a per-firm cost of \$975,150.¹⁹¹ The SROs represent that this cost estimate only includes the costs for 11% of the broker-dealers that will be reporting to CAT.¹⁹² Based on these estimates, the SROs believe the overall cost for the Existing Identifier Approach would be less than Rule 613’s approach, but do not provide estimated costs of implementing the Existing Identifier Approach for comparison.¹⁹³ The SROs also believe that, based on the extent of the changes needed to comply with the approach required by Rule 613, and the number of broker-dealers that would

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Id.

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Id.

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Id.

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Id.

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See id.

need to make these changes, there would be a significant cost savings associated with using the Existing Identifier Approach.¹⁹⁴

2. Discussion of the SROs' Proposed Approach to CAT Reporter ID

The Commission has carefully considered the information provided by the SROs in support of their request for exemptions from Rule 613(c)(7)(i)(C), (c)(7)(ii)(D), (c)(7)(ii)(E), (c)(7)(iii)(D), (c)(7)(iii)(E), (c)(7)(iv)(F), (c)(7)(v)(F), (c)(7)(vi)(B), and (c)(8)¹⁹⁵ applicable to the reporting of broker-dealer CAT-Reporter-IDs. The Commission believes it is appropriate to provide sufficient flexibility so as not to preclude the approach described by the SROs in the Exemption Request.

Based on the information provided by the SROs in the Exemption Request, the Commission is persuaded to grant exemptive relief to provide flexibility such that the Existing Identifier Approach described in the Exemption Request can be included in the CAT NMS Plan and subject to notice and comment. The SROs describe an approach that could result in the linking, within the Central Repository, of all broker-dealer MPIDs to the appropriate CAT-Reporter-ID and, ultimately, to the broker-dealer. To the extent such data is linked in an efficient, accurate and reliable manner, the ability of the Commission and the SROs to access and use CAT Data should not be adversely affected. Moreover, the additional granularity that

¹⁹⁴ Id. at 24, 25. The SROs note that, in addition to the Existing Identifier Approach, they also considered SIFMA's alternative LEI approach to complying with Rule 613, but that not all industry participants use LEIs, so these firms would need to obtain an LEI if SIFMA's approach were adopted. Id. at 25. After weighing the merits of that approach, the SROs concluded that the Existing Identifier Approach was the best among the available options. Id. at 26.

¹⁹⁵ 17 CFR 242.613(c)(7)(i)(C), (c)(7)(ii)(D), (c)(7)(ii)(E), (c)(7)(iii)(D), (c)(7)(iii)(E), (c)(7)(iv)(F), (c)(7)(v)(F), (c)(7)(vi)(B), and (c)(8). The SROs requested exemptions from these provisions with respect to the obligation to report broker-dealer (and clearing and prime broker, as applicable) CAT-Reporter-IDs.

could result from reporting MPIDs potentially identifying not just broker-dealers, but also their internal departments, businesses, or trading desks, represents a possible regulatory benefit. Additionally, the potentially lower cost resulting from CAT Reporters using their existing business processes and data flows to report broker-dealer MPIDs rather than reporting new broker-dealer CAT-Reporter-IDs using new systems and infrastructure represents a possible benefit.

Therefore, the Commission finds that it is appropriate in the public interest and consistent with the protection of investors to exempt the SROs from Rule 613(c)(7)(i)(C), (c)(7)(ii)(D), (c)(7)(ii)(E), (c)(7)(iii)(D), (c)(7)(iii)(E), (c)(7)(iv)(F), (c)(7)(v)(F), (c)(7)(vi)(B), and (c)(8),¹⁹⁶ as those provisions apply to the reporting of broker-dealer CAT-Reporter-IDs. The Commission notes that the proposed approach described in the Exemption Request would require that: (1) broker-dealers report their existing SRO-assigned MPID(s) in lieu of reporting CAT-Reporter IDs as specified in Rule 613; (2) broker-dealers separately report information to identify themselves to the Central Repository; (3) each SRO submits the MPIDs used by its members to the Central Repository on a daily basis; (4) the Central Repository uses the information provided by the SROs to generate a CAT-Reporter-ID for each broker-dealer; (5) the Central Repository links all broker-dealer MPIDs to the appropriate CAT-Reporter-ID; and (6) the Plan Processor creates and maintains a database tracking all MPIDs to the appropriate CAT-Reporter-ID and, ultimately, to the broker-dealer.

