

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-88100; File No. SR-CboeBYX-2020-005)

January 30, 2020

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing of a Proposed Rule Change Relating to Amend Certain Rules Within Rules 4.5 Through 4.16, Which Contains the Exchange's Compliance Rule ("Compliance Rule") Regarding the National Market System Plan Governing the Consolidated Audit Trail (the "CAT NMS Plan" or "Plan"), to be Consistent with Certain Proposed Amendments to and Exemptions from the CAT NMS Plan as well as to Facilitate the Retirement of Certain Existing Regulatory Systems

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on January 22, 2020, Cboe BYX Exchange, Inc. ("Exchange" or "BYX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BYX Exchange, Inc. (the "Exchange" or "Cboe BYX") proposes to amend certain Rules within Rules 4.5 through 4.16, which contains the Exchange's compliance rule ("Compliance Rule") regarding the National Market System Plan Governing the Consolidated Audit Trail (the "CAT NMS Plan" or "Plan"),<sup>3</sup> to be consistent with certain proposed amendments to and exemptions from the CAT NMS Plan as well as to facilitate the retirement of certain existing regulatory systems. The text of the proposed rule change is provided in Exhibit 5.

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

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

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

The text of the proposed rule change is also available on the Exchange's website ([http://markets.cboe.com/us/equities/regulation/rule\\_filings/byx/](http://markets.cboe.com/us/equities/regulation/rule_filings/byx/)), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

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

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

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

1. Purpose

The purpose of this proposed rule change is to amend the Consolidated Audit Trail ("CAT") Compliance Rule in Rules 4.5 through 4.16 to be consistent with certain proposed amendments to and exemptions from the CAT NMS Plan as well as to facilitate the retirement of certain existing regulatory systems. As described more fully below, the proposed rule change would make the following changes to the Compliance Rule:

- Revise data reporting requirements for the Firm Designated ID;
- Add additional data elements to the CAT reporting requirements for Industry Members to facilitate the retirement of the Financial Industry Regulatory Authority, Inc.'s ("FINRA") Order Audit Trail System ("OATS");
- Add additional data elements related to OTC Equity Securities that FINRA currently receives from ATs that trade OTC Equity Securities for regulatory oversight purposes to the CAT reporting requirements for Industry Members;

- Implement a phased approach for Industry Member reporting to the CAT (“Phased Reporting”);
- Revise the CAT reporting requirements regarding cancelled trades and SRO-Assigned Market Participant Identifiers of clearing brokers, if applicable, in connection with order executions, as such information will be available from FINRA’s trade reports submitted to the CAT;
- To the extent that any Industry Member’s order handling or execution systems utilize time stamps in increments finer than milliseconds, revise the timestamp granularity requirement to require such Industry Member to record and report Industry Member Data to the Central Repository with time stamps in such finer increment up to nanoseconds;
- Revise the reporting requirements to address circumstances in which an Industry Member uses an established trading relationship for an individual Customer (rather than an account) on the order reported to the CAT; and
- Revise the CAT reporting requirements so Industry Members would not be required to report to the Central Repository dates of birth, SSNs or account numbers for individuals.

(1) Firm Designated ID

The Participants filed with the Commission a proposed amendment to the CAT NMS Plan to amend the requirements for Firm Designated IDs in two ways: (1) to prohibit the use of account numbers as Firm Designated IDs for trading accounts that are not proprietary accounts; and (2) to require that the Firm Designated ID for a trading account be persistent over time for each Industry Member so that a single account may be tracked across time within a single

Industry Member.<sup>4</sup> As a result, the Exchange proposes to amend the definition of “Firm Designated ID” in Rule 4.5 to reflect the changes to the CAT NMS Plan regarding the requirements for Firm Designated IDs. Rule 4.5(r) (previously Rule 4.5(q)) defines the term “Firm Designated ID” to mean “a unique identifier for each trading account designated by Industry Members for purposes of providing data to the Central Repository, where each such identifier is unique among all identifiers from any given Industry Member for each business date.”

The Exchange proposes to amend the definition of a “Firm Designated ID” in proposed Rule 4.5(r) to provide that Industry Members may not use account numbers as the Firm Designated ID for trading accounts that are not proprietary accounts. Specifically, the Participants propose to add the following to the definition of a Firm Designated ID: “provided, however, such identifier may not be the account number for such trading account if the trading account is not a proprietary account.”

In addition, the Exchange proposes to amend the definition a “Firm Designated ID” in proposed Rule 4.5(r) to require a Firm Designated ID assigned by an Industry Member to a trading account to be persistent over time, not for each business day.<sup>5</sup> To effect this change, the Exchange proposes to amend the definition of “Firm Designated ID” in proposed Rule 4.5(r) to add “and persistent” after “unique” and delete “for each business date” so that the definition of “Firm Designated ID” would read, in relevant part, as follows:

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<sup>4</sup> See Letter to Vanessa Countryman, Secretary, SEC, from Michael Simon, CAT NMS Plan Operating Committee Chair re: Notice of Filing of Amendment to the National Market System Plan Governing the Consolidated Audit Trail (Nov. 20, 2019).

<sup>5</sup> If an Industry Member assigns a new account number or entity identifier to a client or customer due to a merger, acquisition or some other corporate action, then the Industry Member should create a new Firm Designated ID to identify the new account identifier/entity identifier in use at the Industry Member for the entity.

a unique and persistent identifier for each trading account designated by Industry Members for purposes of providing data to the Central Repository, where each such identifier is unique among all identifiers from any given Industry Member . .

(2) CAT-OATS Data Gaps

The Participants have worked to identify gaps between data reported to existing systems and data to be reported to the CAT to “ensure that by the time Industry Members are required to report to the CAT, the CAT will include all data elements necessary to facilitate the rapid retirement of duplicative systems.”<sup>6</sup> As a result of this process, the Participants identified several data elements that must be included in the CAT reporting requirements before existing systems can be retired. In particular, the Participants identified certain data elements that are required by OATS, but not currently enumerated in the CAT NMS Plan. Accordingly, the Exchange proposes to amend its Compliance Rule to include these OATS data elements in the CAT. Each of such OATS data elements are discussed below. The addition of these OATS data elements to the CAT will facilitate the retirement of OATS.

(A) Information Barrier Identification

The FINRA OATS rules require OATS Reporting Members<sup>7</sup> to record the identification of information barriers for certain order events, including when an order is received or originated, transmitted to a department within the OATS Reporting Member, and when it is modified. The Participants propose to amend the CAT NMS Plan to incorporate these requirements into the CAT.

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<sup>6</sup> Letter from Participants to Brent J. Fields, Secretary, SEC, re: File Number 4-698; Notice of Filing of the National Market System Plan Governing the Consolidated Audit Trail (September 23, 2016) at 21 (“Participants’ Response to Comments”) (available at <https://www.sec.gov/comments/4-698/4698-32.pdf>).

<sup>7</sup> An OATS “Reporting Member” is defined in FINRA Rule 7410(o).

Specifically, FINRA Rule 7440(b)(20) requires a FINRA OATS Reporting Member to record the following when an order is received or originated: “if the member is relying on the exception provided in Rule 5320.02 with respect to the order, the unique identification of any appropriate information barriers in place at the department within the member where the order was received or originated.”<sup>8</sup> The Compliance Rule does not require Industry Members to report such information barrier information. To address this OATS-CAT data gap, the Exchange proposes to add new paragraph (a)(1)(A)(7) to Rule 4.7, which would require Industry Members to record and report to the Central Repository, for original receipt or origination of an order, “the unique identification of any appropriate information barriers in place at the department within the Industry Member where the order was received or originated.”

In addition, FINRA Rule 7440(c)(1) states that “[w]hen a Reporting Member transmits an order to a department within the member, the Reporting Member shall record: . . . (H) if the member is relying on the exception provided in Rule 5320.02 with respect to the order, the unique identification of any appropriate information barriers in place at the department within the member to which the order was transmitted.” The Compliance Rule does not require Industry Members to report such information barrier information. To address this OATS-CAT data gap, the Exchange proposes to revise paragraph (a)(1)(B)(6) of Rule 4.7 to require, for the routing of an order, if routed internally at the Industry Member, “the unique identification of any appropriate information barriers in place at the department within the Industry Member to which the order was transmitted.”

