

BOX RULES	FINRA (NASD) RULES, EXCHANGE ACT PROVISION OR SEC RULE
BOX Rule 10070 Anti-Money Laundering Compliance Program # .....	FINRA Rule 3310 Anti-Money Laundering Compliance Program.

\* FINRA shall not have Regulatory Responsibilities for these rules as they pertain to violations of insider trading activities, which is covered by a separate 17d-2 Agreement by and among BATS BZX Exchange, Inc., BATS BYX Y-Exchange, Inc., Chicago Stock Exchange, Inc., BATS EDGA Exchange, Inc., BATS EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., NASDAQ BX, Inc., NASDAQ PHLX LLC, the NASDAQ Stock Market LLC, National Stock Exchange, Inc., New York Stock Exchange LLC, NYSE MKT LLC, and NYSE Arca Inc., effective August 3, 2016, as may be amended from time to time.

# FINRA shall not have any Regulatory Responsibilities regarding (i) notice, reporting or any other filings made directly to or from BOX, (ii) compliance with other referenced BOX Rules that are not Common Rules, (iii) exercise of discretion including, but not limited to exercise of exemptive authority, by BOX, (iv) prior written approval of BOX and (v) payment of fees or fines to BOX.

#### IV. Solicitation of Comments

In order to assist the Commission in determining whether to approve the proposed 17d-2 Plan and to relieve BOX of the responsibilities which would be assigned to FINRA, interested persons are invited to submit written data, views, and arguments concerning the foregoing. Comments may be submitted by any of the following methods:

##### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/other.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number 4-709 on the subject line.

##### Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, Station Place, 100 F Street NE., Washington, DC 20549-1090. All submissions should refer to File Number 4-709. 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 Web site (<http://www.sec.gov/rules/other.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the plan also will be available for inspection and copying at the principal offices of BOX and FINRA. All comments received will be posted without change; the Commission does not edit personal

identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number 4-709 and should be submitted on or before April 5, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Eduardo A. Aleman,**

*Assistant Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-80255; File No. SR-FINRA-2017-003]

#### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change To Adopt the FINRA Rule 6800 Series (Consolidated Audit Trail Compliance Rule)

March 15, 2017.

#### I. Introduction

On January 31, 2017, Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to adopt the FINRA Rule 6800 Series, to implement the compliance rules regarding the National Market System Plan Governing the Consolidated Audit Trail (the "CAT NMS Plan" or "Plan").<sup>3</sup> The proposed rule change was published for comment in the **Federal Register** on February 9,

<sup>14</sup> 17 CFR 200.30-3(a)(34).

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

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

<sup>3</sup> FINRA originally filed this proposed rule change on January 17, 2017 under File No. SR-FINRA-2017-002; FINRA subsequently withdrew that filing on January 30, 2017 and filed this proposed rule change.

2017.<sup>4</sup> The Commission received 3 comments in response to the proposed rule change.<sup>5</sup> On March 15, the Participants<sup>6</sup> submitted a response to the comment letters.<sup>7</sup> This order approves the proposed rule change.<sup>8</sup>

#### II. Background

On September 30, 2014, Bats BYX Exchange, Inc.; Bats BZX Exchange, Inc.; Bats EDGA Exchange, Inc.; Bats EDGX Exchange, Inc.; BOX Options Exchange LLC; C2 Options Exchange, Incorporated; Chicago Board Options Exchange, Incorporated; Chicago Stock Exchange, Inc.; FINRA; International Securities Exchange, LLC; Investors' Exchange LLC; ISE Gemini, LLC; ISE Mercury, LLC; Miami International Securities Exchange LLC; MIAX PEARL, LLC; NASDAQ BX, Inc.; NASDAQ PHLX LLC; The NASDAQ Stock Market LLC; National Stock Exchange, Inc.; New York Stock Exchange LLC; NYSE MKT LLC; and NYSE Arca, Inc. (collectively, the "Participants") filed with the Commission, pursuant to Section 11A of the Exchange Act<sup>9</sup> and Rule 608 of Regulation NMS thereunder,<sup>10</sup> the CAT NMS Plan.<sup>11</sup> The

<sup>4</sup> Securities Exchange Act Release No. 79961 (February 3, 2017), 82 FR 10073 ("Notice").

<sup>5</sup> See letter from William H. Herbert, Managing Director, Financial Information Forum, dated March 1, 2017 ("FIF Letter"); letter from Bonnie Wachtel, Wachtel & Co Inc., dated March 2, 2017 ("Wachtel Letter"); and letter from Manisha Kimmel, Chief Regulatory Officer, Wealth Management, Thomson Reuters, dated March 2, 2017 ("Thomson Reuters Letter").

<sup>6</sup> See *infra* Section II.

<sup>7</sup> See Letter from Participants to Brent J. Fields, Secretary, Commission, dated March 15, 2017 ("Participants' Response Letter"). The Participants note that because all the Participants filed rules similar to FINRA's proposed 6800 Series, the Participants' Response Letter is submitted on behalf of all Participants and applicable to all the Participants' proposed rules implementing the CAT NMS Plan ("Participant Proposed Compliance Rules"). Participants' Response Letter at 1.

<sup>8</sup> The Commission notes that for purposes of this Order, unless otherwise specified, capitalized terms used are defined as set forth in the Notice or in the CAT NMS Plan.

<sup>9</sup> 15 U.S.C. 78k-1.

<sup>10</sup> 17 CFR 242.608.

<sup>11</sup> See Letter from the Participants to Brent J. Fields, Secretary, Commission, dated September 30,

Participants filed the Plan to comply with Rule 613 of Regulation NMS under the Exchange Act.<sup>12</sup> The Plan was published for comment in the **Federal Register** on May 17, 2016,<sup>13</sup> and approved by the Commission, as modified, on November 15, 2016.<sup>14</sup>

The Plan is designed to create, implement and maintain a consolidated audit trail (“CAT”) that would capture customer and order event information for orders in NMS Securities and OTC Equity Securities, across all markets, from the time of order inception through routing, cancellation, modification, or execution in a single consolidated data source. Each Participant is required to enforce compliance by its Industry Members, as applicable, with the provisions of the Plan, by adopting a Compliance Rule applicable to their Industry Members.<sup>15</sup> FINRA’s proposed Rule 6800 Series sets forth FINRA’s “Audit Trail Compliance Rule” implementing provisions of the CAT NMS Plan that are applicable to FINRA members.<sup>16</sup>

### III. Description of the Proposed Rule Change

The proposed Rule 6800 Series includes twelve rules covering the following areas: (1) Definitions; (2) clock synchronization; (3) Industry Member Data reporting; (4) Customer information reporting; (5) Industry Member information reporting; (6) time stamps; (7) clock synchronization rule violations; (8) connectivity and data transmission; (9) development and testing; (10) recordkeeping; (11) timely, accurate and complete data; and (12) compliance dates.

#### A. Definitions (Rule 6810)

Proposed Rule 6810 sets forth the definitions for the terms used in the

2014; and Letter from Participants to Brent J. Fields, Secretary, Commission, dated February 27, 2015. On December 24, 2015, the Participants submitted an amendment to the CAT NMS Plan. See Letter from Participants to Brent J. Fields, Secretary, Commission, dated December 23, 2015. The CAT NMS Plan was approved by the Commission, with limited changes made by the Commission, on November 15, 2016. See *infra* note 14.

<sup>12</sup> 17 CFR 242.613.

<sup>13</sup> Securities Exchange Act Release No. 77724 (April 27, 2016), 81 FR 30614 (May 17, 2016).

<sup>14</sup> Securities Exchange Act Release No. 79318 (November 15, 2016), 81 FR 84696 (November 23, 2016) (“Approval Order”).

<sup>15</sup> See 17 CFR 242.613(g)(1).

<sup>16</sup> The Commission notes that the CAT NMS Plan defines an “Industry Member” as a member of a national securities exchange or a member of a national securities association. CAT NMS Plan, *supra* note 11 at Section 1.1. Because FINRA’s proposed Rule 6800 Series implements the CAT NMS Plan, the term “Industry Member” is used throughout Series. For purposes of proposed Rule 6800 Series, the term “Industry Member” means a FINRA member.

proposed Rule 6800 Series. Each of the defined terms in proposed Rule 6810 is discussed below.