¹⁹⁶ 17 CFR 242.613(c)(7)(i)(C), (c)(7)(ii)(D), (c)(7)(ii)(E), (c)(7)(iii)(D), (c)(7)(iii)(E), (c)(7)(iv)(F), (c)(7)(v)(F), (c)(7)(vi)(B), and (c)(8).

D. Linking Order Executions to Allocations

1. The SROs' Proposed Approach to Linking Order Executions to Allocations

Rule 613(c)(7)(vi)(A) provides that the CAT NMS Plan must require each CAT Reporter to record and report to the Central Repository “the account number for any subaccounts to which the execution is allocated (in whole or part).”¹⁹⁷ This information would allow regulators to link the subaccount to which an allocation was made to the original order placed, and its execution. In the Exemption Request and an accompanying supplement,¹⁹⁸ the SROs request an exemption from Rule 613(c)(7)(vi)(A) and propose an approach where CAT Reporters would instead submit information to the Central Repository that would allow regulators to link subaccount information to the Customer that submitted the original order.¹⁹⁹

The SROs do not believe that their proposed approach, described below, would affect the various ways in which, and purposes for which, regulators would use, access, and analyze CAT Data.²⁰⁰ The SROs represent that their proposed approach would still provide regulators with the ability to associate allocations with the Customers that received allocations and would provide regulators with the information that they require without imposing undue burden on the industry.²⁰¹ The SROs also do not believe that this approach would compromise the linking of order events, alter the time and method by which regulators may access the data, or limit the use

¹⁹⁷ See 17 CFR 242.613(c)(7)(vi)(A).

¹⁹⁸ See April 2015 Supplement, supra note 7.

¹⁹⁹ See Exemption Request Letter, supra note 5, at 28–29.

²⁰⁰ See 17 CFR 242.613(a)(1)(ii) (consideration requiring discussion of the time and method by which the data in the Central Repository will be made available to regulators); see also Exemption Request Letter, supra note 5, at 30.

²⁰¹ See Exemption Request Letter, supra note 5, at 30.

of the data as described in the use cases contained in the Adopting Release for Rule 613.²⁰²

Moreover, the SROs state that they, along with the industry, believe that linking allocations to specific executions, as mandated by Rule 613, would be artificial and any perceived benefits would not be of value to regulators.²⁰³

The SROs believe that reporting the account number for any subaccounts to which an execution is allocated raises significant practical problems, and would be burdensome, for CAT Reporters.²⁰⁴ The SROs explain that generally broker-dealers' front-office systems handle order and execution processes and middle- or back-office systems handle allocation processes and that these systems operate independently of each other.²⁰⁵ The SROs believe that creating linkages between the execution and allocation processes by means of an order identifier would require extensive re-engineering of broker-dealer front-, middle-, and back-office systems, and that such re-engineering would be very costly and time consuming.²⁰⁶ The SROs believe that their proposed approach would significantly reduce the burden on CAT Reporters to comply with the Rule 613 reporting requirements.²⁰⁷

The SROs take the position that, although the ultimate allocation of shares executed that result from an aggregated order may be useful for regulatory purposes, tying allocations to each

²⁰² Id.; see also Securities Exchange Act Release No. 67457 (July 6, 2012), FR 77 45722, 45798–99 (August 1, 2012).

²⁰³ See Exemption Request Letter, supra note 5, at 30.

²⁰⁴ See id. at 27.

²⁰⁵ Id. The middle- and back-office systems generally only provided final execution information on an aggregate, average price basis from the front-office systems. Id.

²⁰⁶ Id.