FINRA Rule 7440(c)(2)(B) and 7440(c)(4)(B) require an OATS Reporting Member that receives an order transmitted from another member to report the unique identification of any

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<sup>8</sup> FINRA Rule 5320 prohibits trading ahead of customer orders.

appropriate information barriers in place at the department within the member to which the order was transmitted. The Compliance Rule not require Industry Members to report such information barrier information. To address this OATS-CAT data gap, the Exchange proposes to add new paragraph (a)(1)(C)(7) to Rule 4.7, which would require Industry Members to record and report to the Central Repository, for the receipt of an order that has been routed, “the unique identification of any appropriate information barriers in place at the department within the Industry Member which received the order.”

FINRA Rule 7440(d)(1) requires an OATS Reporting Member that modifies or receives a modification to the terms of an order to report the unique identification of any appropriate information barriers in place at the department within the member to which the modification was originated or received. The Compliance Rule does not require Industry Members to report such information barrier information. To address this OATS-CAT data gap, the Exchange proposes to add new paragraph (a)(1)(D)(7) to Rule 4.7, which would require Industry Members to record and report to the Central Repository, if the order is modified or cancelled, “the unique identification of any appropriate information barriers in place at the department within the Industry Member which received or originated the modification.”

#### (B) Reporting Requirements for ATSS

Under FINRA Rule 4554, ATSS that receive orders in NMS stocks are required to report certain order information to OATS, which FINRA uses to reconstruct ATS order books and perform order-based surveillance, including layering, spoofing, and mid-point pricing manipulation surveillance.<sup>9</sup> The Participants believe that Industry Members operating ATSS – whether such ATS trades NMS stocks or OTC Equity Securities - should likewise be required to

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<sup>9</sup> See FINRA Regulatory Notice 16-28 (Nov. 2016).

report this information to the CAT. Because ATSS that trade NMS stocks are already recording this information and reporting it to OATS, the Participants believe that reporting the same information to the CAT should impose little burden on these ATSS. Moreover, including this information in the CAT is also necessary for FINRA to be able to retire the OATS system. The Participants similarly believe that obtaining the same information from ATSS that trade OTC Equity Securities will be important for purposes of reconstructing ATS order books and surveillance. Accordingly, the Exchange proposes to add to the data reporting requirements in the Compliance Rule the reporting requirements for alternative trading systems (“ATSS”) in FINRA Rule 4554,<sup>10</sup> but to expand such requirements so that they are applicable to all ATSS rather than solely to ATSS that trade NMS stocks.

(i) New Definition

The Exchange proposes to add a definition of “ATS” to new paragraph (d) in Rule 4.5 to facilitate the addition to the Plan of the reporting requirements for ATSS set forth in FINRA Rule 4554. The Exchange proposes to define an “ATS” to mean “an alternative trading system, as defined in Rule 300(a)(1) of Regulation ATS under the Exchange Act.”

(ii) ATS Order Type

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<sup>10</sup> FINRA Rule 4554 was approved by the SEC on May 10, 2016, while the CAT NMS Plan was pending with the Commission. See Securities Exchange Act Release No. 77798 (May 10, 2016), 81 Fed. Reg. 30395 (May 16, 2016) (Order Approving SR-FINRA-2016-010). As noted in the Participants’ Response to Comments, throughout the process of developing the Plan, the Participants worked to keep the gap analyses for OATS, electronic blue sheets, and the CAT up-to-date, which included adding data fields related to the tick size pilot and ATS order book amendments to the OATS rules. See Participants’ Response to Comments at 21. However, due to the timing of the expiration of the tick size pilot, the Participants decided not to include those data elements into the CAT NMS Plan.



FINRA Rule 4554(b)(5) requires the following information to be recorded and reported to FINRA by ATSs when reporting receipt of an order to OATS:

A unique identifier for each order type offered by the ATS. An ATS must provide FINRA with (i) a list of all of its order types 20 days before such order types become effective and (ii) any changes to its order types 20 days before such changes become effective. An identifier shall not be required for market and limit orders that have no other special handling instructions.

The Compliance Rule does not require Industry Members to report such order type information to the Central Repository. To address this OATS-CAT data gap, the Exchange proposes to incorporate these requirements into four new provisions to the Compliance Rule: paragraphs (a)(1)(A)(11)(a), (a)(1)(C)(10)(a), (a)(1)(D)(9)(a) and (a)(2)(D) of Rule 4.7.

Proposed paragraph (a)(1)(A)(11)(a) of Rule 4.7 would require an Industry Member that operates an ATS to record and report to the Central Repository for the original receipt or origination of an order “the ATS’s unique identifier for the order type of the order.” Proposed paragraph (a)(1)(C)(10)(a) of Rule 4.7 would require an Industry Member that operates an ATS to record and report to the Central Repository for the receipt of an order that has been routed “the ATS’s unique identifier for the order type of the order.” Proposed paragraph (a)(1)(D)(9)(a) of Rule 4.7 would require an Industry Member that operates an ATS to record and report to the Central Repository if the order is modified or cancelled “the ATS’s unique identifier for the order type of the order.” Furthermore, proposed paragraph (a)(2)(D) of Rule 4.7 would state that:

An Industry Member that operates an ATS must provide to the Central Repository:

- (1) a list of all of its order types twenty (20) days before such order types become effective; and
- (2) any changes to its order types twenty (20) days before such changes become effective.

An identifier shall not be required for market and limit orders that have no other special handling instructions.

(iii) National Best Bid and Offer

FINRA Rules 4554(b)(6) and (7) require the following information to be recorded and reported to FINRA by ATSs when reporting receipt of an order to OATS:

(6) The NBBO (or relevant reference price) in effect at the time of order receipt and the timestamp of when the ATS recorded the effective NBBO (or relevant reference price); and

(7) Identification of the market data feed used by the ATS to record the NBBO (or other reference price) for purposes of subparagraph (6). If for any reason, the ATS uses an alternative feed than what was reported on its ATS data submission, the ATS must notify FINRA of the fact that an alternative source was used, identify the alternative source, and specify the date(s), time(s) and securities for which the alternative source was used.

Similarly, FINRA Rule 4554(c) requires the following information to be recorded and reported to FINRA by ATSs when reporting the execution of an order to OATS:

(1) The NBBO (or relevant reference price) in effect at the time of order execution;

(2) The timestamp of when the ATS recorded the effective NBBO (or relevant reference price); and

(3) Identification of the market data feed used by the ATS to record the NBBO (or other reference price) for purposes of subparagraph (1). If for any reason, the ATS uses an alternative feed than what was reported on its ATS data submission, the ATS must notify FINRA of the fact that an alternative source was used, identify the alternative source, and specify the date(s), time(s) and securities for which the alternative source was used.

The Compliance Rule does not require Industry Members to report such NBBO information to the Central Repository. To address this OATS-CAT data gap, the Exchange proposes to incorporate these requirements into four new provisions to the Compliance Rule:

(a)(1)(A)(11)(b) to (c), (a)(1)(C)(10)(b) to (c), (a)(1)(D)(9)(b) to (c) and (a)(1)(E)(8)(a) to (b) of Rule 4.7.

Specifically, proposed paragraph (a)(1)(A)(11)(b) to (c) of Rule 4.7 would require an Industry Member that operates an ATS to record and report to the Central Repository the following information when reporting the original receipt or origination of order:

(b) the National Best Bid and National Best Offer (or relevant reference price) at the time of order receipt or origination, and the date and time at which the ATS recorded such National Best Bid and National Best Offer (or relevant reference price);

(c) the identification of the market data feed used by the ATS to record the National Best Bid and National Best Offer (or relevant reference price) for purposes of subparagraph (11)(b). If for any reason the ATS uses an alternative market data feed than what was reported on its ATS data submission, the ATS must provide notice to the Central Repository of the fact that an alternative source was used, identify the alternative source, and specify the date(s), time(s) and securities for which the alternative source was used.

Similarly, proposed paragraphs (a)(1)(C)(10)(b) to (c), (a)(1)(D)(9)(b) to (c) and (a)(1)(E)(8)(a) to (b) of Rule 4.7 would require an Industry Member that operates an ATS to record and report to the Central Repository the same information when reporting receipt of an order that has been routed, when reporting if the order is modified or cancelled, and when an order has been executed, respectively.

