

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-92239; File No. SR-FINRA-2021-017)

June 23, 2021

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Retirement of FINRA's Order Audit Trail System

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 17, 2021, the Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. FINRA has filed the proposal under paragraph (f)(6) of Rule 19b-4 under the Act,³ which renders the proposal effective upon receipt of this filing by the Commission. 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

FINRA is filing a proposed rule change setting forth the basis for its determination that the accuracy and reliability of the Consolidated Audit Trail (“CAT”) meet the standards approved by the Commission in SR-FINRA-2020-024 for purposes of eliminating the Order Audit Trail System (“OATS”) rules in the FINRA Rule 7400 Series and FINRA Rule 4554 (Alternative Trading Systems — Recording and Reporting Requirements of Order and Execution Information for NMS Stocks) (collectively referred to herein as the “OATS Rules”). The

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

proposed rule change also updates cross-references within FINRA rules to reflect the elimination of the OATS Rules.

The text of the proposed rule change is available on FINRA's website at <http://www.finra.org>, at the principal office of FINRA and at the Commission's Public Reference Room.

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

In its filing with the Commission, FINRA 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. FINRA 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

On August 14, 2020, FINRA filed with the Commission a proposed rule change to delete the OATS Rules once members are effectively reporting to the CAT (the "OATS Retirement Filing").⁴ On October 29, 2020, FINRA filed Amendment No. 1 to the proposed rule change ("Amendment No. 1") and a response to the comments that were submitted on the original filing

⁴ See Securities Exchange Act Release No. 89679 (August 26, 2020), 85 FR 54461 (September 1, 2020) (Notice of Filing of File No. SR-FINRA-2020-024).

(“Response to Comments”).⁵ On November 30, 2020, the Commission approved the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.⁶

In the OATS Retirement Filing, FINRA proposed to eliminate the OATS Rules once members are effectively reporting to the CAT and the CAT’s accuracy and reliability meet certain standards. Specifically, FINRA proposed that before OATS could be retired, the CAT generally must achieve a sustained error rate for Industry Member⁷ reporting in five categories for a period of at least 180 days of 5% or lower on a pre-correction basis, and 2% or lower on a post-correction basis (measured at T+5). In addition to the maximum error rates and matching thresholds, FINRA’s use of CAT Data must confirm that (i) there are no material issues that have not been corrected, (ii) the CAT includes all data necessary to allow FINRA to continue to meet its surveillance obligations, and (iii) the Plan Processor is sufficiently meeting its obligations under the CAT NMS Plan relating to the reporting and linkage of Phase 2a Industry Member Data.

In the OATS Retirement Filing, FINRA explained that its review of CAT Data and error rates would be based on data and linkages in the initial phase of reporting (or “Phase 2a”), which replicate the data in OATS today and thus are most relevant for OATS retirement purposes.

⁵ See Letter from Lisa C. Horrigan, Associate General Counsel, FINRA, to Vanessa Countryman, Secretary, Commission, dated October 29, 2020.

⁶ See Securities Exchange Act Release No. 90535 (November 30, 2020), 85 FR 78395 (December 4, 2020) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of SR-FINRA-2020-024).

⁷ Unless otherwise specified, capitalized terms used in this rule filing are defined as set forth in the CAT Compliance Rule Series or in the National Market System Plan Governing the Consolidated Audit Trail (the “CAT NMS Plan” or “Plan”) that FINRA and the national securities exchanges (collectively, the “Participants”) filed with the Commission, pursuant to Section 11A of the Exchange Act and Rule 608 of Regulation NMS thereunder. See Securities Exchange Act Release No. 79318 (November 15, 2016), 81 FR 84696 (November 23, 2016) (“Approval Order”).

Phase 2a Data includes all events and scenarios covered by OATS and applies only to equities. FINRA will not consider options order events or Phase 2c data and validations, which are not in OATS today, for purposes of OATS retirement.

As described below, FINRA has determined that the CAT meets the accuracy and reliability standards approved by the Commission in the OATS Retirement Filing.