²⁰⁷ See id. at 29.

individual execution is of little regulatory benefit.²⁰⁸ The SROs explain that the subaccount account information required to be reported to the Central Repository pursuant to Rule 613(c)(7)(vi)(A) would show an artificial relationship between any one execution and one allocation.²⁰⁹ According to the SROs, when a large order is submitted by a broker-dealer, that order is likely to be filled, or partially filled, though several smaller executions with different contra-side parties.²¹⁰ Those executions are then aggregated and an average price is determined for the fill of the original order placed.²¹¹ Subaccount allocations are then made using the aggregated execution on an average price basis, so it is not always possible to associate one allocation with one execution.²¹²

To ensure that regulators would receive meaningful information regarding subaccount allocations, the SROs propose to require CAT Reporters to send an Allocation Report following each execution to the Central Repository as part of the information required pursuant to 613(c)(7)(vi).²¹³ The Allocation Report, which would be processed and validated in the same manner as any other order lifecycle report, would include, at a minimum, the following information: (1) the number of shares allocated; (2) the FDI²¹⁴ of any accounts or subaccounts

²⁰⁸ See id. at 28.

²⁰⁹ Id.

²¹⁰ Id.

²¹¹ Id.

²¹² Id.

²¹³ See id. at 26.

²¹⁴ See Section II.B.1, supra (defining “FDI” as firm-designated identifier). The FDI would be associated with all Customer-identifying information, including account number. See Exemption Request Letter, supra note 5, at 28.

The Exemption Request uses the term “firm-designated identifier” when referring to the FDI assigned to a Customer account at a broker-dealer and uses the term “Firm

(as applicable) to which the shares are allocated; (3) the time of allocation; (4) the identifier of the firm reporting the allocation, (5) the security; (6) the price per share; and (7) the side of the order (buy/sell).²¹⁵ There would not be a direct link in the Central Repository between the subaccounts to which an execution is allocated and the execution itself. However, CAT Reporters would be required to report each allocation to the Central Repository on an Allocation Report, and the FDI of the relevant subaccount provided to the Central Repository as part of the Allocation Report could be used by the Central Repository to link the subaccount holder to those with authority to trade on behalf of the account.²¹⁶ Further, the Allocation Reports used in conjunction with order lifecycle information in the CAT would assist regulators in identifying, through additional investigation, the probable group of orders that led to allocations.²¹⁷

In support of their exemption request, the SROs include a cost-benefit analysis in the Exemption Request. The SROs believe that the reporting requirements of Rule 613(c)(7)(vi)(A) would impose significant costs on the industry,²¹⁸ and that linkages between executions and allocations could show artificial relationships.²¹⁹ The SROs believe, however, that the approach proposed in the Exemption Request is an efficient and cost-effective way to report allocations.²²⁰ In particular, the SROs believe that this approach would impose less of a cost burden on broker-

Designated ID” when referring to the FDI of a subaccount. See Exemption Request Letter, supra note 5, at 9–10, 26–27. To avoid confusion, this Order uses “FDI” interchangeably and specifies with separate language the type of account being referenced.

²¹⁵ See id. at 26–27; April 2015 Supplement, supra note 7, at 2.

²¹⁶ Exemption Request Letter, supra note 5, at 28–29.

²¹⁷ See April 2015 Supplement, supra note 7, at 2.

²¹⁸ See Exemption Request Letter, supra note 5, at 31.

²¹⁹ See id. at 30.

²²⁰ Id. at 31.

dealers than the approach required by Rule 613.²²¹ The SROs explain that in communications with the industry, the DAG emphasized that this approach would reduce their costs for complying with Rule 613 by allowing broker-dealers to leverage existing business practices, processes, and data flows, thereby minimizing the effect on current business processes, practices, and data flows.²²² The SROs argue that given the number of affected broker-dealers and the extent of the technology and business process changes needed for the approach outlined in Rule 613, the cost savings of this approach are significant.²²³

