

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-89140; File No. SR-MEMX-2020-01)

June 24, 2020

Self-Regulatory Organizations; MEMX LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the Exchange's Compliance Rules Regarding the National Market System Plan Governing the Consolidated Audit Trail

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on June 23, 2020, MEMX LLC ("MEMX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

MEMX LLC ("MEMX" or the "Exchange") is filing with the Commission a proposed rule change to to amend Exchange Rules 4.5-4.16, the Exchange's compliance rules (collectively, "Compliance Rules") regarding the National Market System Plan Governing the Consolidated Audit Trail (the "CAT NMS Plan" or "Plan")³ to be consistent with certain 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.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Unless otherwise specified, capitalized terms used in this rule filing are defined as set forth in the Compliance Rules.

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 Rules 4.5-4.16, the Compliance Rules regarding the CAT NMS Plan, to be consistent with certain 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 Rules:

- Add additional data elements to the consolidated audit trail (“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 alternative trading systems (“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”);

- 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;
- Require Introducing Industry Members (as defined below) to comply with the requirements of the CAT NMS Plan applicable to Small Industry Members;
- Revise the CAT reporting requirements so Industry Members would not be required to report to the Central Repository dates of birth, “individual tax payer identification number (“ITIN”)/ social security number (“SSN”)” (collectively, referred to as “SSNs”) or account numbers; and
- 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.

i. 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.”⁴ As a result of this process, the Participants identified

⁴ 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>).

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 Rules to include these OATS data elements in the CAT. Each of such OATS data elements are discussed below. With the addition of these OATS data elements to the CAT, the CAT will have the data elements necessary to retire OATS.

A. Information Barrier Identification

The FINRA OATS rules require OATS Reporting Members⁵ 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 Compliance Rules to incorporate these requirements into the CAT.

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.”⁶ The Compliance Rules do 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)(vii) 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

⁵ An OATS “Reporting Member” is defined in FINRA Rule 7410(o).

⁶ FINRA Rule 5320 prohibits trading ahead of customer orders.

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 Rules do 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)(vi) 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 appropriate information barriers in place at the department within the member to which the order was transmitted. The Compliance Rules do 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)(vii) 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 Rules do 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)(vii) 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.⁷ The Participants believe that Industry Members operating ATSS – whether such ATS trades NMS stocks or OTC Equity Securities – should likewise be required to 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 Rules the reporting requirements for ATSS in FINRA Rule 4554,⁸ but to expand

⁷ See FINRA *Regulatory Notice* 16-28 (August 2016).

⁸ 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).

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) of Rule 4.5 to facilitate the addition to the CAT 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

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 Rules do 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 Rules: paragraphs (a)(1)(A)(xi)(1), (a)(1)(C)(x)(1), (a)(1)(D)(ix)(1) and (a)(2)(D) of Rule 4.7.

Proposed paragraph (a)(1)(A)(xi)(1) of Rule 4.7 would require an Industry Member that

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.

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)(x)(1) 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)(ix)(1) 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, as with the requirements in FINRA Rule 4554(b)(5), 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 Rules do 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 Rules: (a)(1)(A)(xi)(2)-(3), (a)(1)(C)(x)(2)-(3), (a)(1)(D)(ix)(2)-(3) and (a)(1)(E)(viii)(1)-(2) of Rule 4.7.

Specifically, proposed paragraph (a)(1)(A)(xi)(2)-(3) 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:

- (2) 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);
- (3) 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 (xi)(2). 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)(x)(2)-(3), (a)(1)(D)(ix)(2)-(3) and

(a)(1)(E)(viii)(1)-(2) 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 Rules do 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 proposed paragraph (a)(1)(A)(xi)(4) 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 proposed paragraph (a)(1)(B)(viii) 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 proposed paragraph (a)(1)(C)(x)(4) 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 proposed paragraph (a)(1)(D)(ix)(4) 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 proposed paragraph (a)(1)(E)(viii)(3) 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)(ix)(5) to Rule 4.7. Specifically, proposed new paragraph (a)(1)(D)(ix)(5) 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 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 paragraph (a)(1)(D)(ix)(5) 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 Rules do 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 proposed paragraphs (a)(1)(A)(xi)(5) and (a)(1)(C)(x)(5) of Rule 4.7. Specifically, proposed paragraph (a)(1)(A)(xi)(5) 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 paragraph (a)(1)(C)(x)(5) 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.