(iv) Sequence Numbers

FINRA Rule 4554(d) states that “[f]or all OATS-reportable event types, all ATSs must record and report to FINRA the sequence number assigned to the order event by the ATS’s matching engine.” The Compliance Rule does not require Industry Members to report ATS sequence numbers to the Central Repository. To address this OATS-CAT data gap, the Exchange proposes to incorporate this requirement regarding ATS sequence numbers into each of the Reportable Events for the CAT. Specifically, the Exchange proposes to add new paragraph (a)(1)(A)(9)(d) to Rule 4.7, which would require an Industry Member that operates an ATS to record and report to the Central Repository “the sequence number assigned to the receipt or

origination of the order by the ATS's matching engine." The Exchange proposes to add new paragraph (a)(1)(B)(8) to Rule 4.7, which would require an Industry Member that operates an ATS to record and report to the Central Repository "the sequence number assigned to the routing of the order by the ATS's matching engine." The Exchange also proposes to add new paragraph (a)(1)(C)(10)(d) to Rule 4.7, which would require an Industry Member that operates an ATS to record and report to the Central Repository "the sequence number assigned to the receipt of the order by the ATS's matching engine." In addition, the Exchange proposes to add new paragraph (a)(1)(D)(10)(d) to Rule 4.7, which would require an Industry Member that operates an ATS to record and report to the Central Repository "the sequence number assigned to the modification or cancellation of the order by the ATS's matching engine." Finally, the Exchange proposes to add new paragraph (a)(1)(E)(8)(c) to Rule 4.7, which would require an Industry Member that operates an ATS to record and report to the Central Repository "the sequence number assigned to the execution of the order by the ATS's matching engine."

(v) Modification or Cancellation of Orders by ATSs

FINRA Rule 4554(f) states that "[f]or an ATS that displays subscriber orders, each time the ATS's matching engine re-prices a displayed order or changes the display quantity of a displayed order, the ATS must report to OATS the time of such modification," and "the applicable new display price or size." The Exchange proposes adding a comparable requirement into new paragraph (a)(1)(D)(9)(e) to Rule 4.7. Specifically, proposed new paragraph (a)(1)(D)(9)(e) of Rule 4.7 would require an Industry Member that operates an ATS to report to the Central Repository, if the order is modified or cancelled, "each time the ATS's matching engine re-prices an order or changes the display quantity of an order," the ATS must report to the Central Repository "the time of such modification, and the applicable new price or size."

Proposed new paragraph (a)(1)(D)(9)(e) of Rule 4.7 would apply to all ATSS, not just ATSS that display orders.

(vi) Display of Subscriber Orders

FINRA Rule 4554(b)(1) requires the following information to be recorded and reported to FINRA by ATSS when reporting receipt of an order to OATS:

Whether the ATS displays subscriber orders outside the ATS (other than to alternative trading system employees). If an ATS does display subscriber orders outside the ATS (other than to alternative trading system employees), indicate whether the order is displayed to subscribers only or through publicly disseminated quotation data);

The Compliance Rule does not require Industry Members to report to the CAT such information about the displaying of subscriber orders. The Exchange proposes to add comparable requirements into new paragraphs (a)(1)(A)(11)(e) and (a)(1)(C)(10)(e) of Rule 4.7. Specifically, proposed new paragraph (a)(1)(A)(11)(e) would require an Industry Member that operates an ATS to report to the Central Repository, for the original receipt or origination of an order,

whether the ATS displays subscriber orders outside the ATS (other than to alternative trading system employees). If an ATS does display subscriber orders outside the ATS (other than to alternative trading system employees), indicate whether the order is displayed to subscribers only or through publicly disseminated quotation data.

Similarly, proposed new paragraph (a)(1)(C)(10)(e) would require an Industry Member that operates an ATS to record and report to the Central Repository the same information when reporting receipt of an order that has been routed.

(C) Customer Instruction Flag

FINRA Rule 7440(b)(14) requires a FINRA OATS Reporting Member to record the following when an order is received or originated: “any request by a customer that a limit order not be displayed, or that a block size limit order be displayed, pursuant to applicable rules.” The Compliance Rule does not require Industry Members to report to the CAT such a customer

instruction flag. To address this OATS-CAT data gap, the Exchange proposes to add new paragraph (a)(1)(A)(8) to Rule 4.7, which would require Industry Members to record and report to the Central Repository, for original receipt or origination of an order, “any request by a Customer that a limit order not be displayed, or that a block size limit order be displayed, pursuant to applicable rules.” The Exchange also proposes to add new paragraph (a)(1)(C)(9) to Rule 4.7, which would require Industry Members to record and report to the Central Repository, for the receipt of an order that has been routed, “any request by a Customer that a limit order not be displayed, or that a block size limit order be displayed, pursuant to applicable rules.”

FINRA Rule 7440(d)(1) requires an OATS Reporting Member that modifies or receives a modification of an order to report the customer instruction flag. The Compliance Rule does not require Industry Members to report such a customer instruction flag. To address this OATS-CAT data gap, the Exchange proposes to add new paragraph (a)(1)(D)(8) to Rule 4.7, which would require Industry Members to record and report to the Central Repository, if the order is modified or cancelled, “any request by a Customer that a limit order not be displayed, or that a block size limit order be displayed, pursuant to applicable rules.”

(D) Department Type

FINRA Rules 7440(b)(4) and (5) require an OATS Reporting Member that receives or originates an order to record the following information: “the identification of any department or the identification number of any terminal where an order is received directly from a customer” and “where the order is originated by a Reporting Member, the identification of the department of the member that originates the order.” The Compliance Rule does not require Industry Members to report to the CAT information regarding the department or terminal where the order is received or originated. To address this OATS-CAT data gap, the Exchange proposes to add

new paragraph (a)(1)(A)(9) to Rule 4.7, which would require Industry Members to record and report to the Central Repository upon the original receipt or origination of an order “the nature of the department or desk that originated the order, or received the order from a Customer.”

Similarly, per FINRA Rules 7440(c)(2)(B) and (4)(B), when an OATS Reporting Member receives an order that has been transmitted by another Member, the receiving OATS Reporting Member is required to record the information required in 7440(b)(4) and (5) described above as applicable. The Compliance Rule does not require Industry Members to report to the CAT information regarding the department that received an order. To address this OATS-CAT data gap, the Exchange propose to add new paragraph (a)(1)(C)(8) to Rule 4.7, which would require Industry Members to record and report to the Central Repository upon the receipt of an order that has been routed “the nature of the department or desk that received the order.”

(E) Account Holder Type

FINRA Rule 7440(b)(18) requires an OATS Reporting Member that receives or originates an order to record the following information: “the type of account, i.e., retail, wholesale, employee, proprietary, or any other type of account designated by FINRA, for which the order is submitted.” The Compliance Rule does not require Industry Members to report to the CAT information regarding the type of account holder for which the order is submitted. To address this OATS-CAT data gap, the Exchange proposes to add new paragraph (a)(1)(A)(10) to Rule 4.7, which would require Industry Members to record and report to the Central Repository upon the original receipt or origination of an order “the type of account holder for which the order is submitted.”

(3) Firm Designated ID

The Participants have identified several data elements related to OTC Equity Securities that FINRA currently receive from ATSS that trade OTC Equity Securities for regulatory oversight purposes, but are not currently included in CAT Data. In particular, the Participants identified three data elements that need to be added to the CAT: (1) bids and offers for OTC Equity Securities; (2) a flag indicating whether a quote in OTC Equity Securities is solicited or unsolicited; and (3) unpriced bids and offers in OTC Equity Securities. The Participants believe that such data will continue to be important for regulators to oversee the OTC Equity Securities market when using the CAT. Moreover, the Participants do not believe that the proposed requirement would burden ATSS because they currently report this information to FINRA and thus the reporting requirement would merely shift from FINRA to the CAT. Accordingly, as discussed below, the Exchange proposes to amend its Compliance Rule to include these data elements.

(A) Bids and Offers for OTC Equity Securities

In performing its current regulatory oversight, FINRA receives a data feed of the best bids and offers in OTC Equity Securities from ATSS that trade OTC Equity Securities. These best bid and offer data feeds for OTC Equity Securities are similar to the best bid and offer SIP Data required to be collected by the Central Repository with regard to NMS Securities.<sup>11</sup> Accordingly, the Exchange proposes to add new paragraph (f)(1) to Rule 4.7 to require the reporting of the best bid and offer data feeds for OTC Equity Securities to the CAT. Specifically, proposed new paragraph (f)(1) of Rule 4.7 would require each Industry Member that operates an ATS that trades OTC Equity Securities to provide to the Central Repository “the best bid and best offer for each OTC Equity Security traded on such ATS.”

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<sup>11</sup> Section 6.5(a)(ii) of the CAT NMS Plan.