The SROs note that industry members informed them that the cost for the Top 3 Tiers of CAT Reporters to link allocations to executions, as required by Rule 613(c)(7)(vi)(A) would be \$525 million.²²⁴ To establish this cost estimate, the SROs explain that industry members considered the costs associated with various activities required to link allocations to executions including: (1) the analysis of the impact of implementation on the broker-dealers processes and systems; (2) the potential changes to buy-side allocation messages to include related executions; (3) the workflow changes to accommodate order bunching at order entry and post-trade bunched order processing; and (4) the integration of the front- and back-office systems that are used to disseminate execution information with the allocation systems.²²⁵ Industry members indicated that these activities would cost 3.5 times the median cost of \$600,000 that was paid by the top 250 CAT Reporters when implementing the first phase of the Large Trader Reporting

221 Id.

222 Id.

223 Id.

224 Id.

225 Id.

requirements.²²⁶ Industry members used the multiplier to account for the significant changes that would be made to the front- and back-office systems as part of this implementation as well as to address the fact that the first phase of Large Trader Reporting focused on just proprietary trading and direct access, and many issues were not addressed during this implementation, including average price processing issues.²²⁷ Based on these estimates, the SROs believe that the overall cost for the proposed approach would be less than the approach outlined in Rule 613 but do not provide estimated costs of implementing the proposed approach for comparison.²²⁸

The SROs discuss the proposed approach's impact on reliability and accuracy of data reported to the Central Repository.²²⁹ The SROs explain that complying with the requirements of Rule 613(c)(7)(vi)(A) would require additional system and process changes which could potentially impact the reliability and accuracy of CAT Data.²³⁰ The SROs argue that because the proposed approach leverages existing business processes instead of creating new workflows, it could help improve the reliability and accuracy of CAT Data as well as reduce the time CAT Reporters need to comply with the CAT reporting requirements.²³¹ Further, the SROs state that CAT Data throughout an order's lifecycle would be more reliable and accurate under the proposed approach than under the approach outlined in Rule 613.²³²

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Id.

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Id.

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Id.

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See 17 CFR 242.613(a)(1)(iii) (consideration requiring discussion of the reliability and accuracy of the proposed approach).

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See Exemption Request Letter, supra note 5, at 30.

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Id.

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Id.

The SROs represent that Bidders did not indicate that the reliability and accuracy of CAT Data under the proposed approach would be compromised during: (1) its transmission and receipt from market participants; (2) data extraction, transformation, and loading at the Central Repository; (3) data maintenance and management at the Central Repository; or (4) use by regulators.²³³

The SROs also state that the proposed approach would have a positive effect on competition, efficiency, and capital formation.²³⁴ In this regard, the SROs believe that the proposed approach would minimize the cost, technology, and other burdens on the broker-dealers and the SROs.²³⁵ The SROs argue that not using the proposed approach could potentially increase barriers to entry due to high infrastructure set-up costs, which would be required to establish linkages between the front-, middle-, and back-offices necessary to comply with the requirements of Rule 613.²³⁶

The SROs also describe the alternatives they considered in proposing this approach.²³⁷ Specifically, they state that in the course of considering the requirements of Rule 613 as they relate to the linking of allocations to executions, the SROs evaluated two primary approaches: (1) compliance with Rule 613 as written; and (2) use of the proposed approach.²³⁸ After

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Id.

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See 17 CFR 242.613(a)(1)(viii) (consideration requiring discussion of competition, efficiency, and capital formation).

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See Exemption Request Letter, supra note 5, at 30–31.

236

See id. at 30–31.

237

See 17 CFR 242.613(a)(1)(xii) (consideration requiring discussion of alternatives considered).

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See Exemption Request Letter, supra note 5, at 31.

analyzing the merits of these approaches, the SROs concluded that the proposed approach was the best among the options considered, for the reasons discussed above.²³⁹

2. Discussion of the SROs' Proposed Approach to Linking Order Executions to Allocations

The Commission has carefully considered the information provided by the SROs in support of their request for an exemption from Rule 613(c)(7)(vi)(A), which requires that the CAT NMS Plan require each CAT Reporter to record and report the account number for any subaccounts to which an execution is allocated.²⁴⁰ The Commission believes that it is appropriate to provide sufficient flexibility so as not to preclude the approach described by the SROs in the Exemption Request and April 2015 Supplement.