#### 1. Account Effective Date

##### (a) Customer Information Approach

Rule 613 of Regulation NMS requires that certain data elements be reported to the CAT to enable regulators to identify Customers associated with orders. FINRA notes that Rule 613(c)(7)(i)(A) requires an Industry Member to report the “Customer-ID” for each Customer for the original receipt or origination of an order,<sup>17</sup> and that “Customer-ID” is defined in Rule 613(j)(5) to mean “with respect to a customer, a code that uniquely and consistently identifies such customer for purposes of providing data to the Central Repository.”<sup>18</sup> Rule 613(c)(8) requires Industry Members to use the same Customer-ID for each Customer.<sup>19</sup> FINRA notes that the Commission granted the Participants exemptive relief to permit the use of an alternative approach to the requirement that an Industry Member report a Customer-ID for every Customer upon original receipt or origination.<sup>20</sup> The alternative approach is called the “Customer Information Approach.”

FINRA states that under the Customer Information Approach, the CAT NMS Plan requires each Industry Member to assign a unique Firm Designated ID to each Customer, and that for the Firm Designated ID, Industry Members are permitted to use an account number or any other identifier defined by the firm, provided each identifier is unique across the firm for each business date (*i.e.*, a single firm may not have multiple separate customers with the same identifier on any given date).<sup>21</sup> Prior to their commencement of reporting to the CAT, Industry Members must submit an initial set of Customer information to the Central Repository, including the Firm Designated ID, Customer Identifying Information and Customer Account Information (which may include, as applicable, the Customer’s name, address, date of birth, individual tax payer identifier number (“ITIN”)/ social security number (“SSN”), individual’s role in the account (*e.g.*, primary holder, joint holder, guardian, trustee, person with power of attorney)

<sup>17</sup> 17 CFR 242.613(c)(7)(i)(A).

<sup>18</sup> 17 CFR 242.613(j)(5).

<sup>19</sup> 17 CFR 242.613(c)(8).

<sup>20</sup> See Securities Exchange Act Release No. 77265 (March 1, 2016), 81 FR 11856 (March 7, 2016) (“Exemption Order”). See also Letter from Participants to Brent J. Fields, Secretary, Commission, dated January 30, 2015 (“Exemptive Request Letter”).

<sup>21</sup> See *infra* Section III.A.17 for a discussion of the application of the term “Firm Designated ID.”

and Legal Entity Identifier (“LEI”) and/or Large Trader ID (“LTID”). This process is referred to as the “customer definition process.”

FINRA noted that in accordance with the Customer Information Approach, Industry Members are required to report only the Firm Designated ID for each new order submitted to the Central Repository, rather than the “Customer-ID” with individual order events. Within the Central Repository, each Customer will be uniquely identified by identifiers or a combination of identifiers such as ITIN/SSN, date of birth, and as applicable, LEI and LTID. The Plan Processor will be required to use these unique identifiers to map orders to specific Customers across all Industry Members and Participants. To ensure information identifying a Customer is up to date, Industry Members will be required to submit to the Central Repository daily and periodic updates for reactivated accounts, newly established accounts, and revised Firm Designated IDs or associated reportable Customer information.

##### (b) Definition of Account Effective Date

In connection with the Customer Information Approach, Industry Members will be required to report “Customer Account Information” to the Central Repository. “Customer Account Information” is defined in Rule 613(j)(4) to “include, but not be limited to, account number, account type, customer type, date account opened, and large trader identifier (if applicable).”<sup>22</sup> Therefore, when reporting Customer Account Information, an Industry Member is required to report the date an account was opened. FINRA notes that the Participants requested and received from the Commission an exemption to allow an “Account Effective Date” to be reported in lieu of an account open date in certain limited circumstances.<sup>23</sup> The definition of “Account Effective Date” as set forth in paragraph (a) of proposed Rule 6810 describes those limited circumstances in which an Industry Member may report an “Account Effective Date” rather than the account open date. FINRA states that the proposed definition is the same as the definition of “Account Effective Date” set forth in Section 1.1 of the CAT NMS Plan, provided, however, that specific

<sup>22</sup> 17 CFR 242.613(j)(4).

<sup>23</sup> On September 2, 2015, the Participants filed a supplement to the Exemptive Request Letter. See Letter from the Participants to Brent J. Fields, Secretary, Commission, dated September 2, 2015. This supplement to the Exemptive Request Letter further addressed the use of an “effective date” in lieu of a “date account opened.”

dates have replaced the descriptions of those dates set forth in Section 1.1 of the Plan.

Specifically, paragraph (a)(1) defines “Account Effective Date” to mean, with regard to those circumstances in which an Industry Member has established a trading relationship with an institution but has not established an account with that institution: (1) When the trading relationship was established prior to November 15, 2018 for Industry Members other than Small Industry Members, or prior to November 15, 2019 for Small Industry Members, either (a) the date the relationship identifier was established within the Industry Member; (b) the date when trading began (*i.e.*, the date the first order was received) using the relevant relationship identifier; or (c) if both dates are available, the earlier date will be used to the extent that the dates differ; or (2) when the trading relationship was established on or after November 15, 2018 for Industry Members other than Small Industry Members, or on or after November 15, 2019 for Small Industry Members, the date the Industry Member established the relationship identifier, which would be no later than the date the first order was received.

Paragraph (a)(2) of proposed Rule 6810 states that an “Account Effective Date” means, where an Industry Member changes back office providers or clearing firms prior to November 15, 2018 for Industry Members other than Small Industry Members, or prior to November 15, 2019 for Small Industry Members, the date an account was established at the relevant Industry Member, either directly or via transfer.

Paragraph (a)(3) of proposed Rule 6810 states that an “Account Effective Date” means, where an Industry Member acquires another Industry Member prior to November 15, 2018 for Industry Members other than Small Industry Members, or prior to November 15, 2019 for Small Industry Members, the date an account was established at the relevant Industry Member, either directly or via transfer.

Paragraph (a)(4) of proposed Rule 6810 states that “Account Effective Date” means, where there are multiple dates associated with an account established prior to November 15, 2018 for Industry Members other than Small Industry Members, or prior to November 15, 2019 for Small Industry Members, the earliest available date.

Paragraph (a)(5) of proposed Rule 6810 states that an “Account Effective Date” means, with regard to Industry Member proprietary accounts established prior to November 15, 2018 for Industry Members other than Small

Industry Members, or prior to November 15, 2019 for Small Industry Members: (1) The date established for the account in the Industry Member or in a system of the Industry Member or (2) the date when proprietary trading began in the account (*i.e.*, the date on which the first orders were submitted from the account). In addition, proposed Rule 6810(a)(5) states that with regard to proposed Rule 6810(a)(2)–(5), the Account Effective Date will be no later than the date trading occurs at the Industry Member or in the Industry Member’s system.

## 2. Active Accounts

Under the Customer Information Approach, Industry Members are required to report Customer Identifying Information and Customer Account Information for only those accounts that are active. Accordingly, paragraph (b) of proposed Rule 6810 defines a “Active Accounts” as an account that has had activity in Eligible Securities within the last six months. FINRA states that this is the same definition as set forth in Section 1.1 of the CAT NMS Plan.

## 3. Allocation Report

### (a) Allocation Report Approach

Rule 613(c)(7)(vi)(A) of Regulation NMS requires each Industry Member to record and report to the Central Repository “the account number for any subaccounts to which the execution is allocated (in whole or in part).”<sup>24</sup> FINRA noted that the Participants requested and received from the Commission exemptive relief from Rule 613 for an alternative to this approach (“Allocation Report Approach”).<sup>25</sup> The Allocation Report Approach permits Industry Members to record and report to the Central Repository an Allocation Report that includes, among other things, the Firm Designated ID for any account(s) to which executed shares are allocated when an execution is allocated in whole or part in lieu of requiring the reporting of the account number for any subaccount to which an execution is allocated, as is required by Rule 613.<sup>26</sup> Under Rule 613, regulators would be able to link the subaccount to which an allocation was made to a specific order. In contrast, under the Allocation Report Approach, regulators would only be

<sup>24</sup> 17 CFR 242.613(c)(7)(vi)(A).