(B) Unsolicited Bid or Offer Flag

FINRA also receives from ATSS that trade OTC Equity Securities an indication whether each bid or offer in OTC Equity Securities on such ATS was solicited or unsolicited. Therefore, the Exchange proposes to add new paragraph (f)(2) to Rule 4.7 to require the reporting to the CAT of an indication as to whether a bid or offer was solicited or unsolicited. Specifically, proposed new paragraph (f)(2) of Rule 4.7 would require each Industry Member that operates an ATS that trades OTC Equity Securities to provide to the Central Repository “an indication of whether each bid and offer for OTC Equity Securities was solicited or unsolicited.”

(C) Unpriced Bids and Offers

FINRA receives from ATSS that trade OTC Equity Securities certain unpriced bids and offers for each OTC Equity Security traded on the ATS. Therefore, the Exchange proposes to add new paragraph (f)(3) to Rule 4.7, which would require each Industry Member that operates an ATS that trades OTC Equity Securities to provide to the Central Repository “the unpriced bids and offers for each OTC Equity Security traded on such ATS.

(4) Revised Industry Member Reporting Timeline

The Participants intend to file with the Commission a request for exemptive relief from certain provisions of the CAT NMS Plan to allow for the implementation of phased reporting to the CAT by Industry Members (“Phased Reporting”). Specifically, in their exemptive request, the Participants request that the SEC exempt each Participant from the requirement in Section 6.7(a)(v) for each Participant, through its Compliance Rule, to require its Large Industry Members to report to the Central Repository Industry Member Data within two years of the Effective Date (that is, by November 15, 2018). In addition, the Participants request that the SEC exempt each Participant from the requirement in Section 6.7(a)(vi) for each Participant, through

its Compliance Rule, to require its Small Industry Members to report to the Central Repository Industry Member Data within three years of the Effective Date (that is, by November 15, 2019). Correspondingly, the Participants request that the SEC provide an exemption from the requirement in Section 6.4 that “[t]he requirements for Industry Members under this Section 6.4 shall become effective on the second anniversary of the Effective Date in the case of Industry Members other than Small Industry Members, or the third anniversary of the Effective Date in the case of Small Industry Members.”

As a condition to these proposed exemptions, each Participant would implement Phased Reporting through its Compliance Rule by requiring:

(1) its Large Industry Members and its Small Industry OATS Reporters to commence reporting to the Central Repository Phase 2a Industry Member Data by April 20, 2020, and its Small Industry Non-OATS Reporters to commence reporting to the Central Repository Phase 2a Industry Member Data by December 13, 2021;

(2) its Large Industry Members to commence reporting to the Central Repository Phase 2b Industry Member Data by May 18, 2020, and its Small Industry Members to commence reporting to the Central Repository Phase 2b Industry Member Data by December 13, 2021;

(3) its Large Industry Members to commence reporting to the Central Repository Phase 2c Industry Member Data by April 26, 2021, and its Small Industry Members to commence reporting to the Central Repository Phase 2c Industry Member Data by December 13, 2021;

(4) its Large Industry Members and Small Industry Members to commence reporting to the Central Repository Phase 2d Industry Member Data by December 13, 2021; and

(5) its Large Industry Members and Small Industry Members to commence reporting to the Central Repository Phase 2e Industry Member Data by July 11, 2022.

The full scope of CAT Data will be required to be reported when all five phases of the Phased Reporting have been implemented.

As a further condition to these exemptions, each Participant proposes to implement the testing timelines, described in Section F below, through its Compliance Rule by requiring the following:

(1) Industry Member file submission and data integrity testing for Phases 2a and 2b begins in December 2019.

(2) Industry Member testing of the Reporter Portal, including data integrity error correction tools and data submissions, begins in February 2020.

(3) The Industry Member test environment will be open with intrafirm linkage validations to Industry Members for both Phases 2a and 2b in April 2020.

(4) The Industry Member test environment will be open to Industry Members with interfirm linkage validations for both Phases 2a and 2b in July 2020.

(5) The Industry Member test environment will be open to Industry Members with Phase 2c functionality (full representative order linkages) in January 2021.

(6) The Industry Member test environment will be open to Industry Members with Phase 2d functionality (manual options orders, complex options orders, and options allocations) in June 2021.

(7) Participant exchanges that support options market making quoting will begin accepting Quote Sent Time on quotes from Industry Members no later than April 2020.

(8) The Industry Member test environment (customer and account information) will be open to Industry Members in January 2022.

As a result, the Exchange proposes to amend its Compliance Rule to be consistent with the proposed exemptive relief to implement Phased Reporting as described below.

(A) Phase 2a

In the first phase of Phased Reporting, referred to as Phase 2a, Large Industry Members and Small Industry OATS Reporters would be required to report to the Central Repository “Phase 2a Industry Member Data” by April 20, 2020.<sup>12</sup> To implement the Phased Reporting for Phase 2a, the Exchange proposes to amend paragraph (t) of Rule 4.5 (previously paragraph (s)) and amend paragraphs (c)(1) and (2) of Rule 4.16.

(i) Scope of Reporting in Phase 2a

To implement the Phased Reporting with respect to Phase 2a, the Exchange proposes to add a definition of “Phase 2a Industry Member Data” as new paragraph (t)(1) of Rule 4.5. Specifically, the Exchange proposes to define the term “Phase 2a Industry Member Data” as “Industry Member Data required to be reported to the Central Repository commencing in Phase 2a as set forth in the Technical Specifications.” Phase 2a Industry Member Data would include Industry Member Data solely related to Eligible Securities that are equities. The following summarizes categories of Industry Member Data required for Phase 2a; the full requirements are set forth in the Industry Member Technical Specifications.<sup>13</sup>

Phase 2a Industry Member Data would include all events and scenarios covered by OATS. FINRA Rule 7440 describes the OATS requirements for recording information, which

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<sup>12</sup> Small Industry Members that are not required to record and report information to FINRA’s OATS pursuant to applicable SRO rules (“Small Industry Non-OATS Reporters”) would be required to report to the Central Repository “Phase 2a Industry Member Data” by December 13, 2021, which is twenty months after Large Industry Members and Small Industry OATS Reporters begin reporting.

<sup>13</sup> The items required to be reported commencing in Phase 2a do not include the items required to be reported in Phase 2c, as discussed below.

includes information related to the receipt or origination of orders, order transmittal, and order modifications, cancellations and executions. Large Industry Members and Small Industry OATS Reporters would be required to submit data to the CAT for these same events and scenarios during Phase 2a. The inclusion of all OATS events and scenarios in the CAT is intended to facilitate the retirement of OATS. Phase 2a Industry Member Data also would include Reportable Events for:

- proprietary orders, including market maker orders, for Eligible Securities that are equities;
- electronic quotes in listed equity Eligible Securities (i.e., NMS stocks) sent to a national securities exchange or FINRA’s Alternative Display Facility (“ADF”);
- electronic quotes in unlisted Eligible Securities (i.e., OTC Equity Securities) received by an Industry Member operating an interdealer quotation system (“IDQS”); and
- electronic quotes in unlisted Eligible Securities sent to an IDQS or other quotation system not operated by a Participant or Industry Member.

Phase 2a Industry Member Data would include Firm Designated IDs. During Phase 2a, Industry Members would be required to report Firm Designated IDs to the CAT, as required by paragraphs (a)(1)(A)(1), and (a)(2)(C) of Rule 4.7. Paragraph (a)(1)(A)(1) of Rule 4.7 requires Industry Members to submit the Firm Designated ID for the original receipt or origination of an order. Paragraph (a)(2)(C) of Rule 4.7 requires Industry Members to record and report to the Central Repository, for original receipt and origination of an order, the Firm Designated ID if the order is executed, in whole or in part.

In Phase 2a, Industry Members would be required to report all street side representative orders, including both agency and proprietary orders and mark such orders as representative

orders, except in certain limited exceptions as described in the Industry Member Technical Specifications. A representative order is an order originated in a firm owned or controlled account, including principal, agency average price and omnibus accounts, by an Industry Member for the purpose of working one or more customer or client orders.

In Phase 2a, Industry Members would be required to report the link between the street side representative order and the order being represented when: (1) the representative order was originated specifically to represent a single order received either from a customer or another broker-dealer; and (2) there is (a) an existing direct electronic link in the Industry Member's system between the order being represented and the representative order and (b) any resulting executions are immediately and automatically applied to the represented order in the Industry Member's system.