(A) Maximum Error Rates

As discussed in the OATS Retirement Filing, FINRA believes that relevant error rates are the primary, but not the sole, metric by which to determine the CAT's accuracy and reliability and will serve as the baseline requirement needed before OATS can be retired. FINRA proposed that, before OATS could be retired, the CAT would generally need to achieve a sustained error rate for Industry Member reporting in five categories for a period of at least 180 days of 5% or lower, measured on a pre-correction or as-submitted basis, and 2% or lower on a post-correction basis (measured at T+5).⁸ FINRA proposed to average the error rates across the period, rather than require a 5% pre-correction and 2% post-correction maximum each day for 180 consecutive days. FINRA also proposed to measure the error rates in the aggregate, rather than on a firm-by-firm basis. Finally, FINRA proposed to measure the error rates separately for each of the five categories, rather than evaluate all categories in the aggregate. As noted above, FINRA's assessment of the error rates for Industry Member reporting is based solely on Phase 2a CAT reporting for equity events since options orders are not included in OATS today.

⁸ As clarified in the OATS Retirement Filing, although FINRA does not believe that post-correction errors need to be de minimis before OATS can be retired, FINRA was not suggesting, with the proposal, that 2% would meet the ultimate objective of de minimis error rates for CAT. See CAT NMS Plan, Appendix C, note 102 (error rates after reprocessing of error corrections are ultimately expected to be de minimis for the CAT).

FINRA measured the error rates in each of the five categories discussed below during the period from October 26, 2020 through April 26, 2021 (the “applicable period”). FINRA commenced this period on October 26, 2020, which was the date that Industry Members were required to begin correcting all errors for inter-firm linkages and exchange/TRF/ORF match validations. As discussed in the Response to Comments, although the production environment for inter-firm linkage and exchange/TRF/ORF match validations was open for testing as of September 28, 2020, FINRA does not believe it would be appropriate for the 180-day period to commence prior to the October 26, 2020 compliance date.⁹

Rejection Rates and Data Validations. As described in the OATS Retirement Filing, the Plan Processor must perform certain basic data validations,¹⁰ and if a record does not pass these basic data validations, it must be rejected and returned to the CAT Reporter to be corrected and resubmitted. FINRA proposed that over the 180-day period, aggregate rejection rates must be no more than 5% pre-correction or 2% post-correction across all Industry Member Reporters. FINRA has determined that, over the applicable period, aggregate rejection rates across all Industry Member Reporters were 0.03% pre-correction and 0.01% post-correction.

Intra-Firm Linkages. As described in the OATS Retirement Filing, the Plan Processor must be able to link all related order events from all CAT Reporters involved in the lifecycle of an order. At a minimum, this requirement includes the creation of an order lifecycle between all order events handled within an individual CAT Reporter, including orders routed to internal

⁹ See FINRA’s Response to Comments, supra note 5.

¹⁰ Appendix D of the CAT NMS Plan, Section 7.2, for example, requires that certain file validations (e.g., file transmission and receipt are in the correct formats, confirmation of a valid SRO-Assigned Market Participant Identifier, etc.), and syntax and context checks (e.g., format checks, data type checks, consistency checks, etc.) be performed on all submitted records.

desks or departments with different functions (e.g., an internal ATS). FINRA proposed that aggregate intra-firm linkage rates across all Industry Member Reporters must be at least 95% pre-correction and 98% post-correction. FINRA has determined that, over the applicable period, aggregate intra-firm linkage rates across all Industry Member Reporters were 99.97% pre-correction and 99.99% post-correction.

Inter-Firm Linkages. As described in the OATS Retirement Filing, the Plan Processor must be able to create the lifecycle between orders routed between broker-dealers. FINRA proposed that at least a 95% pre-correction and 98% post-correction aggregate match rate be achieved for orders routed between two Industry Member Reporters. FINRA has determined that during the applicable period there was a 99.08% pre-correction and 99.84% post-correction aggregate match rate for orders routed between two Industry Member Reporters.