Based on the information provided by the SROs in the Exemption Request and April 2015 Supplement, the Commission is persuaded to grant exemptive relief to provide flexibility such that the alternative approach for providing subaccount allocation information described in the Exemption Request and April 2015 Supplement can be included in the CAT NMS Plan and subject to notice and comment. The SROs describe an approach whereby CAT Reporters would not be required to report account numbers of subaccounts to which executions are allocated but instead would have to submit Allocation Reports containing, among other information, the FDIs of any accounts or subaccounts to which shares are allocated. To the extent the Central Repository is able to efficiently, accurately, and reliably link the subaccount holder to those with authority to trade on behalf of the account, the ability of the Commission and the SROs to access

²³⁹ Id.

²⁴⁰ 17 CFR 242.613(c)(7)(vi)(A).

and use such data should not be significantly affected in many instances.²⁴¹ Also, by leveraging existing broker-dealer processes, the proposed approach could potentially reduce the time CAT Reporters need to comply with CAT reporting requirements. Further, the potentially lower cost resulting from allowing broker-dealer CAT Reporters to use their existing business processes represents a possible benefit.

Therefore, the Commission finds it is appropriate in the public interest and consistent with the protection of investors to exempt the SROs from Rule 613(c)(7)(vi)(A). The Commission notes that the proposed approach described in the Exemption Request and April 2015 Supplement would require that: (1) CAT Reporters submit an Allocation Report to the Central Repository—which shall be processed and validated in the same manner as any other order lifecycle report—as part of the information required pursuant to 613(c)(7)(vi); (2) the Allocation Report contain, at a minimum, the number of shares allocated, the FDI of the account or subaccount (as applicable) to which the shares are allocated, the time of allocation, the identifier of the firm reporting the allocation, as well as the security, price per share, and the side of the order (buy/sell); and (3) the Central Repository be able to link the subaccount holder to those with authority to trade on behalf of the account.

²⁴¹ However, the Commission notes that in other instances where regulators need to further link the subaccount holder to the execution that resulted in the allocation, additional effort would be required to accurately and reliably obtain such information.

E. Time Stamp Granularity

1. The SROs' Proposed Approach to Time Stamp Granularity

Rule 613(c)(7) requires CAT Reporters to record and report the time of each Reportable Event.²⁴² In the Exemption Request, the SROs seek an exemption from the requirement in Rule 613(d)(3) that for “Manual Order Events” each CAT Reporter record and report details for Reportable Events with time stamps that “reflect current industry standards and be at least to the millisecond”²⁴³ and instead propose requiring: (1) each CAT Reporter to record and report Manual Order Event time stamps to the second;²⁴⁴ (2) the CAT NMS Plan to require that Manual Order Events be identified as such when reported to the CAT,²⁴⁵ and (3) CAT Reporters to report in millisecond time stamp increments when a Manual Order Event is captured electronically in the relevant order handling and execution system of the CAT Reporter (“Electronic Capture”).²⁴⁶ As proposed by the SROs, “Manual Order Events” would be defined to mean “the non-electronic communication of order-related information for which CAT Reporters must record and report the time of the event under Rule 613.”²⁴⁷

²⁴² Rule 613(c)(7)(i)(E) requires that CAT Reporters report the “[t]ime of order receipt or origination” when reporting order receipt or origination information to the Central Repository. When reporting the routing of an order, Rule 613(c)(7)(ii)(C) requires CAT Reporters to record and report the “[t]ime at which the order is routed.” When reporting the receipt of an order that has been routed, Rule 613(c)(7)(iii)(C) requires CAT Reporters to record and report the “[t]ime at which the order is received.” When reporting the modification or cancellation of an order, Rule 613(c)(7)(iv)(C) further requires CAT Reporters to record and report the “[t]ime the modification or cancellation is received or originated.”

²⁴³ 17 CFR 242.613(d)(3).

²⁴⁴ See Exemption Request Letter, supra note 5, at 37.

²⁴⁵ See id. at 34.

²⁴⁶ See id.

²⁴⁷ See id. at 32–33.