Phase 2a Industry Member Data also would include the manual and Electronic Capture Time for Manual Order Events. Specifically, for each Reportable Event in Rule 4.7, Industry Members would be required to provide a timestamp pursuant to Rule 4.10. Rule 4.10(b)(1) states that

Each Industry Member may record and report Manual Order Events to the Central Repository in increments up to and including one second, provided that each Industry Member shall record and report the time when a Manual Order Event has been captured electronically in an order handling and execution system of such Industry Member ("Electronic Capture Time") in milliseconds;

Accordingly, for Phase 2a, Industry Members would be required to provide both the manual and Electronic Capture Time for Manual Order Events.<sup>14</sup> Industry Members would be

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<sup>14</sup> Industry Members would be required to provide an Electronic Capture Time following the manual capture time only for new orders that are Manual Order Events and, in certain instances, routes that are Manual Order Events. The Electronic Capture Time would not be required for other Manual Order Events.

required to report special handling instructions for the original receipt or origination of an order during Phase 2a. In addition, during Phase 2a, Industry Members will be required to report, when routing an order, whether the order was routed as an intermarket sweep order (“ISO”). Industry Members would be required to report special handling instructions on routes other than ISOs in Phase 2c, rather than in Phase 2a.

In Phase 2a, Industry Members would not be required to report modifications of a previously routed order in certain limited instances. Specifically, if a trader or trading software modifies a previously routed order, the routing firm is not required to report the modification of an order route if the destination to which the order was routed is a CAT Reporter that is required to report the corresponding order activity. If, however, the order was modified by a Customer or other non-CAT Reporter, and subsequently the routing Industry Members sends a modification to the destination to which the order was originally routed, then the routing Industry Member must report the modification of the order route.<sup>15</sup> In addition, in Phase 2a, Industry Members would not be required to report a cancellation of an order received from a Customer after the order has been executed.

(ii) Timing of Phase 2a Reporting

Pursuant to paragraph (c)(1) of Rule 4.16, Large Industry Members are required to begin reporting to the CAT by November 15, 2018. To implement the Phased Reporting for Phase 2a for Large Industry Members, the Exchange proposes to replace paragraph (c)(1) of Rule 4.16 with new paragraph (c)(1)(A) of Rule 4.16, which would state, in relevant part, that “Each Industry Member (other than a Small Industry Member) shall record and report the Industry

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<sup>15</sup> This approach is comparable to the approach set forth in OATS Compliance FAQ 35.

Member Data to the Central Repository, as follows: (A) Phase 2a Industry Member Data by April 20, 2020.”

Pursuant to paragraph (c)(2) of Rule 4.16, Small Industry Members are required to begin reporting to the CAT by November 15, 2019. To implement the Phased Reporting for Phase 2a for Small Industry Members, the Exchange proposes to replace paragraph (c)(2) of Rule 4.16 with new paragraphs (c)(2)(A) and (B) of Rule 4.16. Proposed new paragraph (c)(2)(A) of Rule 4.16 would state that

Each Industry Member that is a Small Industry Member shall record and report the Industry Member Data to the Central Repository as follows: (A) a Small Industry Member that is required to record or report information to FINRA’s Order Audit Trail System pursuant to applicable SRO rules (“Small Industry OATS Reporter”) to report to the Central Repository Phase 2a Industry Member data by April 20, 2020.

Proposed new paragraph (c)(2)(B) of Rule 4.16 would state that “a Small Industry Member that is not required to record or report information to FINRA’s Order Audit Trail System pursuant to applicable SRO rules (“Small Industry Non-OATS Reporter”) to report to the Central Repository Phase 2a Industry Member Data by December 13, 2021.”

(B) Phase 2b

In the second phase of the Phased Reporting, referred to as Phase 2b, Large Industry Members would be required to report to the Central Repository “Phase 2b Industry Member Data” by May 18, 2020. Small Industry Members would be required to report to the Central Repository “Phase 2b Industry Member Data” by December 13, 2021, which is nineteen months after Large Industry Members begin reporting such data to the Central Repository. To implement the Phased Reporting for Phase 2b, the Exchange proposes to add new paragraph (t)(2) to Rule 4.5 and amend paragraphs (c)(1) and (2) of Rule 4.16.

(i) Scope of Phase 2b Reporting



To implement the Phased Reporting with respect to Phase 2b, the Exchange proposes to add a definition of “Phase 2b Industry Member Data” as new paragraph (t)(2) of Rule 4.5. Specifically, the Exchange proposes to define the term “Phase 2b Industry Member Data” as “Industry Member Data required to be reported to the Central Repository commencing in Phase 2b as set forth in the Technical Specifications.” Phase 2b Industry Member Data is described in detail in the Industry Member Technical Specifications for Phase 2b. The following summarizes the categories of Industry Member Data required for Phase 2b; the full requirements are set forth in the Industry Member Technical Specifications.

Phase 2b Industry Member Data would include Industry Member Data related to Eligible Securities that are options and related to simple electronic option orders, excluding electronic paired option orders.<sup>16</sup> A simple electronic option order is an order to buy or sell a single option that is not related to or dependent on any other transaction for pricing and timing of execution that is either received or routed electronically by an Industry Member. Electronic receipt of an order is defined as the initial receipt of an order by an Industry Member in electronic form in standard format directly into an order handling or execution system. Electronic routing of an order is the routing of an order via electronic medium in standard format from one Industry Member’s order handling or execution system to an exchange or another Industry Member. An electronic paired option order is an electronic option order that contains both the buy and sell side that is routed to another Industry Member or exchange for crossing and/or price improvement as a single transaction on an exchange. Responses to auctions of simple orders and paired simple orders are also reportable in Phase 2b.

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<sup>16</sup> The items required to be reported in Phase 2b do not include the items required to be reported in Phase 2d, as discussed below in Section D.

Furthermore, combined orders in options would be treated in Phase 2b in the same way as equity representative orders are treated in Phase 2a. A combined order would mean, as permitted by Exchange rules, a single, simple order in Listed Options created by combining individual, simple orders in Listed Options from a customer with the same exchange origin code before routing to an exchange. During Phase 2b, the single combined order sent to an exchange must be reported and marked as a combined order, but the linkage to the underlying orders is not required to be reported until Phase 2d.

(ii) Timing of Phase 2b Reporting

Pursuant to paragraph (c)(1) of Rule 4.16, Large Industry Members are required to begin reporting to the CAT by November 15, 2018. To implement the Phased Reporting for Phase 2b for Large Industry Members, the Exchange proposes to replace paragraph (c)(1) of Rule 4.16 with new paragraph (c)(1)(B) of Rule 4.16, which would state, in relevant part, that “Each Industry Member (other than a Small Industry Member) shall record and report the Industry Member Data to the Central Repository as follows: . . . (B) Phase 2b Industry Member Data by May 18, 2020.” Pursuant to paragraph (c)(2) of Rule 4.16, Small Industry Members are required to begin reporting to the CAT by November 15, 2019. To implement the Phased Reporting for Phase 2b for Small Industry Members, the Exchange proposes to replace paragraph (c)(2) of Rule 4.16 with new paragraph (c)(2)(C) of Rule 4.16, which would state, in relevant part, that “Each Industry Member that is a Small Industry Member shall record and report the Industry Member Data to the Central Repository as follows: . . . (C) a Small Industry Member to report to the Central Repository Phase 2b Industry Member Data . . . by December 13, 2021.”

(C) Phase 2c

In the third phase of the Phased Reporting, referred to as Phase 2c, Large Industry Members would be required to report to the Central Repository “Phase 2c Industry Member Data” by April 26, 2021. Small Industry Members would be required to report to the Central Repository “Phase 2c Industry Member Data” by December 13, 2021, which is seven months after Large Industry Members begin reporting such data to the Central Repository. To implement the Phased Reporting for Phase 2c, the Exchange proposes to add new paragraph (t)(3) of Rule 4.5 and amend paragraphs (c)(1) and (2) of Rule 4.16.

(i) Scope of Phase 2c Reporting

To implement the Phased Reporting with respect to Phase 2c, the Exchange proposes to add a definition of “Phase 2c Industry Member Data” as new paragraph (t)(3) of Rule 4.5. Specifically, the Exchange proposes to define the term “Phase 2c Industry Member Data” as “Industry Member Data related to Eligible Securities that are equities other than Phase 2a Industry Member Data or Phase 2e Industry Member Data.” Phase 2c Industry Member Data is described in detail in the Industry Member Technical Specifications for Phase 2c. The following summarizes the categories of Industry Member Data required for Phase 2c; the full requirements are set forth in the Industry Member Technical Specifications.