<sup>25</sup> On April 3, 2015, the Participants filed a supplement related to their Exemptive Request Letter. See Letter from Robert Colby, FINRA, on behalf of the Participants, to Brent J. Fields, Secretary, Commission, dated April 3, 2015. This supplement provided examples of how the proposed relief related to allocations would operate.

<sup>26</sup> See Exemptive Request Letter, *supra* note 20, at 26–27; Exemption Order, *supra* note 20.

able to link an allocation to the account to which it was made, and not to a specific order.

### (b) Definition of Allocation Report

To assist in implementing the Allocation Report Approach, paragraph (c) of proposed Rule 6810 defines an “Allocation Report.” Specifically, an “Allocation Report” means a report made to the Central Repository by an Industry Member that identifies the Firm Designated ID for any account(s), including subaccount(s), to which executed shares are allocated and provides the security that has been allocated, the identifier of the firm reporting the allocation, the price per share of shares allocated, the side of shares allocated, the number of shares allocated to each account, and the time of the allocation; provided, for the avoidance of doubt, any such Allocation Report shall not be required to be linked to particular orders or executions. FINRA states that this is the same definition as set forth in Section 1.1 of the CAT NMS Plan.

## 4. Business Clock

To create the required audit trail, Industry Members are required to record the date and time of various Reportable Events to the Central Repository. Industry Members will use “Business Clocks” to record such dates and times. Accordingly, paragraph (d) of proposed Rule 6810 defines the term “Business Clock” as a clock used to record the date and time of any Reportable Event required to be reported under this Rule 6800 Series. FINRA states that this is the same definition as set forth in Section 1.1 of the CAT NMS Plan, except FINRA proposes to replace the phrase “under SEC Rule 613” at the end of the definition in Section 1.1 of the Plan with the phrase “under this Rule Series.” FINRA represents that this change is intended to recognize that the Industry Members’ obligations with regard to the CAT are set forth in this Rule 6800 Series.

## 5. CAT

Paragraph (e) of proposed Rule 6810 defines the term “CAT” to mean the consolidated audit trail contemplated by Rule 613. FINRA states that this is the same definition as set forth in Section 1.1 of the CAT NMS Plan.

## 6. CAT NMS Plan

Paragraph (f) of proposed Rule 6810 defines the term “CAT NMS Plan” to mean the National Market System Plan Governing the Consolidated Audit Trail, as amended from time to time.

## 7. CAT-Order-ID

### (a) Daisy Chain Approach

FINRA states that under the CAT NMS Plan, a “daisy chain approach” would be used to link and reconstruct the complete lifecycle of each Reportable Event in CAT. According to this approach, Industry Members would assign their own identifiers to each order event. Within the Central Repository, the Plan Processor would replace the identifier provided by the Industry Member for each Reportable Event with a single identifier, called the CAT Order-ID, for all order events pertaining to the same order. This CAT Order-ID would be used to link the Reportable Events related to the same order.

### (b) Definition of CAT-Order-ID

To implement a daisy chain approach, FINRA proposes to define the term “CAT-Order-ID” to mean a unique order identifier or series of unique order identifiers that allows the Central Repository to efficiently and accurately link all Reportable Events for an order, and all orders that result from the aggregation or disaggregation of such order. FINRA states that this is the same definition as set forth in Rule 613(j)(1), and Section 1.1 of the CAT NMS Plan defines “CAT-Order-ID” by reference to Rule 613(j)(1) of Regulation NMS.<sup>27</sup>

## 8. CAT Reporting Agent

The CAT NMS Plan permits an Industry Member to use a third party, such as a vendor, to report the required data to the Central Repository on behalf of the Industry Member.<sup>28</sup> FINRA states that such a third party, referred to in this proposed Rule 6800 Series as a “CAT Reporting Agent,” would be one type of a Data Submitter,<sup>29</sup> as that term is used in the CAT NMS Plan. Therefore, proposed Rule 6810 defines the term “CAT Reporting Agent” to mean a Data Submitter that is a third party that enters into an agreement with an Industry Member pursuant to which the CAT Reporting Agent agrees to fulfill such Industry Member’s obligations under this Rule 6800 Series.<sup>30</sup>

<sup>27</sup> See 17 CFR 242.613(j)(1).

<sup>28</sup> See CAT NMS Plan, *supra* note 11 at Appendix C, Section A.1(a).

<sup>29</sup> See *infra* Section III.A.14 defining “Data Submitter.”

<sup>30</sup> FINRA also notes that this definition is based on FINRA’s definition of a “Reporting Agent” as set forth in FINRA’s Order Audit Trail System (“OATS”) rules. Specifically, Rule 7410(n) defines a “Reporting Agent” as a third party that enters into any agreement with a member pursuant to which the Reporting Agent agrees to fulfill such FINRA member’s reporting obligations under Rule 7450.

## 9. Central Repository

Paragraph (i) of proposed Rule 6810 defines the term “Central Repository” to mean the repository responsible for the receipt, consolidation, and retention of all information reported to the CAT pursuant to Rule 613 of Regulation NMS and the CAT NMS Plan. FINRA states that this is the same definition as set forth in Section 1.1 of the CAT NMS Plan, except FINRA uses the phrase “CAT NMS Plan” in place of the phrase “this Agreement.”

## 10. Compliance Threshold

Proposed Rule 6810 states that the term “Compliance Threshold” has the meaning set forth in proposed Rule 6893(d), which proposed Rule is described and discussed below. FINRA states that this definition has the same substantive meaning as the definition set forth in Section 1.1 of the CAT NMS Plan.

## 11. Customer

Industry Members are required to submit to the Central Repository certain information related to their Customers, including Customer Identifying Information and Customer Account Information, as well as data related to their Customer’s Reportable Events. Accordingly, paragraph (k) of proposed Rule 6810 proposes to define the term “Customer.” Specifically, the term “Customer” is defined to mean: (1) the account holder(s) of the account at an Industry Member originating the order; and (2) any person from whom the Industry Member is authorized to accept trading instructions for such account, if different from the account holder(s). FINRA states that this is the same definition as set forth in Rule 613(j)(3), except FINRA proposes to replace the references to a registered broker-dealer or broker-dealer with a reference to an Industry Member for consistency of terms used in the proposed Rule 6800 Series.<sup>31</sup> FINRA also notes that Section 1.1 of the CAT NMS Plan defines “Customer” by reference to Rule 613(j)(3).

## 12. Customer Account Information

As discussed above, under the Customer Information Approach, Industry Members are required to report Customer Account Information to the Central Repository as part of the customer definition process. Accordingly, FINRA proposes to define the term “Customer Account

FINRA represents that the Reporting Agent for OATS fulfills a similar role to the CAT Reporting Agent.

<sup>31</sup> 17 CFR 242.613(j)(3).

Information” to clarify what customer information would need to be reported to the Central Repository.

Paragraph (l) of proposed Rule 6810 defines the term “Customer Account Information” to include, in part, account number, account type, customer type, date account opened, and large trader identifier (if applicable). Proposed Rule 6810(l), however, provides an alternative definition of “Customer Account Information” in two limited circumstances. First, 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: (1) Provide the Account Effective Date in lieu of the “date account opened”; (2) provide the relationship identifier in lieu of the “account number”; and (3) identify the “account type” as a “relationship.” Second, in those circumstances in which the relevant account was established prior to November 15, 2018 for Industry Members other than Small Industry Members, or prior to November 15, 2019 for Small Industry Members, and no “date account opened” is available for the account, the Industry Member will provide the Account Effective Date in the following circumstances: (1) Where an Industry Member changes back office providers or clearing firms and the date account opened is changed to the date the account was opened on the new back office/clearing firm system; (2) where an Industry Member acquires another Industry Member and the date account opened is changed to the date the account was opened on the post-merger back office/clearing firm system; (3) where there are multiple dates associated with an account in an Industry Member’s system, and the parameters of each date are determined by the individual Industry Member; and (4) where the relevant account is an Industry Member proprietary account. The proposed definition is the same as the definition of “Customer Account Information” set forth in Section 1.1 of the CAT NMS Plan, provided, however, that specific dates have replaced the descriptions of those dates set forth in Section 1.1 of the Plan.