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 Rules do 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 paragraph (a)(1)(A)(viii) 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 paragraph (a)(1)(C)(ix) 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 Rules do not require Industry Members to report such a customer instruction flag. To address this OATS-CAT data gap, the Exchange proposes to add paragraph (a)(1)(D)(viii) 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 Rules do 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 paragraph (a)(1)(A)(ix) 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 Rules do 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 paragraph (a)(1)(C)(viii) 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 Rules do 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 paragraph (a)(1)(A)(x) 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.”

ii. OTC Equity Securities

The Participants have identified several data elements related to OTC Equity Securities that FINRA currently receives 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 Rules 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.⁹ Accordingly, the Exchange proposes to add 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 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.”

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 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 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.”

⁹ Section 6.5(a)(ii) of the CAT NMS Plan.

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 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.”

iii. Revised Industry Member Reporting Timeline

On February 19, 2020, the Participants filed 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”).¹⁰ Specifically, in their exemptive request, the Participants requested that the SEC exempt each Participant from the requirement in Section 6.7(a)(v) of the CAT NMS Plan for each Participant, through its Compliance Rules, to require its Industry Members other than Small Industry Members (“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 requested that the SEC exempt each Participant from the requirement in Section 6.7(a)(vi) of the CAT NMS Plan for each Participant, through its Compliance Rules, to require its Small Industry Members¹¹ 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 requested that the SEC provide an exemption from the requirement in Section 6.4 of the CAT NMS Plan that

¹⁰ See Letter to Vanessa Countryman, Secretary, SEC, from Michael Simon, CAT NMS Plan Operating Committee Chair, re: Request for Exemption from Provisions of the National Market System Plan Governing the Consolidated Audit Trail related to Industry Member Reporting Dates (Feb. 19, 2020).

¹¹ See Section 1.1 of the CAT NMS Plan.

“[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.” On April 20, 2020, the SEC granted the Participants exemptive relief to implement Phased Reporting, subject to certain timeline changes and conditions.¹²

As a condition to the exemption, each Participant would implement Phased Reporting through its Compliance Rules by requiring:

(1) its Large Industry Members and its Small Industry Members that are required to record or report information to OATS pursuant to applicable SRO rules (“Small Industry OATS Reporters”) to commence reporting to the Central Repository Phase 2a Industry Member Data by June 22, 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 July 20, 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,

¹² See Securities Exchange Act Release No. 88702 (April 20, 2020), 85 FR 23075 (April 24, 2020). As discussed in the SEC’s exemptive order, the Commission granted the Participants conditional exemptive relief from the CAT NMS Plan so that the Compliance Rules may require Phase 2a reporting to commence on June 22, 2020, rather than the April 20, 2020 date set forth in the exemptive request, and Phase 2b reporting to commence on July 20, 2020, rather than the May 18, 2020 date set forth in the exemptive request. As a condition to the exemptive relief, Industry Members who elect to report to the CAT prior to such dates will be permitted to report to the CAT as early as April 20, 2020 for Phase 2a reporting and as early as May 18, 2020 for Phase 2b reporting.

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 required under the CAT NMS Plan will be required to be reported when all five phases of the Phased Reporting have been implemented, subject to any applicable exemptive relief or amendments related to the CAT NMS Plan.

As a further condition to the exemption, each Participant proposes to implement the testing timelines described in Section F below through its Compliance Rules 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 intra-firm 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 inter-firm 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 Rules to be consistent with the 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 June 22, 2020.¹³ To implement the Phased Reporting for Phase 2a, the Exchange proposes to add paragraph (t)(1) 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 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.” Phase 2a Industry Member Data would include Industry Member Data solely related to Eligible Securities that are equities. While the following summarizes categories of Industry

¹³ 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 approximately seventeen months after Large Industry Members and Small Industry OATS Reporters begin reporting.

Member Data required for Phase 2a, the Industry Member Technical Specifications provide detailed guidance regarding the reporting for Phase 2a.¹⁴

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 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)(i), and (a)(2)(C) of Rule 4.7. Paragraph (a)(1)(A)(i) of Rule 4.7 requires

¹⁴ The items required to be reported commencing in Phase 2a do not include the items required to be reported in Phase 2c or Phase 2d, as discussed below.

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)(i) 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 Members 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.¹⁵

Industry Members would be 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 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.¹⁶ 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

¹⁵ 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.

¹⁶ This approach is comparable to the approach set forth in OATS Compliance FAQ 35.