Order Linkage Rates. As described in the OATS Retirement Filing, in addition to creating linkages within and between broker-dealers, the Plan Processor must be able to create lifecycles to link various pieces of related orders. For example, the Plan requires linkages of order information to create an order lifecycle from origination or receipt to cancellation or execution. This category essentially combines all of the order-related linkages to capture an overall snapshot of order linkages in the CAT.¹¹ FINRA proposed that there be at least a 95% pre-correction and 98% post-correction rate for order linkages that are required in Phase 2a. FINRA has determined that during the applicable period there was a 99.66% pre-correction and 99.93% post-correction rate for order linkages required in Phase 2a.¹²

¹¹ See FINRA's Response to Comments, supra note 5.

¹² FINRA notes that in Phase 2a, linkage is required between the representative street side order and the order being represented when the representative order was originated specifically to represent a single order (received either from a customer or another broker-dealer) and there is: 1) an existing direct electronic link in the firm's system

Exchange and TRF/ORF Match Rates. As described in the OATS Retirement Filing, an order lifecycle must be created to link orders routed from broker-dealers to exchanges and executed orders and trade reports. FINRA proposed at least a 95% pre-correction and 98% post-correction aggregate match rate across all equity exchanges¹³ for orders routed from Industry Members to an exchange and, for over-the-counter executions, the same match rate for orders linked to trade reports. FINRA has determined that, during the applicable period, there was a 99.51% pre-correction and 99.87% post-correction aggregate match rate across all equity exchanges for orders routed from Industry Members to an exchange and, for over-the-counter executions, there was a 99.34% pre-correction and 99.53% post-correction rate for orders linked to trade reports submitted to the FINRA Trade Reporting Facilities and OTC Reporting Facility.

As set forth above, the error rates for Industry Member reporting over the applicable period were well below the maximum rates established in the OATS Retirement Filing. FINRA also notes that the overall post-correction error rate for Phase 2a Industry Member reporting of

between the order being represented and the representative order, and 2) any resulting executions are immediately and automatically applied to the represented order in the firm's system. As set forth in the OATS Retirement Filing, while such linkages are not required in OATS, FINRA believes that it is appropriate to evaluate them for purposes of retiring OATS because they represent a significant enhancement to the data currently available in OATS and will enhance the quality of the equity audit trail. However, FINRA also explained in the Response to Comments that if all other proposed criteria have been met, FINRA would not anticipate delaying OATS retirement based on Phase 2a representative order linkage error rates alone.

In evaluating whether the standards for OATS retirement have been met, FINRA has determined that the error rates for the Phase 2a representative order linkages did not have a significant negative impact on the overall error rates for order linkages. Accordingly, FINRA did not need to separately evaluate or exclude Phase 2a representative order linkage rates in measuring the error rates over the applicable period. For example, if the intra-firm linkage error rate had been above 5% over the applicable period, FINRA would have evaluated whether the error rate was the result of unlinked representative orders to create an apples-to-apples comparison to OATS.

¹³ See Amendment No. 1.

1.01% is comparable to the current overall OATS post-correction error rate, which generally is at or slightly below 1%. Therefore, FINRA has determined that, based on the error rates for Industry Member reporting, the CAT Data meets the accuracy and reliability baseline standards required for OATS retirement.

(B) FINRA's Use of CAT Data

In the OATS Retirement Filing, FINRA stated that while error rates are a key standardized measure in determining whether OATS retirement is appropriate, FINRA's use of the data in the CAT also must confirm that (i) there are no material issues that have not been corrected (e.g., delays in the processing of data, issues with query functions, etc.), (ii) the CAT includes all data necessary to allow FINRA to continue to meet its surveillance obligations, and (iii) the Plan Processor is sufficiently meeting its obligations under the CAT NMS Plan relating to the reporting and linkage of Phase 2a Data.

FINRA has been planning for OATS retirement for several years and the necessary development work has been underway for some time. FINRA also has been analyzing and testing production CAT Data for purposes of transitioning its automated equity surveillance patterns since the commencement of Phase 2a Industry Member reporting in June 2020 and through subsequent CAT milestone releases. For example, in addition to quantitative reviews, such as the error rate statistics discussed above, FINRA has conducted a series of qualitative reviews of Industry Member CAT Data. Such reviews include, among other things, comparing the count and distribution of Industry Member event reporting through CAT versus OATS (e.g., new order and execution events, and data elements such as buy/sell/sell short codes), and reviewing results of examinations, alert reviews, and investigations relating to the timeliness and accuracy of Industry Member reporting. Based on such qualitative data reviews, FINRA has

concluded that Industry Member CAT Data, in the aggregate, is a sufficient replacement for OATS for purposes of FINRA’s surveillance program.