The SROs do not believe that their proposed approach would have an adverse effect on the various ways in which, and purposes for which, regulators would use, access, and analyze CAT Data,²⁴⁸ and in particular, do not believe that their approach will compromise the linking of Reportable Events, alter the time and method by which regulators may access the data, or limit the use of CAT Data.²⁴⁹

The SROs take the position that, while time stamp granularity to the millisecond reflects current industry standards with respect to electronically-processed events,²⁵⁰ based on industry feedback received through the DAG, established industry practice with respect to Manual Order Events is to capture manual time stamps with granularity at the level of one second.²⁵¹ The SROs believe that time stamps finer than a second cannot be captured with precision for manual processes which, by their nature, take one second or longer to perform.²⁵² In this regard, the SROs note that a time stamp process for Manual Order Events would be inherently imprecise due to the nature of the manual recording process.²⁵³ The SROs hence believe that such an approach would result in little additional benefit, and, in fact, could result in adverse consequences such as creating a false sense of precision for data that is inherently imprecise,

²⁴⁸ Id. at 36. The SROs take the position that because the recording of Manual Order Events is inherently imprecise, time stamps reported in increments finer than the inherent precision of the action will not likely contribute any data useful to regulators. Id. at 35. The SROs also believe that permitting one-second time stamps for Manual Order Events would preserve the sequential recording of Manual Order Events, and will not hinder the ability of regulators to determine the sequence of Manual Order Events. Id.

²⁴⁹ See id. at 36.

²⁵⁰ See id. at 32.

²⁵¹ Id.

²⁵² Id.

²⁵³ See id. at 33.

while imposing additional costs on CAT Reporters.²⁵⁴ For Manual Order Events that have an Electronic Capture time stamp, however, the SROs' proposed approach would require that such Electronic Capture time stamps be consistent with Rule 613(d)(3), and thus be at least to the millisecond.²⁵⁵ The SROs conclude that adding the Electronic Capture time stamp would be beneficial for the reconstructing of the order handling process once Manual Order Events are entered into an electronic system.²⁵⁶

In the Exemption Request, the SROs provide examples of how CAT Reporters would record and report a Manual Order Event if the exemption is granted.²⁵⁷ For example, if an investment advisor or broker received a telephone order from a Customer, the investment advisor or broker would either manually generate an order ticket with a time stamping device or manually input an order into an electronic system, including all order details and the time of order receipt, which may be generated through a time stamping mechanism on the order entry screen.²⁵⁸ Under their proposed approach, the SROs represent that if a Manual Order Event were recorded manually, such event would be recorded with time stamp granularity at least to the second, but if such Manual Order Event were subsequently processed and captured electronically, that such electronic capture would be recorded with time stamp granularity at least to the millisecond.²⁵⁹

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Id.

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Id.

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Id.

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See id. at 32–33 and Appendix A.

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The SROs note in their Exemption Request that the list of examples that they provide is not intended to be an exhaustive list of the circumstances where a Manual Order Event occurs. See id. at 33 n.77.

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See id.

In support of their Exemption Request, the SROs considered their own experiences regarding time stamp requirements, and evaluated the various operational and technical issues related to the implementation of the time stamp granularity requirements of Rule 613 with regard to Manual Order Events.²⁶⁰ In addition, as contemplated by Rule 613(a)(1)(xi), the SROs solicited the views of their members and other market participants.²⁶¹ In particular, the SROs consulted with the DAG, which strongly supports requiring a time stamp granularity of one second for Manual Order Events.²⁶² The SROs represent that they did not find any company that currently produces a manual time stamping device that records time to the millisecond.²⁶³ With no known company producing such a device, the SROs state that the cost of adopting such technology is difficult to predict.²⁶⁴ Nevertheless, the SROs believe that compliance with the millisecond time stamp requirements of Rule 613 for Manual Order Events would result in added costs to the industry, as there may be a need to upgrade databases, internal messaging applications/protocols, data warehouses, and reporting applications to enable the reporting of such time stamps to the Central Repository.²⁶⁵ The SROs further represent that firms will face significant costs regarding time and resources to implement the millisecond time stamp policy across multiple systems because although many systems currently have granularity to the

²⁶⁰ See id. at 35.

²⁶¹ 17 CFR 242.613(a)(1)(xi).