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 delete the November 15, 2018 date and to supplement 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 Member Data to the Central Repository, as follows: (A) Phase 2a Industry Member Data by June 22, 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 delete the November 15, 2019 date and to supplement paragraph (c)(2) of Rule 4.16 with new paragraphs (c)(2)(A) and (B) of Rule 4.16. Proposed 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) Small Industry Members that are 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 June 22, 2020.

Proposed paragraph (c)(2)(B) of Rule 4.16 would state that “Small Industry Members that are 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 July 20, 2020. Small Industry Members would be required to report to the Central Repository “Phase 2b Industry Member Data” by December 13, 2021, which is approximately seventeen 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 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 paragraph (t)(2) to 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.” Phase 2b Industry Member Data is described in detail in the Industry Member Technical Specifications for Phase 2b. While the following summarizes the categories of Industry Member Data required for Phase 2b, the Industry Member Technical Specifications provide detailed guidance regarding the reporting for Phase 2b.

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.¹⁷ 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

¹⁷ 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 A.4.

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.

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 delete the November 15, 2018 date and to supplement 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 July 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 2b

for Small Industry Members, the Exchange proposes to delete the November 15, 2019 date and to supplement 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) Small Industry Members 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 approximately 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 paragraph (t)(3) to 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 paragraph (t)(3) to Rule 4.5. Specifically, the Exchange proposes to define the term “Phase 2c Industry Member Data” as “Industry Member Data required to be reported to the Central Repository commencing in Phase 2c.” Phase 2c Industry Member Data” would be Industry Member Data related to Eligible Securities that are equities other than Phase 2a Industry Member Data, Phase 2d 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. While the following

summarizes the categories of Industry Member Data required for Phase 2c, the Industry Member Technical Specifications provide detailed guidance regarding the reporting for Phase 2c.

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 IDQS operated by a CAT Reporter (reportable by the Industry Member sending the quotes) (except for quotes reportable in Phase 2d, as discussed below); (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, which is required to be reported in Phase 2a); (9) quote identifier on trade events; (10) reporting of large trader identifiers¹⁸ ("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 Date¹⁹ (as applicable) for accounts and flag indicating the Firm Designated ID

¹⁸ See definition of "Customer Account Information" in Section 1.1 of the CAT NMS Plan. See also Rule 13h-1 under the Exchange Act.

¹⁹ See definition of "Customer Account Information" and "Account Effective Date" in Section 1.1 of the CAT NMS Plan. Note that 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

type as account or relationship; (12) order effective time for orders that are received by an Industry Member and do not become effective until a later time; (13) the modification or cancellation of an internal route of an order; and (14) linkages to the customer order(s) being represented for all representative order scenarios, including agency average price trades, net trades, aggregated orders, and disconnected Order Management System (“OMS”) - Execution Management System (“EMS”) scenarios, as required in the Industry Member Technical Specifications.²⁰

Phase 2c Industry Member Data also includes electronic quotes that are provided by or received in a CAT Reporter’s order/quote handling or execution systems in Eligible Securities that are equities and are provided by an Industry Member to other market participants off a national securities exchange under the following conditions: (1) an equity bid or offer is displayed publicly or has been communicated (a) for listed securities to the Alternative Display Facility (ADF) operated by FINRA; or (b) for unlisted equity securities to an “inter-dealer quotation system” as defined in FINRA Rule 6420(c); or (2) an equity bid or offer which is accessible electronically by customers or other market participants and is immediately actionable for execution or routing; i.e., no further manual or electronic action is required by the responder providing the quote in order to execute or cause a trade to be executed). With respect to OTC Equity Securities, OTC Equity Securities quotes sent by an Industry Member to an IDQS

(m)(2) of Rule 4.5 to replace the references to November 15, 2018 and 2019 with references to the commencement of Phase 2c and Phase 2d. The Exchange also proposes to amend paragraphs (a)(1)(A), (a)(1)(B) and (a)(2)-(5) of Rule 4.5 regarding the definition of “Account Effective Date” with similar changes to the dates set forth therein.

²⁰ 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 OMS and represented by a principal order originated in an EMS that is not linked to the OMS, marking and linkages must be reported as required in the Industry Member Technical Specifications.

operated by an Industry Member CAT Reporter (other than such an IDQS that does not match and execute orders) are reportable by the Industry Member sending them in Phase 2c.

Accordingly, any response to a request for quote or other form of solicitation response provided in standard electronic format (e.g., FIX) that meets this quote definition (i.e., an equity bid or offer which is accessible electronically by customers or other market participants and is immediately actionable for execution or routing) would be reportable in Phase 2c.