Today, FINRA’s surveillance patterns rely on the cross-market data model (“CMDM”), which comprises linked OATS data, equity exchange data feeds from each of the exchanges with which FINRA has entered into a regulatory service agreement (“RSA”), and transactions reported to FINRA’s equity trade reporting facilities. The CMDM will be retired and replaced by a newly created surveillance data mart, the Pattern Optimized Datamart (“POD”), which incorporates both equities and options data. At that point, FINRA’s patterns will rely on CAT Data in POD, i.e., Plan Participant and Industry Member data reported in CAT format and linked by CAT.¹⁴ FINRA notes that the Plan Participants transitioned to reporting via the CAT technical specification as of April 26, 2021, and full Plan Participant equities reporting and linkage validations in accordance with the CAT specification commenced on June 1, 2021.¹⁵ Successful completion of the transition to the CAT specification for Plan Participants is a prerequisite for FINRA to retire the CMDM and leverage CAT Data and linkages in POD for its surveillance patterns. As of the date of this filing, FINRA has completed all planned activities on schedule, including substantially completing the process of integrating CAT Data into POD

¹⁴ FINRA’s Response to Comments noted this dependency, stating that the process of transitioning FINRA’s surveillance patterns to CAT Data necessarily includes, among other things, ingestion of all Industry Member and Plan Participant data and linkages in CAT format. See Response to Comments, *supra* note 5, at 4. The Response to Comments further noted that the Plan Participants would be reporting to CAT via another mechanism until April 2021.

¹⁵ For example, according to the CAT Reporting Technical Specification for Plan Participants (version 4.0.0-r4 dated April 20, 2021), additional linkage error feedback for off-exchange trade reports was effective as of June 1, 2021. The Technical Specifications can be found on the CAT NMS Plan website at www.catnmsplan.com/sites/default/files/2021-04/04.20.2021-CAT-Reporting-Technical-Specifications-for-Participants-4.0.0-r4.pdf.

and successfully running large amounts of production CAT Data for the month of May through POD.¹⁶ FINRA anticipates completing additional activities before the proposed OATS retirement date of September 1, 2021, including, e.g., planned user acceptance testing.¹⁷

FINRA has performed broad analysis of its equity surveillance patterns and has determined that all of the data required to support the transition is available in CAT. By mapping OATS data to Industry Member CAT Data in POD, FINRA has confirmed that CAT Data has equivalent analogs to all data elements in OATS. In that regard, FINRA notes that, as a Plan Participant, FINRA has been involved in CAT development efforts to ensure that the scope and features of Industry Member data and processed output are sufficient for FINRA's surveillance program. These efforts include, for example, developing and updating the Industry Member Technical Specifications and Reporting Scenarios, conducting OATS-CAT gap analyses and validating that all such gaps have been properly addressed, and performing OATS-to-CAT field-level mappings.

With respect to Plan Participant data, FINRA notes that the test environment for Plan Participant reporting in accordance with the CAT specification opened on February 15, 2021.¹⁸ Plan Participant equity reporting in accordance with the CAT specification in the test environment had a very high compliance rate for data ingestion and validation, and compliance in the production environment is comparable. In addition, starting on April 26, 2021, CAT

¹⁶ FINRA notes that additional POD releases are scheduled; however, these releases introduce minor enhancements to POD, as opposed to significant changes that would impact the way data is ingested or processed in POD.

¹⁷ FINRA notes that user acceptance testing is the final stage of any software development life cycle and enables actual users to test the system to confirm that it is able to carry out the required tasks it was designed to address in real-world situations.