²⁶² See Exemption Request Letter, supra note 5, at 35.

²⁶³ The SROs represented that they contacted three companies that manufacture time stamp devices, and each company confirmed that it did not currently produce any products that could record a time stamp to the millisecond for Manual Order Events. See id. at 33 n.80.

²⁶⁴ Id. at 33.

²⁶⁵ Id.

millisecond, some front-office systems only have granularity to the second.²⁶⁶ Moreover, the SROs believe that such costs would be incurred only to adopt a time stamp process that would be inherently imprecise, due to the nature of the manual recording process.²⁶⁷

In the Exemption Request, the SROs represent that their proposed approach of one-second time stamp granularity for Manual Order Events would not negatively impact the reliability or accuracy of CAT Data,²⁶⁸ or its security and confidentiality. Moreover, the SROs represent that the proposed approach for Manual Order Event time stamps would have a positive effect on competition, efficiency, and capital formation; the SROs represent that in this regard their approach would satisfy the Commission’s regulatory goals for the CAT and would do so in a manner that minimizes cost, technology, and other burdens on CAT Reporters.²⁶⁹

Finally, the SROs represent that they considered various alternatives to requiring a one-second time stamp granularity for Manual Order Events, including: (1) requiring a millisecond time stamp as required by Rule 613; (2) the proposed approach, requiring a manual time stamp granularity of one second; and (3) requiring a manual time stamp of greater than one second.²⁷⁰ After weighing the merits of these various approaches,²⁷¹ the SROs conclude that a time stamp

²⁶⁶ Id. (citing to FIF’s “Response to Selected Topics of NMS Plan Document” (June 2013)).

²⁶⁷ Id.

²⁶⁸ Id. at 35–36. The SROs do not believe that one-second granularity for Manual Order Events would affect the reliability or accuracy of data during (1) its transmission and receipt from market participants; (2) extraction, transformation, and loading at the Central Repository; (3) maintenance and management at the Central Repository; or (4) use by regulators. Id.

²⁶⁹ Id. at 36.

²⁷⁰ Id. at 37.

²⁷¹ In the Exemption Request Letter, the SROs note cost information that they considered regarding various time stamping clocks for Manual Order Events, including an estimated minimum total cost to the industry of approximately \$10,500,000 for purchasing an

granularity of one second for Manual Order Events is the preferred approach because it is consistent with current established industry practice standards and would allow for sequencing without compromising the integrity of the data.²⁷²

2. Discussion of the SROs' Proposed Approach to Time Stamp Granularity

The Commission has carefully considered the information provided by the SROs in support of their request for exemptions from Rule 613(c)(7)(i)(E), 613(c)(7)(ii)(C), 613(c)(7)(iii)(C), 613(c)(7)(iv)(C), and 613(d)(3), as applicable to the recording and reporting of Manual Order Events.²⁷³ The Commission believes that it is appropriate to provide sufficient flexibility so as not to preclude the approach described by the SROs in the Exemption Request.

Based on the information provided by the SROs in the Exemption Request, the Commission is persuaded to grant exemptive relief to provide flexibility such that the alternative approach to increment time stamps for capturing Manual Order Events described in the Exemption Request can be included in the CAT NMS Plan and subject to notice and comment.

advanced OATS compliance clock with granularity to the second and Network Time Protocol time synchronization, where the retail cost of each such clock is approximately \$1,050. The SROs consider this a conservative estimate for their analysis because the development of a clock that captures time stamps in milliseconds, they believe, would be more expensive (though they do not provide a dollar estimate for comparison). The SROs add that the clock drift of the stamping mechanism would likely be more pronounced at the millisecond level of granularity. The SROs also note that the manufacturing firms they contacted, see supra note 263, indicated that manual time stamping at the millisecond level of granularity would be inherently imprecise, as it takes approximately 400–500 milliseconds for a human being to recognize visual stimuli and initiate a response, and due to the time required for a person to actually record a time stamp. The SROs conclude that the cost for reporting time stamps for Manual Order Events in milliseconds outweighs the benefits. Id. at 36–37.