## 13. Customer Identifying Information

As discussed above, under the Customer Information Approach, Industry Members are required to report Customer Identifying Information to the Central Repository as part of the customer definition process. Accordingly, FINRA proposes to define the term “Customer Account Information” to include, but not be

limited to: Name, address, date of birth, ITIN/SSN, individual's role in the account (e.g., primary holder, joint holder, guardian, trustee, person with the power of attorney). With respect to legal entities, "Customer Identifying Information" includes, but is not limited to, name, address, EIN/LEI or other comparable common entity identifier, if applicable. The definition further notes that an Industry Member that has an LEI for a Customer must submit the Customer's LEI in addition to other information of sufficient detail to identify the Customer. FINRA states that this is the same definition as set forth in Section 1.1 of the CAT NMS Plan.

#### 14. Data Submitter

The CAT NMS Plan uses the term "Data Submitter" to refer to any person that reports data to the Central Repository.<sup>32</sup> Such Data Submitters may include those entities that are required to submit data to the Central Repository (e.g., national securities exchanges, national securities associations and Industry Members), third-parties that may submit data to the CAT on behalf of CAT Reporters (i.e., CAT Reporting Agents), and outside parties that are not required to submit data to the CAT but from which the CAT may receive data (e.g., securities information processors ("SIPs")). To include this term in the proposed Rule 6800 Series, FINRA proposes to define "Data Submitter" to mean any person that reports data to the Central Repository, including national securities exchanges, national securities associations, broker-dealers, the SIPs for the CQS, CTA, UTP and Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information ("OPRA") Plans, and certain other vendors or third parties that may submit data to the Central Repository on behalf of Industry Members.

#### 15. Eligible Security

The reporting requirements of the proposed Rule 6800 Series only apply to Reportable Events in Eligible Securities. Currently, an Eligible Security includes NMS Securities and OTC Equity Securities. Accordingly, paragraph (o) of proposed Rule 6810 defines the term "Eligible Security" to include: (1) All NMS Securities; and (2) all OTC Equity Securities. FINRA states that this is the same definition as set forth in Section 1.1 of the CAT NMS Plan.

<sup>32</sup> See CAT NMS Plan, *supra* note 11 at Appendix C, Section A.1(a).

#### 16. Error Rate

##### (a) Generally

The CAT NMS Plan requires the Plan Processor to: (1) Measure and report errors every business day; (2) provide Industry Members daily statistics and error reports as they become available, including a description of such errors; (3) provide monthly reports to Industry Members that detail an Industry Member's performance and comparison statistics; (4) define educational and support programs for Industry Members to minimize Error Rates; and (5) identify, daily, all Industry Members exceeding the maximum allowable Error Rate. To timely correct data-submitted errors to the Central Repository, the CAT NMS Plan requires that the Central Repository receive and process error corrections at all times. Further, the CAT NMS Plan requires that Industry Members be able to submit error corrections to the Central Repository through a web-interface or via bulk uploads or file submissions, and that the Plan Processor, subject to the Operating Committee's approval, support the bulk replacement of records and the reprocessing of such records. The Participants, furthermore, require that the Plan Processor identify Industry Member data submission errors based on the Plan Processor's validation processes.<sup>33</sup>

##### (b) Definition of Error Rate

To implement the requirements of the CAT NMS Plan related to the Error Rate, FINRA proposes to define the term "Error Rate" to mean the percentage of Reportable Events collected by the Central Repository in which the data reported does not fully and accurately reflect the order event that occurred in the market. FINRA states that this is the same definition as set forth in Rule 613(j)(6), and Section 1.1 of the CAT NMS Plan defines "Error Rate" by reference to Rule 613(j)(6).<sup>34</sup>

##### (c) Maximum Error Rate

Under the CAT NMS Plan, the Operating Committee would set the maximum Error Rate that the Central Repository would tolerate from an Industry Member reporting data to the Central Repository.<sup>35</sup> The Operating Committee would review and reset the maximum Error Rate, at least annually.<sup>36</sup> If an Industry Member reports CAT data to the Central

<sup>33</sup> Approval Order, *supra* note 14 at 84718.

<sup>34</sup> 17 CFR 242.613(j)(6).

<sup>35</sup> CAT NMS Plan, *supra* note 11 at Section 6.5(d)(i).

<sup>36</sup> CAT NMS Plan, *supra* note 11 at Appendix C, Section A.3(b).

Repository with errors such that their error percentage exceeds the maximum Error Rate, then such Industry Member would not be in compliance with the CAT NMS Plan or Rule 613.<sup>37</sup> FINRA states that, according to the CAT NMS Plan, FINRA or the SEC may take appropriate action against an Industry Member for failing to comply with its CAT reporting obligations.<sup>38</sup> The CAT NMS Plan sets the initial Error Rate at 5%.<sup>39</sup> FINRA stated that it is anticipated that the maximum Error Rate will be reviewed and lowered by the Operating Committee once Industry Members begin to report to the Central Repository.<sup>40</sup>

#### 17. Firm Designated ID

As discussed above, under the Customer Information Approach, the CAT NMS Plan requires each Industry Member to utilize a unique Firm Designated ID. Industry Members will be permitted to use as the Firm Designated ID an account number or any other identifier defined by the firm, provided each identifier is unique across the firm for each business date. Industry Members will be required to report only the Firm Designated ID for each new order submitted to the Central Repository, rather than the "Customer-ID" with individual order events. Accordingly, FINRA proposes to define the term "Firm Designated ID" in proposed Rule 6810 to mean a unique identifier for each trading account designated by Industry Members for purposes of providing data to the Central Repository, where each such identifier is unique among all identifiers from any given Industry Member for each business date. FINRA states that this is the same definition as set forth in Section 1.1 of the CAT NMS Plan. Industry Members will be permitted to use an account number or any other identifier defined by the firm, provided each identifier is unique across the firm for each business date (i.e., a single firm may not have multiple separate customers with the same identifier on any given date).<sup>41</sup>

#### 18. Industry Member

Proposed Rule 6810 defines the term "Industry Member" to mean "a member of a national securities exchange or a

<sup>37</sup> CAT NMS Plan, *supra* note 11 at Appendix C, Section A.3(b); 17 CFR 242.613(g)-(h).

<sup>38</sup> CAT NMS Plan, *supra* note 11 at Appendix C, Section A.3(b).

<sup>39</sup> CAT NMS Plan, *supra* note 11 at Section 6.5(d)(i).

<sup>40</sup> CAT NMS Plan, *supra* note 11 at Appendix C, Section A.3(b).

<sup>41</sup> See *supra* Section IV for a discussion of the application of the term "Firm Designated ID."

member of a national securities association that is required to record and report information pursuant to the CAT NMS Plan and this Rule 6800 Series.” FINRA states that this is the same definition as set forth in Section 1.1 of the CAT NMS Plan; however, FINRA proposes to add the phrase “that is required to record and report information pursuant to the CAT NMS Plan and this Rule 6800 Series” to clarify that FINRA members that do not handle orders in Eligible Securities are not subject to any of the rules in the proposed Rule 6800 Series.

#### 19. Industry Member Data

Proposed Rule 6810 states that the term “Industry Member Data” has the meaning set forth in Rule 6830(a)(2). FINRA states that this definition has the same substantive meaning as the definition set forth in Section 1.1 of the CAT NMS Plan.

#### 20. Initial Plan Processor

Proposed Rule 6810 defines the term “Initial Plan Processor” to mean the first Plan Processor selected by the Operating Committee in accordance with Rule 613, Section 6.1 of the CAT NMS Plan and the National Market System Plan Governing the Process for Selecting a Plan Processor and Developing a Plan for the Consolidated Audit Trail.<sup>42</sup> FINRA states that this is the same definition as set forth in Section 1.1 of the CAT NMS Plan.