(ii) Timing of Phase 2c 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 2c for Large Industry Members, the Exchange proposes to delete the November 15, 2018 date and to supplement 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 2c for Small Industry Members, the Exchange proposes to delete the November 15, 2019 date and to supplement 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) Small Industry Members 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 paragraph (t)(4) to Rule 4.5 and amend paragraphs (c)(1) and (2) of Rule 4.16.

(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 paragraph (t)(4) to Rule 4.5. Specifically, the Exchange proposes to define the term “Phase 2d Industry Member Data” as “Industry Member Data required to be reported to the Central Repository commencing in Phase 2d.”²¹

“Phase 2d Industry Member Data” is Industry Member Data that is related to Eligible Securities that are options other than Phase 2b Industry Member Data, Industry Member Data that is related to Eligible Securities that are equities other than Phase 2a Industry Member Data or Phase 2c Industry Member Data, and Industry Member Data other than Phase 2e Industry Member Data. Phase 2d Industry Member Data is described in detail in the Industry Member Technical Specifications for Phase 2d. While the following summarizes the categories of Industry Member Data required for Phase 2d, the Industry Member Technical Specifications provide detailed guidance regarding the reporting for Phase 2d.

²¹ 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.

Phase 2d Industry Member Data includes with respect to the Eligible Securities that are options: (1) simple manual orders; (2) electronic and manual paired 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 with an LTID and flag indicating the Firm Designated ID type as account or relationship for such accounts;²² (6) 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; (7) the modification or cancellation of an internal route of an order; and (8) linkage between a combined order and the original customer orders.

Phase 2d Industry Member Data also would include electronic quotes that are provided by or received in a CAT Reporter's order/quote handling or execution systems in Eligible Securities that are options and are provided by an Industry Member to other market participants off a national securities exchange under the following conditions: a listed option bid or offer which is accessible electronically by customers or other market participants and is immediately actionable (i.e., no further action is required by the responder providing the quote in order to execute or cause a trade to be executed). Accordingly, any response to a request for quote or other form of solicitation response provided in standard electronic format (e.g., FIX) that meets this definition would be reportable in Phase 2d for options.

Phase 2d Industry Member Data also would include with respect to Eligible Securities

²² 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 with references to the commencement of Phase 2c and Phase 2d. The Exchange also proposes to amend paragraphs (a)(1)(A), (a)(1)(B) and (a)(2)-(5) of Rule 4.5 regarding the definition of "Account Effective Date" with similar changes to the dates set forth therein.

that are options or equities (1) receipt time of cancellation and modification instructions through Order Cancel Request and Order Modification Request events; (2) modifications of previously routed orders in certain instances; and (3) OTC Equity Securities quotes sent by an Industry Member to an IDQS operated by an Industry Member CAT Reporter that does not match and execute orders. In addition, subject to any exemptive or other relief, Phase 2d Industry Member Data will include verbal or manual quotes on an exchange floor or in the over-the-counter market, where verbal quotes and manual quotes are defined as bids or offers in Eligible Securities provided verbally or that are provided or received other than via a CAT Reporter's order handling and execution system (e.g., quotations provided via email or instant messaging).

(ii) Timing of Phase 2d 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 2d for Large Industry Members, the Exchange proposes to delete the November 15, 2018 date and to supplement 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 delete the November 15, 2019 date and to supplement 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) Small

Industry Members 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 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 paragraph (t)(5) of Rule 4.5. Specifically, the Exchange proposes to define the term “Phase 2e Industry Member Data” as “Industry Member Data required to be reported to the Central Repository commencing in Phase 2e. The full scope of Industry Member Data required by the CAT NMS Plan will be required to be reported to the CAT when Phase 2e has been implemented, subject to any applicable exemptive relief or amendments to the CAT NMS Plan.” 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 4.5.²³ The Industry Member Technical Specifications provide detailed guidance

²³ The term “Customer Account Information” includes account numbers, and the term “Customer Identifying Information” includes, with respect to individuals, dates of birth and SSNs. *See* Rule 4.5. The Participants have received 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* Securities Exchange Act Release No. 88393 (March 17, 2020), 85 FR 16152 (March 20, 2020). *See* also Letter to Vanessa Countryman, Secretary, SEC, from Michael Simon, CAT NMS

regarding the reporting for Phase 2e.