¹⁸ See, e.g., CAT Q1 2021 Quarterly Progress Report dated April 30, 2021, available at www.catnmsplan.com/sites/default/files/2021-05/CAT-Q1-2021-QPR.pdf.

began linking copies of Industry Member and Plan Participant data reported via the CAT specification in a test environment, and at that point, FINRA began its evaluation of the quality of these linkages. Based on this review and evaluation, FINRA believes that the linkages between Plan Participant data and Industry Member data in CAT are comparable to the linkages between RSA exchange data and OATS data in the CMDM today.¹⁹ FINRA CAT and the Plan Participants have now met the necessary criteria for a full cutover from the RSA specification to the CAT specification, including, e.g., achieving comparable data ingestion validation and intervene linkage rates (within a variance of under one percent) between RSA and CAT specification submissions. Accordingly, the Operating Committee approved the cutover from the RSA specification to the CAT specification as the official source of Plan Participant data as of June 1, 2021, and today, all Industry Member and Plan Participant equities data reported via the CAT specification is linked in the CAT production environment.

FINRA continues to evaluate CAT Data quality, and in particular, linkages between Industry Member and Plan Participant data, and to test its surveillance patterns to run on CAT Data in POD. In that regard, FINRA notes that it has followed established and time-tested processes and protocols throughout the development process to ensure that its patterns will perform as expected and produce the necessary output using CAT Data following the retirement of OATS. For example, FINRA's Software Development Lifecycle ("SDLC") procedures govern systems design, changes, testing and controls. The SDLC procedures are an essential component of FINRA's operations and have been developed to serve FINRA's unique regulatory needs and structure. Additionally, consistent with SEC Regulation SCI, FINRA procedures

¹⁹ FINRA notes that the CAT uses the same code in both the test and production environments. Thus, FINRA believes that linkages in the test environment are reliable indicators of linkages in the production environment.

include a plan of coordination and communication with regulatory staff. By relying on these established processes and protocols, FINRA has confidence that the CAT Data and linkages are reliable and sufficient to run FINRA's surveillance patterns.

As an added measure, FINRA ran a sample of its pattern portfolio using both OATS and production CAT Data for a short period following implementation of additional Plan Participant linkage validations and compared the pattern outputs. Specifically, FINRA ran several surveillance patterns and processes against legacy-sourced data (OATS/RSA) and against CAT-sourced data. The patterns processed end-to-end with significant alignment and no unexplained anomalous results. Any differences in output between a pattern run with legacy data versus CAT Data were appropriate, given differences in pattern logic as well as enhanced data available through CAT, e.g., representative order linkages. FINRA believes that this sample has provided sufficient evidence that FINRA will be able to integrate all surveillance patterns to run on CAT Data. Based on these results, as well as the results of its quantitative and qualitative reviews of CAT Data and successful efforts integrating CAT Data into POD, FINRA believes that the complete portfolio of equity surveillance patterns will be capable of consuming CAT Data and achieving comparable (or better) output results.

Thus, FINRA proposes to retire OATS in accordance with the schedule set forth herein. FINRA will run its surveillance patterns for review periods through the end of the second quarter of 2021 using OATS data and begin using—and be fully reliant on—CAT Data for its surveillance patterns for review periods beginning in the third quarter of 2021. Following the retirement of OATS, FINRA expects to maintain the current established cadence of its monthly, quarterly and semi-annual surveillance patterns. In addition, FINRA's analytics platforms will have access to CAT Data as soon as such data is made available to regulators. Thus, outside of

regularly scheduled surveillance pattern runs, FINRA can perform expedited analytics, as required by market events.

FINRA is finalizing the development and certification of its surveillance patterns to run on CAT Data on a rolling basis and, in accordance with its existing SDLC procedures, will run a month's worth of data and compare the output before certifying each pattern. For those equity patterns that will be subject to certification after OATS retirement, FINRA anticipates that there would be sufficient time to identify and remediate any issues prior to running the patterns in accordance with the current established cadence. FINRA does not anticipate significant issues arising from additional scheduled POD releases or in the final stages of its pattern development and certification efforts. FINRA bases this belief on years of experience with other large technology rollouts that have been executed in accordance with FINRA's SDLC procedures. In such instances, recourse to the legacy system was neither available nor required.