Phase 2c Industry Member Data would include Industry Member Data that is related to Eligible Securities that are equities and that is related to: (1) Allocation Reports as required to be recorded and reported to the Central Repository pursuant to Section 6.4(d)(ii)(A)(1) of the CAT NMS Plan; (2) quotes in unlisted Eligible Securities sent to an interdealer quotation system operated by a CAT Reporter; (3) electronic quotes in listed equity Eligible Securities (i.e., NMS stocks) that are not sent to a national securities exchange or FINRA’s Alternative Display Facility; (4) reporting changes to client instructions regarding modifications to algorithms; (5)

marking as a representative order any order originated to work a customer order in price guarantee scenarios, such as a guaranteed VWAP; (6) flagging rejected external routes to indicate a route was not accepted by the receiving destination; (7) linkage of duplicate electronic messages related to a Manual Order Event between the electronic event and the original manual route; (8) special handling instructions on order route reports (other than the ISO or short sale exempt, which are required to be reported in Phase 2a); (9) a cancellation of an order received from a Customer after the order has been executed; (10) reporting of large trader identifiers<sup>17</sup> (“LTID”) (if applicable) for accounts with Reportable Events that are reportable to CAT as of and including Phase 2c; (11) reporting of date account opened or Account Effective Date<sup>18</sup> (as applicable) for accounts and flag indicating the Firm Designated ID type as account or relationship; and (12) linkages for representative order scenarios involving agency average price trades, net trades, and aggregated orders. In Phase 2c, for any scenarios that involve orders originated in different systems that are not directly linked, such as a customer order originated in an Order Management System (“OMS”) and represented by a principal order originated in an Execution Management System (“EMS”) that is not linked to the OMS, marking and linkages must be reported as required in the Industry Member Technical Specifications.

(ii) Timing of Phase 2c Reporting

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<sup>17</sup> See definition of “Customer Account Information” in Section 1.1 of the CAT NMS Plan; see also Rule 13h-1 under the Exchange Act.

<sup>18</sup> See definition of “Customer Account Information” and “Account Effective Date” in Section 1.1 of the CAT NMS Plan. The Exchange also proposes to amend the dates in the definitions of “Account Effective Date” and “Customer Account Information” to reflect the Phased Reporting. Specifically, the Exchange proposes to amend paragraph (m)(2) of Rule 4.5 to replace the references to November 15, 2018 and 2019, the prior implementation dates, with references to the Phase 2c and Phase 2d. The Exchange also proposes to amend paragraphs (a)(1)(A), (a)(1)(B) and (a)(2) to (5) of Rule 4.5 regarding the definition of “Account Effective Date” with similar changes to the dates set forth therein.

Pursuant to paragraph (c)(1) of Rule 4.16, Large Industry Members are required to begin reporting to the CAT by November 15, 2018. To implement the Phased Reporting for Phase 2c for Large Industry Members, the Exchange proposes to replace paragraph (c)(1) of Rule 4.16 with new paragraph (c)(1)(C) of Rule 4.16, which would state, in relevant part, that “Each Industry Member (other than a Small Industry Member) shall record and report the Industry Member Data to the Central Repository, as follows: . . . (C) Phase 2c Industry Member Data by April 26, 2021.”

Pursuant to paragraph (c)(2) of Rule 4.16, Small Industry Members are required to begin reporting to the CAT by November 15, 2019. To implement the Phased Reporting for Phase 2d for Small Industry Members, the Exchange proposes to replace paragraph (c)(2) of Rule 4.16 with new paragraph (c)(2)(C) of Rule 4.16, which would state, in relevant part, that “Each Industry Member that is a Small Industry Member shall record and report the Industry Member Data to the Central Repository, as follows: . . . (C) a Small Industry Member to report to the Central Repository . . . Phase 2c Industry Member Data . . . by December 13, 2021.”

#### (D) Phase 2d

In the fourth phase of the Phased Reporting, referred to as Phase 2d, Large Industry Members and Small Industry Members would be required to report to the Central Repository “Phase 2d Industry Member Data” by December 13, 2021. To implement the Phased Reporting for Phase 2d, the Exchange proposes to add new paragraph (t)(4) to Rule 4.5 and amend paragraphs (c)(1) and (2) of Rule 4.1631.

##### (i) Scope of Phase 2d Reporting

To implement the Phased Reporting with respect to Phase 2d, the Exchange proposes to add a definition of “Phase 2d Industry Member Data” as new paragraph (t)(4) of Rule 4.5.

Specifically, the Exchange proposes to define the term “Phase 2d Industry Member Data” as “Industry Member Data that is related to Eligible Securities that are options other than Phase 2b Industry Member Data or Phase 2e Industry Member Data, and Industry Member Data related to all Eligible Securities for the modification or cancellation of an internal route of an order”<sup>19</sup>

Phase 2d Industry Member Data is described in detail in the Industry Member Technical Specifications for Phase 2d and includes with respect to the Eligible Securities that are options: (1) simple manual orders; (2) electronic and paired manual orders; (3) all complex orders with linkages to all CAT-reportable legs; (4) LTIDs (if applicable) for accounts with Reportable Events for Phase 2d; (5) date account opened or Account Effective Date (as applicable) for accounts and flag indicating the Firm Designated ID type as account or relationship;<sup>20</sup> and (5) Allocation Reports as required to be recorded and reported to the Central Repository pursuant to Section 6.4(d)(ii)(A)(1) of the CAT NMS Plan. In addition, it includes Industry Member Data related to all Eligible Securities for the modification or cancellation of an internal route of an order.

(ii) Timing of Phase 2d Reporting

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<sup>19</sup> The Participants have determined that reporting information regarding the modification or cancellation of a route is necessary to create the full lifecycle of an order. Accordingly, the Participants require the reporting of information related to the modification or cancellation of a route similar to the data required for the routing of an order and modification and cancellation of an order pursuant to Sections 6.3(d)(ii) and (iv) of the CAT NMS Plan.

<sup>20</sup> As noted above, the Exchange also proposes to amend the dates in the definitions of “Account Effective Date” and “Customer Account Information” to reflect the Phased Reporting. Specifically, the Exchange proposes to amend paragraph (m)(2) of Rule 4.5 to replace the references to November 15, 2018 and 2019, the prior implementation dates, with references to the Phase 2c and Phase 2d. The Exchange also proposes to amend paragraphs (a)(1)(A), (a)(1)(B) and (a)(2) to (5) of Rule 4.5 regarding the definition of “Account Effective Date” with similar changes to the dates set forth therein.

Pursuant to paragraph (c)(1) of Rule 4.16 Large Industry Members are required to begin reporting to the CAT by November 15, 2018. To implement the Phased Reporting for Phase 2d for Large Industry Members, the Exchange proposes to replace paragraph (c)(1) of Rule 4.16 with new paragraph (c)(1)(D) of Rule 4.16, which would state, in relevant part, that “[e]ach Industry Member (other than a Small Industry Member) shall record and report the Industry Member Data to the Central Repository as follows: . . . (D) Phase 2d Industry Member Data by December 13, 2021.”

Pursuant to paragraph (c)(2) of Rule 4.16, Small Industry Members are required to begin reporting to the CAT by November 15, 2019. To implement the Phased Reporting for Phase 2d for Small Industry Members, the Exchange proposes to replace paragraph (c)(2) of Rule 4.16 with new paragraph (c)(2)(C) of Rule 4.16, which would state, in relevant part, that “Each Industry Member that is a Small Industry Member shall record and report the Industry Member Data to the Central Repository as follows: . . . (C) a Small Industry Member to report to the Central Repository . . . Phase 2d Industry Member Data by December 13, 2021.”

(E) Phase 2e

In the fifth phase of Phased Reporting, referred to as Phase 2e, both Large Industry Members and Small Industry Members would be required to report to the Central Repository “Phase 2e Industry Member Data” by July 11, 2022. To implement the Phased Reporting for Phase 2e, the Exchange proposes to add new paragraph (t)(5) to Rule 4.5 and amend paragraphs (c)(1) and (2) of Rule 4.16.

(i) Scope of Phase 2e Reporting

To implement the Phased Reporting with respect to Phase 2e, the Exchange proposes to add a definition of “Phase 2e Industry Member Data” as new paragraph (t)(5) of Rule 4.5.