(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 delete the November 15, 2018 date and to supplement paragraph (c)(1) of Rule 4.10 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 for Small Industry Members, the Exchange proposes to delete the November 15, 2019 date and to supplement 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) Small Industry Members 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

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 (Jan. 29, 2020). Given the relief has been granted, Phase 2e Industry Member Data will not include account numbers, dates of birth and SSNs for individuals.

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 exemptive relief. Specifically, the Exchange proposes to replace Rule 4.13(a) with the following:

- (1) Industry Member file submission and data integrity testing for Phases 2a and 2b shall begin in December 2019.
- (2) Industry Member testing of the Reporter Portal, including data integrity error correction tools and data submissions, shall begin in February 2020.
- (3) The Industry Member test environment shall open with intra-firm linkage validations to Industry Members for both Phases 2a and 2b in April 2020.
- (4) The Industry Member test environment shall open to Industry Members with inter-firm linkage validations for both Phases 2a and 2b in July 2020.
- (5) The Industry Member test environment shall open to Industry Members with Phase 2c functionality (full representative order linkages) in January 2021.
- (6) 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.
- (7) Participant exchanges that support options market making quoting shall 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.

iv. Granularity of Timestamps

On February 3, 2020, the Participants filed 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 Rules, 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.²⁴ On April 8, 2020, the Participants received the exemptive relief.²⁵ 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. The timestamp granularity exemption remains in effect for five years, until April 8, 2025. After five years, the exemption would no longer be in effect unless the period the exemption is in effect is extended by the SEC.

Accordingly, the Exchange proposes to amend its Compliance Rules to reflect the 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.

²⁴ See Letter to Vanessa Countryman, Secretary, SEC, from Michael Simon, CAT NMS Plan Operating Committee Chair, re: Request for Exemption from Certain Provisions of the National Market System Plan Governing the Consolidated Audit Trail related to Granularity of Timestamps and Relationship Identifiers (Feb. 3, 2020).

²⁵ See Securities Exchange Act Release No. 88608 (April 8, 2020), 85 FR 20743 (April 14, 2020).

The Exchange proposes to amend this provision to read as follows to reflect the exemptive relief:

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 up to nanoseconds; provided, that Industry Members that capture timestamps in increments more granular than nanoseconds must truncate the timestamps after the nanosecond level for submission to CAT, rather than rounding such timestamps up or down, until April 8, 2025.

v. Introducing Industry Members

On February 3, 2020, the Participants requested that the Commission exempt broker-dealers that do not qualify as Small Industry Members solely because they satisfy Rule 0-10(i)(2) under the Exchange Act and, as a result, are deemed affiliated with an entity that is not a small business or small organization ("Introducing Industry Member") from the requirements in the CAT NMS Plan applicable to Industry Members other than Small Industry Members ("Large Industry Members").²⁶ Instead, such Introducing Industry Members would comply with the requirements in the CAT NMS Plan applicable to Small Industry Members. On April 20, 2020, the SEC granted the Participants exemptive relief with regard to Introducing Industry Members.²⁷

As a result, the Exchange proposes to amend its Compliance Rules to adopt a definition of "Introducing Industry Member" and to revise Rule 4.16 to require Introducing Industry

²⁶ See Letter to Vanessa Countryman, Secretary, SEC, from Michael Simon, CAT NMS Plan Operating Committee Chair, re: Request for Exemption from Certain Provisions of the National Market System Plan Governing the Consolidated Audit Trail related to Small Industry Members (Feb. 3, 2020).

²⁷ See Securities Exchange Act Release No. 88703 (April 20, 2020), 85 FR 23115 (April 24, 2020).

Members to comply with the requirements of the CAT NMS Plan applicable to Small Industry Members. Specifically, the Exchange proposes to define “Introducing Industry Member” in proposed paragraph (v) to Rule 4.5, as “a broker-dealer that does not qualify as a Small Industry Member solely because such broker-dealer satisfies Rule 0-10(i)(2) under the Exchange Act in that it introduces transactions on a fully disclosed basis to clearing firms that are not small businesses or small organizations.” The Exchange also proposes to add a new paragraph (3) to Rule 4.16(c) to state that “Introducing Industry Members must comply with the requirements of the CAT NMS Plan applicable to Small Industry Members.” With these changes, Introducing Industry Members would be required to comply with the requirements in the CAT NMS Plan applicable to Small Industry Members, rather than the requirements in the CAT NMS Plan applicable to Large Industry Members.

vi. CCID/PII

On January 29, 2020, the Participants filed with the Commission a request for exemptive relief from certain requirements related to reporting SSNs, dates of birth and account numbers to the CAT.²⁸ The Commission, Participants and others indicated security concerns with maintaining such sensitive Customer information in the CAT. On March 17, 2020, the Participants received the exemptive relief, subject to certain conditions.²⁹ Assuming the

²⁸ 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 (Jan. 29, 2020).