On an ongoing basis following the retirement of OATS, FINRA will conduct regular reviews to ensure confidence in the completeness and accuracy of Industry Member reporting, along with the ability to remediate any issues in a timely manner. Among other things, FINRA has a robust mechanism for detecting data issues, determining which issues are material for purposes of its surveillance program, and requesting resubmission and/or reprocessing of data, as necessary. FINRA also (1) performs a suite of data quality checks against data sourced from CAT to POD and against data processed by POD for use in surveillance patterns; (2) oversees a robust surveillance and examination compliance program that evaluates Industry Member reporting timeliness, data quality, and other issues and trends; (3) reviews CAT compliance program alerts using a rapid remediation process and formal reviews, as necessary; and (4) reviews Industry Member self-reporting and error correction trends. FINRA believes that these

practices are sufficient for identification and timely resolution of Industry Member reporting and data issues after OATS has been retired.

Specifically with regard to the additional standards approved in the OATS Retirement Filing, through its use of CAT Data to date, as described above, FINRA believes that these standards have been satisfied. With respect to the first factor, FINRA does not believe that there are any material issues that have not been corrected (or could not be corrected in the course of operation of CAT, as approved by the Operating Committee)²⁰ that would impact FINRA's ability to incorporate and use CAT Data in FINRA's surveillance program. For example, the Plan requires that raw unprocessed data that has been ingested by the Plan Processor must be available to Participant regulatory staff and the SEC prior to 12:00 p.m. Eastern Time on T+1, and access to all iterations of processed data must be available to Participant regulatory staff and the SEC between 12:00 p.m. Eastern Time on T+1 and T+5.²¹ The Plan Processor also must ensure that regulators have access to corrected and linked order data by 8:00 a.m. Eastern Time on T+5.²² Additionally, after ingestion by the Central Repository, the raw unprocessed data must be transformed into a format appropriate for data querying and regulatory output.²³ The user-defined direct queries and bulk extracts must provide authorized users with the ability to retrieve CAT Data via a query tool or language that allows users to query all available attributes and data

²⁰ FINRA notes that FINRA CAT tracks known issues relating to Industry Member and Plan Participant reporting. See, e.g., catnmsplan.com/CAT-Transaction-Known-Issues-List. FINRA regularly reviews and analyzes FINRA CAT's list of current and resolved issues and does not believe that any of these issues would impact its ability to incorporate and use CAT Data in its surveillance program.

²¹ See CAT NMS Plan, Appendix D, Section 6.2.

²² See CAT NMS Plan, Appendix C, Section A.2(a).

²³ See CAT NMS Plan, Appendix C, Section A.1(b).

sources.²⁴ FINRA's use of the CAT Data has not uncovered any processing delays or other material issues impacting the availability of, and FINRA's access to, the data.

With respect to the second factor, FINRA believes that the CAT includes all data necessary for FINRA to meet its surveillance obligations after the retirement of OATS. FINRA must ensure that the CAT, as the single source of order and trade data, can enable FINRA to conduct accurate and effective market surveillance in accordance with its regulatory obligations.²⁵ As noted above, Phase 2a Data includes all events and scenarios covered by OATS and is the most relevant for OATS retirement purposes. 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 Members that currently are reporting to OATS were required to submit data to the CAT for these same events and scenarios commencing in Phase 2a. FINRA's testing, analysis and use of the CAT Data (including integration into POD), as described above, has confirmed that the CAT includes all data necessary for FINRA to meet its surveillance obligations and that CAT is a reliable substitute for OATS. In addition, based on its

²⁴ See CAT NMS Plan, Section 6.10(c).

²⁵ As discussed in the OATS Retirement Filing, OATS was originally proposed to fulfill one of the undertakings contained in an order issued by the Commission relating to the settlement of an enforcement action against FINRA (f/k/a National Association of Securities Dealers, Inc. ("NASD")) for failure to adequately enforce its rules. See Securities Exchange Act Release No. 39729 (March 6, 1998), 63 FR 12559 (March 13, 1998) (Order Approving File No SR-NASD-97-56) ("OATS Approval Order"); see also Securities Exchange Act Release No. 37538 (August 8, 1996); Administrative Proceeding File No. 3-9056 ("SEC Order"). In the OATS Approval Order, the Commission concluded that OATS satisfied the conditions of the SEC Order and was consistent with the Exchange Act. See 63 FR 12559, 12566-67. FINRA believes that it will continue to be in compliance with the requirements of the SEC Order once the OATS Rules are deleted.

qualitative data reviews, FINRA has concluded that Industry Member CAT Data, in the aggregate, is a sufficient replacement for OATS for purposes of FINRA's surveillance program.