Specifically, the Exchange proposes to define the term “Phase 2e Industry Member Data” as “Customer Account Information and Customer Identifying Information, other than LTIDs, date account opened/Account Effective Date and Firm Designated ID type flag previously reported to the CAT.” LTIDs and Account Effective Date are both required to be reported in Phases 2c and 2d in certain circumstances, as discussed above. The terms “Customer Account Information” and “Customer Identifying Information” are defined in Rule 4.5 of the Compliance Rule.<sup>21</sup>

(ii) Timing of Phase 2e Reporting

Pursuant to paragraph (c)(1) of Rule 4.16, Large Industry Members are required to begin reporting to the CAT by November 15, 2018. To implement the Phased Reporting for Phase 2e for Large Industry Members, the Exchange proposes to replace paragraph (c)(1) of Rule 4.16 with new paragraph (c)(1)(E) of Rule 4.16, which would state, in relevant part, that “[e]ach Industry Member (other than a Small Industry Member) shall record and report the Industry Member Data to the Central Repository as follows: . . . (E) Phase 2e Industry Member Data by July 11, 2022.”

Pursuant to paragraph (c)(2) of Rule 4.16, Small Industry Members are required to begin reporting to the CAT by November 15, 2019. To implement the Phased Reporting for Phase 2e

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<sup>21</sup> The term “Customer Account Information” includes account numbers, and the term “Customer Identifying Information” includes, with respect to individuals, individual tax payer identification numbers and social security numbers (collectively, “SSNs”). See Rule 4.5. The Participants have requested exemptive relief from the requirements for the Participants to require their members to provide dates of birth, account numbers and social security numbers for individuals to the CAT. See Letter from Michael Simon, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, SEC, Request for Exemptive Relief from Certain Provisions of the CAT NMS Plan related to Social Security Numbers, Dates of Birth and Account Numbers (Oct. 16, 2019), available at <https://www.catnmsplan.com/wpcontent/uploads/2019/10/CCID-and-PII-Exemptive-Request-Oct-16-2019.pdf>. If this requested relief is granted, Phase 2e Industry Member Data will not include account numbers, dates of birth and SSNs for individuals.



for Small Industry Members, the Exchange proposes to replace paragraph (c)(2) of Rule 4.16 with new paragraph (c)(2)(D) of Rule 4.16, which would state, in relevant part, that “[e]ach Industry Member that is a Small Industry Member shall record and report the Industry Member Data to the Central Repository as follows: . . . (E) a Small Industry Member to report to the Central Repository Phase 2e Industry Member Data by July 11, 2022.”

(F) Industry Member Testing Requirements

Rule 4.13(a) sets forth various compliance dates for the testing and development for connectivity, acceptance and the submission order data. In light of the intent to shift to Phased Reporting in place of the two specified dates for the commencement of reporting for Large and Small Industry Members, the Exchange correspondingly proposes to replace the Industry Member development testing milestones in Rule 4.13(a) with the testing milestones set forth in the proposed request for exemptive relief. Specifically, the Exchange proposes to (8).

Proposed new Rule 4.13(a)(1) would provide that “Industry Member file submission and data integrity testing for Phases 2a and 2b shall begin in December 2019.” Proposed new Rule 4.13(a)(2) would provide that “Industry Member testing of the Reporter Portal, including data integrity error correction tools and data submissions, shall begin in February 2020.” Proposed new Rule 4.13(a)(3) would provide that “The Industry Member test environment shall open with intrafirm linkage validations to Industry Members for both Phases 2a and 2b in April 2020.” Proposed new Rule 4.13(a)(4) would provide that “The Industry Member test environment shall open to Industry Members with interfirm linkage validations for both Phases 2a and 2b in July 2020.” Proposed new Rule 4.13(a)(5) would provide that “The Industry Member test environment shall open to Industry Members with Phase 2c functionality (full representative order linkages) in January 2021.” Proposed new Rule 4.13(a)(6) would provide that “The

Industry Member test environment shall open to Industry Members with Phase 2d functionality (manual options orders, complex options orders, and options allocations) in June 2021.”

Proposed new Rule 4.13(a)(7) would provide that “Participant exchanges that support options market making quoting shall begin accepting Quote Sent Time on quotes from Industry Members no later than April 2020.” Finally, proposed new Rule 4.13(a)(8) would provide that “The Industry Member test environment (customer and account information) will be open to Industry Members in January 2022.”

(5) FINRA Facility Data Linkage

The Participants intend to file with the Commission a request for exemptive relief from certain provisions of the CAT NMS Plan to allow for an alternative approach to the reporting of clearing numbers and cancelled trade indicators. Under this alternative approach, FINRA would report to the Central Repository data collected by FINRA’s Trade Reporting Facilities, FINRA’s OTC Reporting Facility or FINRA’s Alternative Display Facility (collectively, “FINRA Facility”) pursuant to applicable SRO rules (“FINRA Facility Data”). Included in this FINRA Facility Data would be the clearing number of the clearing broker in place of the SRO-Assigned Market Participant Identifier of the clearing broker required to be reported to the Central Repository pursuant to Section 6.4(d)(ii)(A)(2) of the CAT NMS Plan as well as the cancelled trade indicator required to be reported to the Central Repository pursuant to Section 6.4(d)(ii)(B) of the CAT NMS Plan. The process would link the FINRA Facility Data to the related execution reports reported by Industry Members. To implement this approach, the Participants request exemptive relief from the requirement in Sections 6.4(d)(ii)(A)(2) and (B) of the CAT NMS Plan to require, through their Compliance Rules, that Industry Members record and report to the Central Repository: (1) if the order is executed, in whole or in part, the SRO-Assigned Market

Participant Identifier of the clearing broker, if applicable; and (2) if the trade is cancelled, a cancelled trade indicator. As conditions to this exemption, the Participants would require Industry Members to submit a trade report for a trade and, if the trade is cancelled, a cancellation to a FINRA Facility pursuant to applicable SRO rules, and to report the corresponding execution to the Central Repository. In addition, the Participants' Compliance Rules would provide that if an Industry Member does not submit a cancellation to a FINRA Facility, then the Industry Member would be required to record and report to the Central Repository a cancelled trade indicator if the trade is cancelled. As a result, the Exchange proposes to amend its Compliance Rule to reflect the request for exemptive relief to implement this alternative approach.

Specifically, the Exchange proposes to require Industry Members to report to the CAT with an execution report the unique trade identifier reported to a FINRA facility with the corresponding trade report. For example, the unique trade identifier for the OTC Reporting Facility and the Alternative Display Facility would be the Compliance ID, for the FINRA/Nasdaq Trade Reporting Facility, it would be the Branch Sequence Number, and for the FINRA/NYSE Trade Reporting Facility, it would be the FINRA Compliance Number. This unique trade identifier would be used to link the FINRA Facility Data with the execution report in the CAT. Specifically, the Exchange proposes to add a new paragraph to (a)(2)(E) to Rule 4.7, which states that:

(E) If an Industry Member is required to submit and submits a trade report for a trade to one of FINRA's Trade Reporting Facilities, OTC Reporting Facility or Alternative Display Facility pursuant to applicable SRO rules, and the Industry Member is required to report the corresponding execution to the Central Repository:

(i) the Industry Member is required to report to the Central Repository the unique trade identifier reported by the Industry Member to such FINRA facility for the trade when the Industry Member reports the execution of an order pursuant to Rule 4.7(a)(1)(E);

The Exchange also proposes to relieve Industry Members of the obligation to report to the CAT data related to clearing brokers and trade cancellations pursuant to Rules 6.6830(a)(2)(A)(ii) and (B), respectively, as this data will be reported by FINRA to the CAT. Accordingly, the Exchange proposes new paragraphs (a)(1)(E)(2) and (3) of Rule 4.7, which states that:

(E) If an Industry Member is required to submit and submits a trade report for a trade to one of FINRA's Trade Reporting Facilities, OTC Reporting Facility or Alternative Display Facility pursuant to applicable SRO rules, and the Industry Member is required to report the corresponding execution to the Central Repository: . . .

(ii) the Industry Member is not required to submit the SRO- Assigned Market Participant Identifier of the clearing broker pursuant to Rule 4.7(a)(2)(A)(2); and

(iii) if the trade is cancelled and the Industry Member submits the cancellation to one of FINRA's Trade Reporting Facilities, OTC Reporting Facility or Alternative Display Facility pursuant to applicable SRO rules, the Industry Member is not required to submit the cancelled trade indicator pursuant to Rule 4.7(a)(2)(B), but is required to submit the time of cancellation to the Central Repository.

#### (6) Granularity of Timestamps

The Participants intend to file with the Commission a request for exemptive relief from the requirement in Section 6.8(b) of the CAT NMS Plan for each Participant, through its Compliance Rule, to require that, to the extent that its Industry Members utilize timestamps in increments finer than nanoseconds in their order handling or execution systems, such Industry Members utilize such finer increment when reporting CAT Data to the Central Repository. As a condition to this exemption, the Participants, through their Compliance Rules, will require Industry Members that capture timestamps in increments more granular than nanoseconds to truncate the timestamps, after the nanosecond level for submission to CAT, not round up or

down in such circumstances. As a result, the Exchange proposes to amend its Compliance Rule to reflect the proposed exemptive relief.