²⁹ See Securities Exchange Act Release No. 88393 (March 17, 2020), 85 FR 16152 (March 20, 2020) (Order Granting Conditional Exemptive Relief, Pursuant to Section 36 and Rule 608(e) of the Securities Exchange Act of 1934, from Section 6.4(d)(ii)(C) and Appendix D Sections 4.1.6, 6.2, 8.1.1, 8.2, 9.1, 9.2, 9.4, 10.1, and 10.3 of the National Market System Plan Governing the Consolidated Audit Trail) (“PII Exemption Order”). The PII Exemption Order lists several conditions that must be met by the Exchange. If

Participants comply with the conditions set forth in the PII Exemption Order, Industry Members would not be required to report SSNs, dates of birth and account numbers to the CAT NMS Plan.

As described in the request for exemptive relief, the Participants requested exemptive relief to allow for an alternative approach to generating a CAT Customer ID (“CCID”) without requiring Industry Members to report SSNs to the CAT (the “CCID Alternative”). In lieu of retaining such SSNs in the CAT, the Participants would use the CCID Alternative, a strategy developed by the Chief Information Security Officer for the CAT and the Chief Information Security Officers from each of the Participants, in consultation with security experts from member firms of Securities Industry and Financial Markets Association. The CCID Alternative facilitates the ability of the Plan Processor to generate a CCID without requiring the Plan Processor to receive SSNs or store SSNs within the CAT. Under the CCID Alternative, the Plan Processor would generate a unique CCID using a two-phase transformation process that avoids having SSNs reported to or stored in the CAT. In the first transformation phase, a CAT Reporter would transform the SSN to an interim value (the “transformed value”). This transformed value, and not the SSN, would be submitted to a separate system within the CAT (“CCID Subsystem”). The CCID Subsystem would then perform a second transformation to create the globally unique CCID for each Customer that is unknown to, and not shared with, the original CAT Reporter. The CCID would then be sent to the customer and account information system of the CAT, where it would be linked with the other customer and account information. The CCID may then be used by the Participants’ regulatory staff and the SEC in queries and analysis of CAT Data. To implement the CCID Alternative, the Participants requested exemptive relief from the

the Exchange does not satisfy the conditions, the PII Exemption Order would not apply to the Exchange.

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 SSNs to the Central Repository for the original receipt of an order. As set forth in one condition of the PII Exemption Order, Industry Members would be required to transform an SSN to an interim value, and report the transformed value to the CAT.

The Participants also requested exemptive relief to allow for an alternative approach which would exempt the reporting of dates of birth and account numbers³⁰ to the CAT (“Modified PII Approach”), and instead would require Industry Members to report the year of birth and the Firm Designated ID for each trading account associated with the Customers. To implement 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 dates of birth and account numbers for Customers. As conditions to the exemption, Industry Members would be required to report the year of birth of an individual to the Central Repository, and to report the Firm Designated ID to the Central Repository.

To implement the request for exemptive relief and to eliminate the requirement to report SSNs, date of birth and account numbers to the CAT, the Exchange proposes to amend its Compliance Rules to reflect the exemptive relief. 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

³⁰ With respect to this aspect of the requested relief, the PII Exemption Order provided relief with regard to the reporting of all account numbers, not just account numbers for individuals as requested by the Participants.

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.

Similarly, Rule 4.8 requires the reporting of Customer Account Information and Customer Identifying Information to the Central Repository. Currently, Rule 4.5(m) defines “Customer Identifying Information” to include, with respect to individuals, “date of birth” and “individual tax payer identification number (“ITIN”)/social security number (“SSN”).” Accordingly, the Exchange proposes to replace “date of birth” in the definition of “Customer Identifying Information” in Rule 4.5(m) (now renumbered Rule 4.5(n)) with “year of birth” and to delete “individual tax payer identification number (“ITIN”)/social security number (“SSN”)” from Rule 4.5(m) (now renumbered Rule 4.5(n)). In addition, currently, Rule 4.5(l) defines “Customer Account Information” to include account numbers. The Exchange proposes to delete “account number” from the definition of “Customer Account Information” in Rule 4.5(l) (now renumbered Rule 4.5(m)).