²⁷² Id. at 37.

²⁷³ 17 CFR 242.613(c)(7)(i)(E), (c)(7)(ii)(C), (c)(7)(iii)(C), (c)(7)(iv)(C), and (d)(3).

The Commission notes that the time stamp process for Manual Order Events may likely be inherently imprecise due to the nature of the manual recording process.

Therefore, the Commission finds that it is appropriate in the public interest and consistent with the protection of investors to exempt the SROs from Rule 613(c)(7)(i)(E), 613(c)(7)(ii)(C), 613(c)(7)(iii)(C), 613(c)(7)(iv)(C), and 613(d)(3).²⁷⁴ The Commission notes that the proposed approach described in the Exemption Request would require that: (1) Manual Order Events be recorded and reported with granularity to the second, with the exception for system outages that prevent a floor broker from systemizing an order, in which case the requirement for recording of the manual time stamp will be made within a reasonable time frame basis after the fact; (2) Manual Order Events be identified as such in the CAT; and (3) the Electronic Capture of Manual Order Events be recorded and reported to the millisecond.²⁷⁵

III. Conclusion

Section 36 of the Exchange Act²⁷⁶ authorizes the Commission, by rule, regulation, or order, to exempt, either conditionally or unconditionally, any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of the Exchange Act or any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors. For the reasons discussed throughout this Order, the Commission is granting the relief requested in the Exemption Request.

²⁷⁴ 17 CFR 242.613(c)(7)(i)(E), (c)(7)(ii)(C), (c)(7)(iii)(C), (c)(7)(iv)(C), and (d)(3).

²⁷⁵ See Exemption Request Letter, supra note 5, at 34 (defining “Electronic Capture” as when a Manual Order Event is captured electronically in the relevant order handling and execution system of the CAT Reporter).

²⁷⁶ 15 U.S.C. 78mm.

IT IS HEREBY ORDERED, pursuant to Section 36 of the Exchange Act²⁷⁷ and with respect to the proposed approaches specifically described above, that the SROs are exempted from the following provisions of Rule 613: (1) for the reporting of options market maker quotations, Rule 613(c)(7)(ii) and (iv);²⁷⁸ (2) for the reporting and use of the Customer-ID, Rule 613(c)(7)(i)(A), (iv)(F), (viii)(B) and (c)(8);²⁷⁹ (3) for the reporting of the CAT-Reporter-ID with respect to broker-dealer CAT Reporters, Rule 613(c)(7)(i)(C), (ii)(D), (ii)(E), (iii)(D), (iii)(E), (iv)(F), (v)(F), (vi)(B), and (c)(8);²⁸⁰ (4) for the linking of executions to specific subaccount allocations, Rule 613(c)(7)(vi)(A);²⁸¹ and (5) for time stamp granularity, Rule 613(c)(7)(i)(E), (ii)(C), (iii)(C), (iv)(C), and (d)(3).²⁸²

By the Commission.

Robert W. Errett
Deputy Secretary

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Id.

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17 CFR 242.613(c)(7)(ii); 17 CFR 242.613(c)(7)(iv).

²⁷⁹

17 CFR 242.613(c)(7)(i)(A); 17 CFR 242.613(c)(7)(iv)(F); 17 CFR 242.613(c)(7)(viii)(B); 17 CFR 242.613(c)(8).

²⁸⁰

17 CFR 242.613(c)(7)(i)(C); 17 CFR 242.613(c)(7)(ii)(D); 17 CFR 242.613(c)(7)(ii)(E); 17 CFR 242.613(c)(7)(iii)(D); 17 CFR 242.613(c)(7)(iii)(E); 17 CFR 242.613(c)(7)(iv)(F); 17 CFR 242.613(c)(7)(v)(F); 17 CFR 242.613(c)(7)(vi)(B); and 17 CFR 242.613(c)(8).

²⁸¹

17 CFR 242.613(c)(7)(iv)(A).

²⁸²

17 CFR 242.613(c)(7)(i)(E), (c)(7)(ii)(C), (c)(7)(iii)(C), (c)(7)(iv)(C), and (d)(3).