Specifically, the Exchange proposes to amend paragraph (a)(2) of Rule 4.10.

Rule 4.10(a)(2) states that

Subject to paragraph (b), to the extent that any Industry Member's order handling or execution systems utilize time stamps in increments finer than milliseconds, such Industry Member shall record and report Industry Member Data to the Central Repository with time stamps in such finer increment

The Exchange proposes to amend this provision by adding the phrase "up to nanoseconds" to the end of the provision.

(7) Relationship IDs

The Participants intend to file with the Commission a request for exemptive relief from certain provisions of the CAT NMS Plan to address circumstances in which an Industry Member uses an established trading relationship for an individual Customer (rather than an account) on the order reported to the CAT. Specifically, in this exemptive relief, the Participants request an exemption from the requirement in Section 6.4(d)(ii)(C) of the CAT NMS Plan for each Participant to require, through its Compliance Rules, its Industry Members to record and report to the Central Repository the account number, the date account opened and account type for the relevant individual Customer. As conditions to this exemption, each Participant would require, through its Compliance Rule, its Industry Members to record and report to the Central Repository for the original receipt or origination of an order: (i) the relationship identifier in lieu of the "account number;" (ii) the "account type" as a "relationship;" and (iii) the Account Effective Date in lieu of the "date account opened."

With regard to the third condition, an Account Effective Date would depend upon when the trading relationship was established. When the trading relationship was established prior to

the implementation date of the CAT NMS Plan applicable to the relevant Industry Member, the Account Effective Date would be either the date the relationship identifier was established within the Industry Member, or the date when trading began (i.e., the date the first order was received) using the relevant relationship identifier. If both dates are available, the earlier date will be used to the extent that the dates differ. When the trading relationship was established on or after the implementation date of the CAT NMS Plan applicable to the relevant Industry Member, the Account Effective Date would be the date the Industry Member established the relationship identifier, which would be no later than the date the first order was received. This definition of the Account Effective Date is the same as the definition of the “Account Effective Date” in paragraph (a) of the definition of “Account Effective Date” in Section 1.1 of the CAT NMS Plan except it would apply with regard to those circumstances in which an Industry Member has established a trading relationship with an individual, instead of an institution. Such exemptive relief would be the same as the SEC provided with regard to institutions in its 2016 Exemptive Order granting exemptions from certain provisions of Rule 613 under the Exchange Act.<sup>22</sup>

As a result, the Exchange proposes to amend its Compliance Rule to reflect the exemptive relief request. Specifically, the Exchange proposes to amend paragraphs (a)(1) and paragraph (m) (previously (l)) of Rule 4.5. The definition of Customer Account Information in Rule 4.5(m) states that in those circumstances in which an Industry Member has established a trading relationship with an institution but has not established an account with that institution, the Industry Member will provide the Account Effective Date in lieu of the “date account opened”, provide the relationship identifier in lieu of the “account number”; and identify the “account type” as “relationship.” The Exchange proposes to extend this provision to apply to

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<sup>22</sup> 2016 Exemptive Order at 11861 – 11862.

trading relationships with individuals as well as institutions. Specifically, the Exchange proposes to revise paragraph (m)(1) (previously (l)(1)) of Rule 4.5 to state the following:

(1) in those circumstances in which an Industry Member has established a trading relationship with an institution or an individual but has not established an account with that institution or individual, the Industry Member will: (A) provide the Account Effective Date in lieu of the “date account opened”; (B) provide the relationship identifier in lieu of the “account number”; and (C) identify the “account type” as a “relationship”  
. . .

Similarly, the Exchange proposes to amend the definition of “Account Effective Date” as set forth in Rule 4.5(a) to apply to circumstances in which an Industry Member has established a trading relationship with an individual in addition to institutions. Specifically, the Exchange proposes to revise the introductory paragraph of subparagraph(a)(1) of Rule 4.5 to state “with regard to those circumstances in which an Industry Member has established a trading relationship with an institution or an individual but has not established an account with that institution or individual . . . .”

(8) CCID/PII

On October 16, 2019, the Participants filed with the Commission a request for exemptive relief from certain requirements related to SSNs, dates of birth and account numbers for individuals in the CAT NMS Plan.<sup>23</sup> Specifically, to implement the CCID Alternative and the Modified PII Approach, the Participants requested exemptive relief from the requirement in Section 6.4(d)(ii)(C) of the CAT NMS Plan to require, through their Compliance Rules, Industry Members to record and report to the Central Repository for the original receipt of an order SSNs,

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<sup>23</sup> See Letter to Vanessa Countryman, Secretary, SEC, from Michael Simon, CAT NMS Plan Operating Committee Chair, re: Request for Exemptive Relief from Certain Provisions of the CAT NMS Plan related to Social Security Numbers, Dates of Birth and Account Numbers (Oct. 16, 2019).

dates of birth and account numbers for individuals. As a result, the Exchange proposes to amend its Compliance Rule to reflect the exemptive relief request. Exchange Rule 4.7(a)(2)(C) states that

[s]ubject to paragraph (3) below, each Industry Member shall record and report to the Central Repository the following, as applicable (“Received Industry Member Data” and collectively with the information referred to in Rule 4.7(a)(1) “Industry Member Data”) in the manner prescribed by the Operating Committee pursuant to the CAT NMS Plan: . . . (C) for original receipt or origination of an order, the Firm Designated ID for the relevant Customer, and in accordance with Rule 4.8, Customer Account Information and Customer Identifying Information for the relevant Customer.

Rule 4.5(n)(1) (previously Rule 4.5(m)(1)), in turn, defines “Customer Identifying Information” to include, with respect to individuals, “date of birth, individual tax payer identification number (“ITIN”)/social security number (“SSN”) . . .” In addition, Rule 4.5(m)(1) (previously Rule 4.5(l)(1)) defines “Customer Account Information” to include account numbers for individuals. Accordingly, the Exchange proposes to delete “date of birth, individual tax payer identification number (“ITIN”)/social security number (“SSN”)” from the definition of “Customer Identifying Information” in Rule 4.5(n)(1) (previously Rule 4.5(m)(1)) and to delete account numbers for individuals from the definition of “Customer Account Information” in Rule 4.5(m)(1) (previously Rule 4.5(l)(1)). The Exchange proposes to amend the definition of “Customer Account Information” to include only account numbers other than for individuals. With these changes, Industry Members would not be required to report to the Central Repository dates of birth, SSNs or account numbers for individuals pursuant to Rule 4.5(a)(2)(C).

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the “Act”) and the rules and regulations thereunder applicable to the



Exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>24</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>25</sup> requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>26</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that this proposal is consistent with the Act because it is consistent with certain proposed amendments to and exemptions from the CAT NMS Plan, because it facilitates the retirement of certain existing regulatory systems, and is designed to assist the Exchange and its Industry Members in meeting regulatory obligations pursuant to the Plan. In approving the Plan, the Commission noted that the Plan “is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act.”<sup>27</sup> To the extent that this proposal implements the Plan, including the proposed amendments and exemptive relief, and applies

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<sup>24</sup> 15 U.S.C. 78f(b).

<sup>25</sup> 15 U.S.C. 78f(b)(5).

<sup>26</sup> Id.

<sup>27</sup> Approval Order at 84697.

specific requirements to Industry Members, the Exchange believes that this proposal furthers the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Act.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that the proposed rule changes are consistent with certain proposed amendments to and exemptions from the CAT NMS Plan, facilitate the retirement of certain existing regulatory systems, and are designed to assist the Exchange in meeting its regulatory obligations pursuant to the Plan. The Exchange also notes that the amendments to the Compliance Rule will apply equally to all Industry Members that trade NMS Securities and OTC Equity Securities. In addition, all national securities exchanges and FINRA are proposing these amendments to their Compliance Rules. Therefore, this is not a competitive rule filing, and, therefore, it does not impose a burden on competition.

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

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

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

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

#### IV. Solicitation of Comments

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

##### Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CboeBYX-2020-005 on the subject line.

##### Paper Comments:

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

All submissions should refer to File Number SR-CboeBYX-2020-005. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, D.C. 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without

change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CboeBYX-2020-005 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>28</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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<sup>28</sup> 17 CFR 200.30-3(a)(12).