The Exchange also proposes to add a definition of the term “Transformed Value for individual tax payer identification number (“ITIN”)/social security number (“SSN”)” to Rule 4.5. Specifically, the Exchange proposes to add paragraph (pp) to Rule 4.5 to define “Transformed Value for individual tax payer identification number (“ITIN”)/social security number (“SSN”)” to mean “the interim value created by an Industry Member based on a Customer ITIN/SSN.”

The Exchange proposes to revise Rule 4.7(a)(2)(C) to include the Transformed Value for individual tax payer identification number (“ITIN”)/social security number (“SSN”).

Specifically, the Exchange proposes to revise Rule 4.7(a)(2)(C) to state:

[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, Transformed Value for individual tax payer identification number (“ITIN”)/social security number (“SSN”), and in accordance with Rule 4.8, Customer Account Information and Customer Identifying Information for the relevant Customer.

The Exchange also proposes to include the Transformed Value for individual tax payer identification number (“ITIN”)/social security number (“SSN”) in the Customer information reporting required under Rule 4.8. Specifically, the Exchange proposes to revise Rule 4.8(a) to require each Industry Member to submit to the Central Repository the Transformed Value for individual tax payer identification number (“ITIN”)/social security number (“SSN”), for each of its Customers with an Active Account prior to such Industry Member's commencement of reporting to the Central Repository and in accordance with the deadlines set forth in Rule 4.13. The Exchange also proposes to revise Rule 4.8(b) to require each Industry Member to submit to the Central Repository any updates, additions or other changes to the Transformed Value for individual tax payer identification number (“ITIN”)/social security number (“SSN”) for each of its Customers with an Active Account on a daily basis. In addition, the Exchange proposes to revise Rule 4.8(c) to require, on a periodic basis as designated by the Plan Processor and approved by the Operating Committee, each Industry Member to submit to the Central Repository a complete set of the Transformed Value for individual tax payer identification number (“ITIN”)/social security number (“SSN”) for each of its Customers with an Active

Account. The Exchange also proposes to revise Rule 4.8(d) to require, for each Industry Member for which errors in the Transformed Value for individual tax payer identification number (“ITIN”)/social security number (“SSN”) for each of its Customers with an Active Account submitted to the Central Repository have been identified by the Plan Processor or otherwise, such Industry Member to submit corrected data to the Central Repository by 5:00 p.m. Eastern Time on T+3.

Paragraph (1)(B) of Rule 4.5(m), the definition of “Customer Account Information” 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 relationship identifier in lieu of the “account number.” As an account number will no longer be an element in “Customer Account Information,” the relationship identifier used in lieu of the account number will no longer be required as an element of Customer Account Information. Therefore, the Exchange proposes to delete the requirement set forth in Rule 4.5(m)(a)(B) regarding relationship identifiers from Rule 4.5(m).

With these changes, Industry Members would not be required to report to the Central Repository dates of birth, SSNs or account numbers pursuant to Rule 4.7(a)(2)(C). However, Industry Members would be required to report the Transformed Value for individual tax payer identification number (“ITIN”)/social security number (“SSN”) and the year of birth to the Central Repository.³¹

vii. FINRA Facility Data Linkage

On June 5, 2020, the Participants filed with the Commission a request for exemptive

³¹ The Exchange anticipates that the Compliance Rules may be further amended when further details regarding the CCID Alternative are finalized.

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.³² The SEC provided this exemptive relief on June 11, 2020.³³ FINRA is required to 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 is the clearing number of the clearing broker for a reported trade as well as the cancelled trade indicator. Under this alternative approach, the clearing number and the cancelled trade indicator of the FINRA Facility Data that is reported to the CAT would be linked to the related execution reports reported by Industry Members. To implement this approach in a phased manner, the Participants received 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, subject to certain conditions.

As a condition to this exemption, the Participants would continue to 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, Industry Members would be required to report to the Central

³² See Letter to Vanessa Countryman, Secretary, SEC, from Michael Simon, CAT NMS Plan Operating Committee Chair, re: Request for Exemption from Certain Provisions of the National Market System Plan Governing the Consolidated Audit Trail related to FINRA Facility Data Linkage (June 5, 2020).

³³ See Securities Exchange Act Release No. 89051 (June 11, 2020) (Federal Register publication pending).