#### 21. Listed Option or Option

FINRA represented that the reporting requirements of the CAT NMS Plan and proposed Rule 6800 Series apply to Eligible Securities, which includes NMS Securities, which, in turn, includes Listed Options. Certain requirements of proposed Rule 6800 Series apply specifically to Listed Options. Accordingly, “Listed Option” or “Option” has the meaning set forth in

<sup>42</sup> See Securities Exchange Act Release Nos. 70892 (November 15, 2013), 78 FR 69910 (November 21, 2013) (Selection Plan Notice); 75192 (June 17, 2015), 80 FR 36028 (June 23, 2015) (Order Approving Amendment No. 1 to the Selection Plan); 75980 (September 24, 2015), 80 FR 58796 (September 30, 2015) (Order Approving Amendment No. 2 to the Selection Plan); 77917 (May 25, 2016), 81 FR 35072 (June 1, 2016) (Notice of Filing and Immediate Effectiveness of Amendment No. 3 to the Selection Plan); 78477 (August 4, 2016), 81 FR 52917 (August 10, 2016) (Notice of Filing and Immediate Effectiveness of Amendment No. 4 to the Selection Plan); *see also* Securities Exchange Act Release Nos. 71596 (February 21, 2014), 79 FR 11152 (February 27, 2014) (Selection Plan Approval Order); 74223 (February 6, 2015), 80 FR 7654 (February 11, 2015) (Notice of Amendment No. 1 to the Selection Plan); 75193 (June 17, 2015), 80 FR 36006 (June 23, 2015) (Notice of Amendment No. 2 to the Selection Plan).

Rule 600(b)(35) of Regulation NMS.<sup>43</sup> Rule 600(b)(35) of Regulation NMS defines a listed option as “any option traded on a registered national securities exchange or automated facility of a national securities association.” FINRA states that the proposed definition of “Listed Option” is the same definition as the definition set forth in Section 1.1 of the CAT NMS Plan.

#### 22. Manual Order Event

##### (a) Manual Order Event Approach

The CAT NMS Plan sets forth clock synchronization and timestamp requirements for Industry Members which reflect exemptions for Manual Order Events granted by the Commission.<sup>44</sup> Specifically, the Plan requires Industry Members to record and report the time of each Reportable Event using timestamps reflecting current industry standards (which must be at least to the millisecond) or, if an Industry Member’s order handling or execution system uses timestamps in increments finer than milliseconds, such finer increments, when reporting to the Central Repository. For Manual Order Events, however, the Plan provides that such events must be recorded in increments up to and including one second, provided that Industry Members record and report the time the event is captured electronically in an order handling and execution system (“Electronic Capture Time”) in milliseconds. In addition, Industry Members are required to synchronize their respective Business Clocks (other than such Business Clocks used solely for Manual Order Events) at a minimum to within 50 milliseconds of the time maintained by the National Institute of Standards and Technology (“NIST”), and maintain such synchronization. Each Industry Member is required to synchronize its Business Clocks used solely for Manual Order Events, however, at a minimum to within one second of the time maintained by the NIST.

##### (b) Definition of Manual Order Event

In order to clarify what a Manual Order Event is for clock synchronization and time stamp purposes, FINRA proposes to define the term “Manual Order Event” in proposed Rule 6810. Specifically, the term “Manual Order Event” means a non-electronic communication of order-related information for which Industry Members must record and report the time of the event. FINRA states that this

<sup>43</sup> 17 CFR 242.600(b)(35).

<sup>44</sup> See Exemption Order, *supra* note 20.

is the same definition as set forth in Section 1.1 of the CAT NMS Plan.

#### 23. Material Terms of the Order

Proposed Rule 6830 requires Industry Members to record and report to the Central Repository Material Terms of the Order with certain Reportable Events (*e.g.*, for the original receipt or origination of an order, for the routing of an order). Accordingly, FINRA proposes to define the term “Material Terms of the Order” to include: The NMS Security or OTC Equity Security symbol; security type; price (if applicable); size (displayed and non-displayed); side (buy/sell); order type; if a sell order, whether the order is long, short, short exempt; open/close indicator (except on transactions in equities); time in force (if applicable); if the order is for a Listed Option, option type (put/call), option symbol or root symbol, underlying symbol, strike price, expiration date, and open/close (except on market maker quotations); and any special handling instructions. FINRA states that this is the same definition as set forth in Section 1.1 of the CAT NMS Plan.

#### 24. NMS Security

NMS Securities are one of the types of Eligible Securities for the CAT. Therefore, FINRA proposes to define the term “NMS Security” to mean any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan, or an effective national market system plan for reporting transactions in Listed Options. FINRA states that this is the same definition as set forth in Section 1.1 of the CAT NMS Plan.

#### 25. NMS Stock

Under the CAT NMS Plan, the Operating Committee may establish different Trading Days for NMS Stocks, as defined in Rule 600(b)(47) of Regulation NMS,<sup>45</sup> Listed Options, OTC Equity Securities, and any other securities that are included as Eligible Securities from time to time. Accordingly, FINRA proposes to define the term “NMS Stock” to mean any NMS Security other than an option. FINRA states that this is the same definition as set forth in Rule 600(b)(47) of Regulation NMS.<sup>46</sup>

#### 26. Operating Committee

Proposed Rule 6810 defines the term “Operating Committee” to mean the governing body of the CAT NMS, LLC

<sup>45</sup> 17 CFR 242.600(b)(47).

<sup>46</sup> 17 CFR 242.600(b)(47).

designated as such and described in Article IV of the CAT NMS Plan. FINRA states that this is the same definition as set forth in Section 1.1 of the CAT NMS Plan, except FINRA proposes to use the phrase “CAT NMS LLC” in place of the phrase “the Company” for clarity.

## 27. Options Market Maker

### (a) Options Market Maker Quote Exemption

Rule 613(c)(7) provides that the CAT NMS Plan must require each Industry Member to record and electronically report to the Central Repository details for each order and each reportable event, including the routing and modification or cancellation of an order.<sup>47</sup> Rule 613(j)(8) defines “order” to include “any bid or offer.”<sup>48</sup> Therefore, under Rule 613, the details for each Options Market Maker quotation must be reported to the Central Repository by both the Options Market Maker and the options exchange to which it routes its quote.

The Participants, however, requested and received exemptive relief from Rule 613 of Regulation NMS so that the CAT NMS Plan may permit Options Market Maker quotes to be reported to the Central Repository by the relevant options exchange in lieu of requiring that such reporting be done by both the options exchange and the Options Market Maker, as is required by Rule 613.<sup>49</sup> In accordance with the exemptive relief, Options Market Makers will be required to report to the options exchange the time at which a quote in a Listed Option is sent to the options exchange. Such time information also will be reported to the Central Repository by the options exchange in lieu of reporting by the Options Market Maker.

### (b) Definition of Options Market Maker

To implement the requirements related to Option Market Maker quotes, FINRA proposes to define the term “Options Market Maker” to mean a broker-dealer registered with an exchange for the purpose of making markets in options contracts traded on the exchange. FINRA states that this is the same definition as set forth in Section 1.1 of the CAT NMS Plan.

## 28. Order

The proposed Rule 6800 Series requires each Industry Member to record and electronically report to the Central Repository certain details for

each order. Accordingly, FINRA proposes to define the term “Order” with respect to Eligible Securities, to include: (1) Any order received by an Industry Member from any person; (2) any order originated by an Industry Member; or (3) any bid or offer. FINRA states that this is the same definition as set forth in Rule 613(j)(8), except FINRA proposes to replace the phrase “member of a national securities exchange or national securities association” with the term “Industry Member.”<sup>50</sup> FINRA also notes that Section 1.1 of the CAT NMS Plan defines “Order” by reference to Rule 613(j)(8).