With respect to the third factor, FINRA believes that the Plan Processor is sufficiently meeting its obligations under the CAT NMS Plan relating to the reporting and linkage of Phase 2a Data. As detailed in the Implementation Plan and Quarterly Progress Reports submitted by the Plan Participants, the Plan Processor has met its targeted completion dates for the milestones for Phase 2a, including, for example, production Go-Live for Equities 2a file submission and data integrity validation (Large Industry Members and Small OATS Reporters) on June 22, 2020; Production Go-Live for Equities 2a Intrafirm Linkage validations on July 27, 2020; and production go-live for firm-to-firm linkage validations for equities (Large Industry Members and Small OATS Reporters) and exchange and TRF/ORF linkage validations for equities (Large Industry Members and Small OATS Reporters) on October 26, 2020.²⁶

Based on the foregoing, FINRA has determined that the CAT meets the accuracy and reliability standards approved by the Commission in the OATS Retirement Filing for purposes of eliminating the OATS Rules. FINRA has determined to retire OATS effective September 1, 2021. Firms must continue to report to OATS all order events that occur on or prior to August 31, 2021. Reports submitted to OATS for order events that occur after August 31, 2021 will be rejected. In other words, August 31, 2021 will be the last "OATS Business Day," as defined under Rule 7450(b)(3), for which OATS will accept order events and perform routine processing (including incorporation of corrections and repairs of rejections) occurring within the normal OATS timeframe for such activities. OATS will continue to accept reports for order events that

²⁶ The Implementation Plan and Quarterly Progress Reports are available at www.catnmsplan.com/implementation-plan.

occur on or prior to August 31, 2021 (including, but not limited to, late and corrected reports for such order events) through September 16, 2021. Firms must ensure that their OATS reporting is accurate and complete for all order events that occur on or prior to August 31, 2021. The OATS Rules will be deleted from the FINRA rulebook effective September 1, 2021.²⁷

Finally, FINRA notes that as requested by the industry, FINRA has provided transparency into the process of retiring OATS. For example, FINRA has provided the industry with monthly status updates²⁸ on (1) the error rates in the categories discussed above, (2) FINRA's evaluation of the non-error rate factors, (3) a general timeframe for OATS retirement, and (4) steps for Industry Members to consider in preparation for the retirement of OATS. Materials for these events are available on the CAT NMS Plan website.²⁹

In light of the foregoing, FINRA believes that retiring OATS as of September 1, 2021 is appropriate, particularly given the potential risks of continuing to run OATS and CAT in parallel for an additional period of time. Such potential risks may include, for example, on an industry-

²⁷ Pursuant to the OATS Retirement Filing, the Commission approved the deletion of the OATS Rules and the adoption of new introductory language in Rule 4554 and the Rule 7400 Series to help alert members of the status of the OATS Rules. The Exhibit 5 attached to this filing is marked to show the deletion of this introductory language (but is not marked to show the previously approved deletion of the OATS Rules).

In addition, there are multiple rules throughout the FINRA rulebook that cross-reference or otherwise incorporate some or all of the OATS Rules. In this filing, FINRA also is proposing non-substantive technical changes to delete or amend, as applicable, such references to the OATS Rules.

²⁸ On March 18, 2021, FINRA conducted an industry webinar addressing OATS retirement issues and informed the industry that although a formal OATS retirement date had not yet been established, it would be no earlier than the end of June 2021. Additional monthly updates were held on April 15, 2021 and May 20, 2021.

²⁹ See www.catnmsplan.com/events. FINRA CAT also provides regular updates to Industry Members regarding CAT implementation and compliance during FINRA CAT's Weekly Industry Checkpoint and Monthly Implementation calls. The statistics provided by FINRA CAT have also served as a good proxy for progress toward achieving the requisite error rates for purposes of OATS retirement.

wide basis: (1) processing and storage capacity issues from operating two systems (particularly in the event of extraordinary market volume); (2) cybersecurity risks from having data flow through two separate systems for a longer time period; (3) systems issues from reporting infrastructure that is near end-of-life; and (4) the expense and burden on CAT Reporters of dual reporting, particularly in the event of systems issues requiring correction and/or resubmission of data and competing resource priorities between OATS and CAT reporting and repair activities.