Repository the unique trade identifier reported to a FINRA Facility with the corresponding trade report. Furthermore, if an Industry Member does not submit a cancellation to a FINRA Facility, or is unable to provide a link between the execution reported to the Central Repository and the related FINRA Facility trade report, then the Industry Member would be required to record and report to the Central Repository a cancelled trade indicator and cancelled trade timestamp if the trade is cancelled. Similarly, if an Industry Member does not submit the clearing number of the clearing broker to a FINRA Facility for a trade, or is unable to provide a link between the execution reported to the Central Repository and the related FINRA Facility trade report, then the Industry Member would be required to record and report to the Central Repository the clearing number as well as contra party information.

As a result, the Exchange proposes to amend its Compliance Rules to reflect the 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 new paragraph (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, and, if the trade is cancelled, a cancellation, 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 and/or cancellation to the Central

Repository:

(1) the Industry Member is required to report to the Central Repository 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) or cancellation of an order pursuant to Rule 4.7(a)(1)(D) beginning June 22, 2020 for Large Industry Members and Small Industry OATS Reporters and beginning December 13, 2021 for Small Industry Non-OATS Reporters, and such trade identifier must be unique beginning October 26, 2020 for Large Industry Members and Small Industry OATS Reporters and beginning December 13, 2021 for Small Industry Non-OATS Reporters.

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 4.7(a)(2)(A)(ii) and (B), respectively, as this data will be reported by FINRA to the CAT, except in certain circumstances. Accordingly, the Exchange proposes new paragraphs (a)(2)(E)(2) and (3) to Rule 4.7, which would state:

(2) if the order is executed in whole or in part, and the Industry Member submits the trade report 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 SRO-Assigned Market Participant Identifier of the clearing broker pursuant to Rule 4.7(a)(2)(A)(ii); provided, however, if the Industry Member does not report the clearing number of the clearing broker to such FINRA facility for a trade, or does not report the unique trade identifier to the Central Repository as required by Rule 4.7(a)(2)(E)(1), then the Industry Member would be required to record and report to the Central Repository the clearing number of the clearing broker as well as information about the contra party to the trade beginning April 26, 2021 for Large Industry Members and Small Industry OATS Reporters and beginning December 13, 2021 for Small Industry Non-OATS Reporters; and

(3) 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); provided, however, if the Industry Member does not report a cancellation for a canceled trade to such FINRA facility, or does not report the unique trade identifier as required by 4.7(a)(2)(E)(1), then the Industry Member would be required to record and report to the Central Repository a cancelled trade indicator as well as a cancelled trade timestamp beginning June 22, 2020 for Large Industry Members and Small Industry OATS Reporters and beginning December 13, 2021 for Small Industry Non-OATS Reporters.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b)(5) of the Act,³⁴ which require, among other things, that the Exchange’s rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, and Section 6(b)(8) of the Act,³⁵ which requires that the Exchange’s rules not impose any burden on competition that is not necessary or appropriate.

The Exchange believes that this proposal is consistent with the Act because it is consistent with certain 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 SEC noted that the Plan “is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect

³⁴ 15 U.S.C. 78f(b)(6).

³⁵ 15 U.S.C. 78f(b)(8)

the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act.”³⁶ To the extent that this proposal implements the Plan, including the exemptive relief, and applies 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 believes its proposed rule change would not 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 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 Rules 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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition;

³⁶ See Securities Exchange Act Release No. 79318 (November 15, 2016), 81 FR 84696, 84697 (November 23, 2016).

and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act³⁷ and subparagraph (f)(6) of Rule 19b-4 thereunder.³⁸

A proposed rule change filed under Rule 19b-4(f)(6)³⁹ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),⁴⁰ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative upon filing. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because it implements exemptive relief from the CAT NMS Plan granted by the Commission and facilitates the start of Industry Member reporting. In addition, as noted by the Exchange, the proposed rule change is based on a filing recently approved by the Commission.⁴¹ Accordingly, the Commission waives the 30-day operative delay and designates the proposed rule change operative upon filing.⁴²

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such

³⁷ 15 U.S.C. 78s(b)(3)(A)(iii).

³⁸ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

³⁹ 17 CFR 240.19b-4(f)(6).

⁴⁰ 17 CFR 240.19b-4(f)(6)(iii).

⁴¹ See Securities Exchange Act Release No. 89108 (June 19, 2020).

⁴² For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or 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. Please include File Number SR-MEMX-2020-01 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-MEMX-2020-01. 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, DC 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-MEMX-2020-01 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.⁴³

J. Matthew DeLesDernier
Assistant Secretary

⁴³ 17 CFR 200.30-3(a)(12).