## 29. OTC Equity Security

OTC Equity Securities are one of the types of Eligible Securities for the CAT. Therefore, FINRA proposes to define the term “OTC Equity Security” to mean any equity security, other than an NMS Security, subject to prompt last sale reporting rules of a registered national securities association and reported to one of such association’s equity trade reporting facilities. FINRA states that this is the same definition as set forth in Section 1.1 of the CAT NMS Plan.

## 30. Participant

Proposed Rule 6810 defines the term “Participant” to mean each Person identified as such in Exhibit A of the CAT NMS Plan, as amended, in such Person’s capacity as a Participant in CAT NMS, LLC. FINRA states that this is the same definition in substance as set forth in Section 1.1 of the CAT NMS Plan.

## 31. Person

Proposed Rule 6810 defines the term “Person” to mean any individual, partnership, limited liability company, corporation, joint venture, trust, business trust, cooperative or association and any heirs, executors, administrators, legal representatives, successors and assigns of such Person where the context so permits. FINRA states that this is the same definition as set forth in Section 1.1 of the CAT NMS Plan.

## 32. Plan Processor

Proposed Rule 6810 defines the term “Plan Processor” to mean the Initial Plan Processor or any other Person selected by the Operating Committee pursuant to Rule 613 and Sections 4.3(b)(i) and 6.1 of the CAT NMS Plan, and with regard to the Initial Plan Processor, the National Market System Plan Governing the Process for Selecting a Plan Processor and Developing a Plan

for the Consolidated Audit Trail, to perform the CAT processing functions required by Rule 613 of Regulation NMS and set forth in the CAT NMS Plan.

## 33. Received Industry Member Data

Proposed Rule 6810 states that the term “Received Industry Member Data” has the meaning set forth in Rule 6830(a)(2). FINRA represents that this definition has the same substantive meaning as the definition set forth in Section 1.1 of the CAT NMS Plan.

## 34. Recorded Industry Member Data

Proposed Rule 6810 states that the term “Recorded Industry Member Data” has the meaning set forth in Rule 6830(a)(1). FINRA states that this definition has the same substantive meaning as the definition set forth in Section 1.1 of the CAT NMS Plan.

## 35. Reportable Event

The proposed Rule 6800 Series requires each Industry Member to record and electronically report to the Central Repository certain details for each Reportable Event. FINRA proposes to define the term “Reportable Event” to include, but not be limited to, the original receipt or origination, modification, cancellation, routing, execution (in whole or in part) and allocation of an order, and receipt of a routed order. FINRA states that this is the same definition as set forth in Section 1.1 of the CAT NMS Plan.

## 36. SRO

FINRA proposed to define the term “SRO” to mean any self-regulatory organization within the meaning of Section 3(a)(26) of the Exchange Act.<sup>51</sup> FINRA states that this is the same definition as set forth in Section 1.1 of the CAT NMS Plan.

## 37. SRO-Assigned Market Participant Identifier

### (a) Existing Identifier Approach

The Participants requested and received exemptive relief from Rule 613 of Regulation NMS so that the CAT NMS Plan may permit the “Existing Identifier Approach,” which would allow an Industry Member to report an existing SRO-Assigned Market Participant Identifier in lieu of requiring the reporting of a universal CAT-Reporter-ID (that is, a code that uniquely and consistently identifies an Industry Member for purposes of providing data to the Central

<sup>47</sup> 17 CFR 242.613(c)(7).

<sup>48</sup> 17 CFR 242.613(j)(8).

<sup>49</sup> See Exemptive Request Letter, *supra* note 20, at 2; Exemption Order, *supra* note 20 at 6.

<sup>50</sup> See 17 CFR 242.613(j)(8).

<sup>51</sup> See 15 U.S.C. 78c(a)(26).

Repository).<sup>52</sup> The CAT NMS Plan reflects the Existing Identifier Approach for purposes of identifying each Industry Member associated with an order or Reportable Event. Under the Existing Identifier Approach, Industry Members are required to record and report to the Central Repository an SRO-Assigned Market Participant Identifier for orders and certain Reportable Events to be used by the Central Repository to assign a unique CAT-Reporter-ID to identify Industry Members.

For the Central Repository to link the SRO-Assigned Market Participant Identifier to the CAT-Reporter-ID, each SRO will submit to the Central Repository, on a daily basis, all SRO-Assigned Market Participant Identifiers used by its Industry Members, as well as information to identify each such Industry Member, including CRD number and LEI, if the SRO has collected such LEI of the Industry Member. Additionally, each Industry Member is required to submit to the Central Repository the CRD number of the Industry Member as well as the LEI of the Industry Member (if the Industry Member has an LEI). The Plan Processor will use this information to assign a CAT-Reporter-ID to each Industry Member for internal use within the Central Repository.

#### (b) Definition of SRO-Assigned Market Participant Identifier

To implement the Existing Identifier Approach, FINRA proposes to define the term “SRO-Assigned Market Participant Identifier” to mean an identifier assigned to an Industry Member by an SRO or an identifier used by a Participant.<sup>53</sup> FINRA states that this is the same definition as set forth in Section 1.1 of the CAT NMS Plan.

#### 38. Small Industry Member

FINRA represents that the requirements of the proposed Rule 6800 Series differ to some extent for Small Industry Members versus Industry Members other than Small Industry Members. For example, the compliance dates for reporting data to the CAT are different for Small Industry Members versus other Industry Members. Accordingly, to clarify the requirements that apply to which Industry Members, FINRA proposes to define the term “Small Industry Member” to mean an

Industry Member that qualifies as a small broker-dealer as defined in Exchange Act Rule 0–10(c).<sup>54</sup> FINRA states that this is the same in substance as the definition of “Small Industry Member” as set forth in Section 1.1 of the CAT NMS Plan. Specifically, Section 1.1 of the CAT NMS Plan defines a “Small Industry Member” as “an Industry Member that qualifies as a small broker-dealer as defined in Rule 613.” The definition of a small broker-dealer under Rule 613, in turn, is a small broker-dealer as defined in Exchange Act Rule 0–10(c).

#### 39. Trading Day

Proposed Rule 6830(b) establishes the deadlines for reporting certain data to the Central Repository using the term “Trading Day.” Accordingly, FINRA proposes that the term “Trading Day” shall have the meaning as is determined by the Operating Committee. For the avoidance of doubt, FINRA represents that the Operating Committee may establish different Trading Days for NMS Stocks, Listed Options, OTC Equity Securities, and any other securities that are included as Eligible Securities from time to time.

#### B. Clock Synchronization (Rule 6820)

Rule 613(d)(1) of Regulation NMS requires Industry Members to synchronize their Business Clocks to the time maintained by NIST, consistent with industry standards.<sup>55</sup> To comply with this provision, Section 6.8 of the Plan sets forth the clock synchronization requirements for Industry Members.<sup>56</sup> To implement these provisions with regard to its Industry Members, FINRA proposes Rule 6820 to require its Industry Members to comply with the clock synchronization requirements of the Plan.

#### 1. Clock Synchronization

Paragraph (a) of proposed Rule 6820 sets forth the manner in which Industry Members must synchronize their Business Clocks. Paragraph (a)(1) of proposed Rule 6820 requires each Industry Member to synchronize its Business Clocks, other than such

Business Clocks used solely for Manual Order Events or used solely for the time of allocation on Allocation Reports, at a minimum to within a fifty (50) millisecond tolerance of the time maintained by the NIST atomic clock, and maintain such synchronization. FINRA states that this is the same requirement as set forth in Section 6.8(a)(ii)(A) of the CAT NMS Plan.

Paragraph (a)(2) of proposed Rule 6820 requires each Industry Member to synchronize (1) its Business Clocks used solely for Manual Order Events and (2) its Business Clocks used solely for the time of allocation on Allocation Reports at a minimum to within a one second tolerance of the time maintained by the NIST atomic clock, and maintain such synchronization. FINRA states that this is the same requirement as set forth in Section 6.8(a)(iii) and (iv) of the CAT NMS Plan. Paragraph (a)(3) of proposed Rule 6820 clarifies that the tolerance described in paragraphs (a)(1) and (2) of proposed Rule 6820 includes all of the following: (1) The time difference between the NIST atomic clock and the Industry Member’s Business Clock; (2) the transmission delay from the source; and (3) the amount of drift of the Industry Member’s Business Clock.