FINRA has filed the proposed rule change for immediate effectiveness and has determined to retire OATS effective September 1, 2021. The implementation date of SR-FINRA-2020-024, pursuant to which the Commission approved the deletion of the OATS Rules, and of this proposed rule change will be September 1, 2021. FINRA will publish a Regulatory Notice announcing this implementation date.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,³⁰ which requires, among other things, that FINRA 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 15A(b)(9) of the Act,³¹ which requires that FINRA rules not impose any burden on competition that is not necessary or appropriate.

FINRA has determined that the CAT accuracy and reliability standards approved by the Commission in SR-FINRA-2020-024 have been satisfied and it is appropriate to retire OATS, which is duplicative in light of the implementation of CAT. Based on its testing, analysis and

³⁰ 15 U.S.C. 78o-3(b)(6).

³¹ 15 U.S.C. 78o-3(b)(9).

use of CAT Data (including integration of CAT Data into POD), as described above, FINRA has determined that its surveillance of market activity will remain accurate and effective and FINRA will be able to continue to fulfill its statutory obligation to protect investors and the public interest after the retirement of OATS. Among other things, FINRA has performed broad analysis of its equity surveillance patterns and has determined that all of the data required to support the transition is available in CAT. In addition, based on its qualitative data reviews, FINRA has concluded that Industry Member CAT Data, in the aggregate, is a sufficient replacement for OATS for purposes of FINRA's surveillance program. FINRA also ran a sample of its pattern portfolio using both OATS and production CAT Data and compared the pattern outputs. Based on these results, as well as the results of its quantitative and qualitative reviews of CAT Data and efforts to integrate CAT Data into POD, FINRA believes that the complete portfolio of equity surveillance patterns will be capable of consuming CAT Data and achieving comparable (or better) output results.

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

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. As set forth in the OATS Retirement Filing, FINRA undertook an economic impact assessment to analyze the regulatory need for the proposed rule change, its potential economic impacts, including anticipated costs and benefits, and the alternatives considered in assessing how to best meet regulatory objectives. The economic impact assessment discussed the potential costs and benefits associated with OATS retirement assuming that the accuracy and reliability standards delineated in the filing were met. As FINRA has determined that CAT meets or exceeds these standards, FINRA does not anticipate any additional impacts from retiring OATS.

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

The OATS Retirement Filing, pursuant to which FINRA proposed the above-discussed accuracy and reliability standards the CAT would need to achieve before FINRA could retire OATS, was published for comment on September 1, 2020.³² Three comment letters were submitted in response,³³ and on October 29, 2020, FINRA responded to the comment letters.³⁴ The comment letters, as well as FINRA’s response to comments, are available on the Commission’s website.

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; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act³⁵ and Rule 19b-4(f)(6) thereunder.³⁶

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 action is necessary or appropriate in the public interest, for the protection of investors, or

³² See supra note 4.

³³ See Letters from Howard Meyerson, Managing Director, Financial Information Forum, to Vanessa Countryman, Secretary, Commission, dated September 22, 2020; William J. Leahey, Head of Regulatory Compliance, Refinitiv Wealth Management, to Vanessa Countryman, Secretary, Commission, dated September 22, 2020; and Ellen Greene, Managing Director, Securities Industry and Financial Markets Association, to Vanessa Countryman, Secretary, Commission, dated September 24, 2020 (“SIFMA”).

³⁴ See supra note 5.

³⁵ 15 U.S.C. 78s(b)(3)(A).

³⁶ 17 CFR 240.19b-4(f)(6).

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-FINRA-2021-017 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-FINRA-2021-017. 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 FINRA. 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-FINRA-2021-017, 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.³⁷

J. Matthew DeLesDernier
Assistant Secretary

³⁷ 17 CFR 200.30-3(a)(12).