Paragraph (a)(4) of proposed Rule 6820 requires Industry Members to synchronize their Business Clocks every business day before market open to ensure that timestamps for Reportable Events are accurate. In addition, to maintain clock synchronization, Business Clocks must be checked against the NIST atomic clock and re-synchronized, as necessary, throughout the day.

#### 2. Documentation

Paragraph (b) of proposed Rule 6820 sets forth documentation requirements with regard to clock synchronization. Specifically, paragraph (b) requires Industry Members to document and maintain their synchronization procedures for their Business Clocks. The proposed rule requires Industry Members to keep a log of the times when they synchronize their Business Clocks and the results of the synchronization process. This log is required to include notice of any time a Business Clock drifts more than the applicable tolerance specified in paragraph (a) of the proposed rule. Such logs must include results for a period of not less than five years ending on the then current date, or for the entire period for which the Industry Member has been required to comply with this Rule if less than five years. FINRA states that these documentation requirements are the same as those set forth in the

<sup>54</sup> 17 CFR 240.0–10(c).

<sup>55</sup> 17 CFR 242.613(d)(1). Related to the clock synchronization requirements, the Commission notes that the Participants, including FINRA, also filed a request for an exemption from the March 15, 2017 filing deadline requirement set forth Section 6.7(a)(ii) of the CAT NMS Plan and proposed FINRA Rule 6895(b)(1). See *infra* note 75. The Commission granted the Participants’ exemption request. See *infra* note 77.

<sup>56</sup> In addition, Section 6.7(a)(ii) of the Plan sets forth the timeline for CAT Reporters to comply with the clock synchronization requirements.

<sup>52</sup> See Exemptive Request Letter, *supra* note 20, at 19; Exemption Order, *supra* note 20 at 49.

<sup>53</sup> FINRA notes that an Industry Member would be permitted to use any existing SRO-Assigned Market Participant Identifier (e.g., FINRA MPID, NASDAQ MPID, NYSE Mnemonic, CBOE User Acronym and CHX Acronym) when reporting order information to the Central Repository, for example.

“Sequencing orders and Clock Synchronization” section of Appendix C of the CAT NMS Plan.

### 3. Certification

Paragraph (c) of proposed Rule 6820 sets forth certification requirements with regard to clock synchronization. Specifically, paragraph (c) of proposed Rule 6820 requires each Industry Member to certify to FINRA that its Business Clocks satisfy the synchronization requirements set forth in paragraph (a) of proposed Rule 6820 periodically in accordance with the certification schedule established by the Operating Committee pursuant to the CAT NMS Plan. FINRA states that this requirement is the same requirement as set forth in Section 6.8(a)(ii)(B), (iii) and (iv) of the CAT NMS Plan. FINRA states that it intends to announce to its Industry Members the certification schedule established by the Operating Committee via *Regulatory Notice*.

### 4. Violation Reporting

Paragraph (d) of proposed Rule 6820 establishes reporting requirements with regard to clock synchronization. Paragraph (d) of proposed Rule 6820 requires Industry Members to report to the Plan Processor and FINRA violations of paragraph (a) of this Rule pursuant to the thresholds set by the Operating Committee pursuant to the CAT NMS Plan. FINRA states that this requirement is the same requirement as set forth in Section 6.8(a)(ii)(C), (iii) and (iv) of the CAT NMS Plan. FINRA intends to announce to its Industry Members the relevant thresholds established by the Operating Committee via *Regulatory Notice*.

### C. Industry Member Data Reporting (Rule 6830)

Rule 613(c) of Regulation NMS requires the CAT NMS Plan to set forth certain provisions requiring Industry Members to record and report data to the CAT.<sup>57</sup> To comply with this provision, Section 6.4 of the CAT NMS Plan sets forth the data reporting requirements for Industry Members. To implement these provisions with regard to its Industry Members, FINRA proposes Rule 6830 to require its Industry Members to comply with the Industry Member Data reporting requirements of the Plan. Proposed Rule 6830 has five sections covering: (1) Recording and reporting Industry Member Data, (2) timing of the recording and reporting, (3) the applicable securities covered by the recording and reporting requirements,

(4) the security symbology to be used in the recording and reporting, and (5) error correction requirements, each of which is described below.

#### 1. Recording and Reporting Industry Member Data

Paragraph (a) of proposed Rule 6830 describes the recording and reporting of Industry Member Data to the Central Repository. Paragraph (a) consists of paragraphs (a)(1)–(a)(3), which cover Recorded Industry Member Data, Received Industry Member Data and Options Market Maker data, respectively. FINRA states that paragraphs (a)(1)–(a)(3) of proposed Rule 6830 set forth the recording and reporting requirements required in Section 6.4(d)(i)–(iii) of the CAT NMS Plan, respectively.

Paragraph (a)(1) requires, subject to paragraph (a)(3) regarding Options Market Makers, each Industry Member to record and electronically report to the Central Repository the following details for each order and each Reportable Event, as applicable (“Recorded Industry Member Data”) in the manner prescribed by the Operating Committee pursuant to the CAT NMS Plan:

- For original receipt or origination of an order: (1) Firm Designated ID(s) for each Customer; (2) CAT-Order-ID; (3) SRO-Assigned Market Participant Identifier of the Industry Member receiving or originating the order; (4) date of order receipt or origination; (5) time of order receipt or origination (using timestamps pursuant to proposed Rule 6860); and (6) Material Terms of the Order;

- for the routing of an order: (1) CAT-Order-ID; (2) date on which the order is routed; (3) time at which the order is routed (using timestamps pursuant to proposed Rule 6860); (4) SRO-Assigned Market Participant Identifier of the Industry Member routing the order; (5) SRO-Assigned Market Participant Identifier of the Industry Member or Participant to which the order is being routed; (6) if routed internally at the Industry Member, the identity and nature of the department or desk to which the order is routed; and (7) Material Terms of the Order;

- for the receipt of an order that has been routed, the following information: (1) CAT-Order-ID; (2) date on which the order is received; (3) time at which the order is received (using timestamps pursuant to proposed Rule 6860); (4) SRO-Assigned Market Participant Identifier of the Industry Member receiving the order; (5) SRO-Assigned Market Participant Identifier of the Industry Member or Participant routing

the order; and (6) Material Terms of the Order;

- if the order is modified or cancelled: (1) CAT-Order-ID; (2) date the modification or cancellation is received or originated; (3) time at which the modification or cancellation is received or originated (using timestamps pursuant to proposed Rule 6860); (4) price and remaining size of the order, if modified; (5) other changes in the Material Terms of the Order, if modified; and (6) whether the modification or cancellation instruction was given by the Customer or was initiated by the Industry Member;

- if the order is executed, in whole or in part: (1) CAT-Order-ID; (2) date of execution; (3) time of execution (using timestamps pursuant to proposed Rule 6860); (4) execution capacity (principal, agency or riskless principal); (5) execution price and size; (6) SRO-Assigned Market Participant Identifier of the Industry Member executing the order; (7) whether the execution was reported pursuant to an effective transaction reporting plan or the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information; and

- other information or additional events as may be prescribed pursuant to the CAT NMS Plan.

Paragraph (a)(2) of proposed Rule 6830 requires, subject to paragraph (a)(3) regarding Options Market Makers, each Industry Member to record and report to the Central Repository the following, as applicable (“Received Industry Member Data” and collectively with the information referred to in Rule 6830(a)(1) “Industry Member Data”) in the manner prescribed by the Operating Committee pursuant to the CAT NMS Plan:

- If the order is executed, in whole or in part: (1) An Allocation Report; (2) SRO-Assigned Market Participant Identifier of the clearing broker or prime broker, if applicable; and (3) CAT-Order-ID of any contra-side order(s);

- if the trade is cancelled, a cancelled trade indicator; and

- for original receipt or origination of an order, the Firm Designated ID for the relevant Customer, and in accordance with proposed Rule 6840, Customer Account Information and Customer Identifying Information for the relevant Customer.

Paragraph (a)(3) of proposed Rule 6830 states that each Industry Member that is an Options Market Maker is not required to report to the Central Repository the Industry Member Data regarding the routing, modification or cancellation of its quotes in Listed Options. Each Industry Member that is

<sup>57</sup> See 17 CFR 242.613(c).

an Options Market Maker, however, is required to report to the Exchange the time at which its quote in a Listed Option is sent to the Exchange (and, if applicable, any subsequent quote modification time and/or cancellation time when such modification or cancellation is originated by the Options Market Maker). This paragraph implements the Options Market Maker Quote Exemption, as discussed above.

## 2. Timing of Recording and Reporting

Paragraph (b) of proposed Rule 6830 describes the requirements related to the timing of recording and reporting of Industry Member Data. FINRA states that paragraphs (b)(1)–(b)(3) of proposed Rule 6830 set forth the requirements related to the timing of the recording and reporting requirements required in Section 6.4(b)(i)–(ii) of the CAT NMS Plan.

Paragraph (b)(1) of proposed Rule 6830 requires each Industry Member to record Recorded Industry Member Data contemporaneously with the applicable Reportable Event. Paragraph (b)(2) of proposed Rule 6830 requires each Industry Member to report: (1) Recorded Industry Member Data to the Central Repository by 8:00 a.m. Eastern Time on the Trading Day following the day the Industry Member records such Recorded Industry Member Data; and (2) Received Industry Member Data to the Central Repository by 8:00 a.m. Eastern Time on the Trading Day following the day the Industry Member receives such Received Industry Member Data. Paragraph (b)(3) states that Industry Members may, but are not required to, voluntarily report Industry Member Data prior to the applicable 8:00 a.m. Eastern Time deadline.

## 3. Applicable Securities

Paragraph (c) of proposed Rule 6830 describes the securities to which the recording and reporting requirements of proposed Rule 6830 apply. FINRA states that paragraphs (c)(1) and (c)(2) of proposed Rule 6830 set forth the description of applicable securities as set forth in Section 6.4(c)(i) and (ii) of the CAT NMS Plan, respectively. Paragraph (c)(1) of proposed Rule 6830 requires each Industry Member to record and report to the Central Repository the Industry Member Data as set forth in paragraph (a) of proposed Rule 6830 for each NMS Security registered or listed for trading on such exchange or admitted to unlisted trading privileges on such exchange. Paragraph (c)(2) of proposed Rule 6830 requires each Industry Member to record and report to the Central Repository the Industry Member Data as set forth in

paragraph (a) of this proposed Rule 6830 for each Eligible Security for which transaction reports are required to be submitted to FINRA.

## 4. Security Symbolology

Paragraph (d) of proposed Rule 6830 describes the security symbolology that Industry Members are required to use when reporting Industry Member Data to the Central Repository. Paragraph (d)(1) of proposed Rule 6830 requires, for each exchange-listed Eligible Security, each Industry Member to report Industry Member Data to the Central Repository using the symbolology format of the exchange listing the security. FINRA states that this requirement implements the requirement set forth in Section 2 of Appendix D of the CAT NMS Plan to use the listing exchange symbolology when reporting data to the Central Repository for exchange-listed Eligible Securities.

For each Eligible Security that is not exchange-listed, however, FINRA represents that there is no listing exchange to provide the symbolology format. Moreover, to date, the requisite symbolology format has not been determined. Therefore, paragraph (d)(2) of proposed Rule 6830 requires, for each Eligible Security that is not exchange-listed, each Industry Member to report Industry Member Data to the Central Repository using such symbolology format as approved by the Operating Committee pursuant to the CAT NMS Plan. FINRA states that it intends to announce to its Industry Members the relevant symbolology formats established by the Operating Committee via *Regulatory Notice*.

## 5. Error Correction Timeline

To ensure that the CAT contains accurate data, the CAT NMS Plan requires Industry Members to correct erroneous data submitted to the Central Repository. Therefore, FINRA proposes to adopt paragraph (e) of proposed Rule 6830 which requires that for each Industry Member for which errors in Industry Member Data submitted to the Central Repository have been identified by the Plan Processor or otherwise, such Industry Member submit corrected Industry Member Data to the Central Repository by 8:00 a.m. Eastern Time on T+3. FINRA represents that this requirement implements the error correction requirement set forth in Section 6 of Appendix D of the CAT NMS Plan.

## D. Customer Information Reporting (Rule 6840)

Section 6.4(d)(iv) of the CAT NMS Plan requires Industry Members to submit to the Central Repository certain information related to their Customers in accordance with the Customer Information Approach discussed above. FINRA proposes Rule 6840 to implement this provision of the CAT NMS Plan with regard to its Industry Members.

### 1. Initial Set of Customer Information

Paragraph (a) of proposed Rule 6840 requires each Industry Member to submit to the Central Repository the Firm Designated ID, Customer Account Information and Customer Identifying Information 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 6880.

### 2. Daily Updates to Customer Information

Paragraph (b) of proposed Rule 6840 requires each Industry Member to submit to the Central Repository any updates, additions or other changes to the Firm Designated ID, Customer Account Information and Customer Identifying Information for each of its Customers with an Active Account on a daily basis.

### 3. Periodic Updates To Complete Set of Customer Information

Paragraph (c) of proposed Rule 6840 requires each Industry Member, on a periodic basis as designated by the Plan Processor and approved by the Operating Committee, to submit to the Central Repository a complete set of Firm Designated IDs, Customer Account Information and Customer Identifying Information for each of its Customers with an Active Account. This periodic refresh is intended to ensure that the Central Repository has the most current information identifying a Customer. FINRA states that it intends to announce to its Industry Members when such a periodic refresh is required by the Plan Processor and the Operating Committee via *Regulatory Notice*.

### 4. Error Correction Timeline

Paragraph (d) of proposed Rule 6840 addresses the correction of erroneous Customer data reported to the Central Repository to ensure an accurate audit trail. Paragraph (d) requires, for each Industry Member for which errors in Firm Designated ID, Customer Account Information and Customer Identifying Information for each of its Customers

with an Active Account submitted to the Central Repository have been identified by the Plan Processor or otherwise, such Member to submit corrected data to the Central Repository by 5:00 p.m. Eastern Time on T+3. FINRA states that this requirement implements the error correction requirement set forth in Appendix C of the CAT NMS Plan.

#### *E. Industry Member Information Reporting (Rule 6850)*

Section 6.4(d)(vi) of the CAT NMS Plan requires Industry Members to submit to the Central Repository information sufficient to identify such Industry Member, including CRD number and LEI, if such LEI has been obtained, in accordance with the Existing Identifier Approach discussed above. Proposed Rule 6850 requires each Industry Member to submit to the Central Repository information sufficient to identify such Industry Member, including CRD number and LEI, if such LEI has been obtained, prior to such Industry Member's commencement of reporting to the Central Repository and in accordance with the deadlines set forth in Rule 6880, and keep such information up to date as necessary. FINRA states that this provision of the CAT NMS Plan with regard to its Industry Members information reporting.

#### *F. Time Stamps (Rule 6860)*

Rule 613(d)(3) of Regulation NMS sets forth requirements for time stamps used by CAT Reporters in recording and reporting data to the CAT.<sup>58</sup> To comply with this provision, Section 6.8(b) of the Plan sets forth time stamp requirements for Industry Members. To implement this provision with regard to its Industry Members, FINRA proposes new Rule 6860 to require its Industry Members to comply with the time stamp requirements of the Plan.

##### 1. Millisecond Time Stamps

Paragraph (a) of proposed Rule 6860 sets forth the time stamp increments to be used by Industry Members in their CAT reporting. Paragraph (a)(1) of proposed Rule 6860 requires each Industry Member to record and report Industry Member Data to the Central Repository with time stamps in milliseconds, subject to paragraphs (a)(2) and (b) of proposed Rule 6860. To the extent that any Industry Member's order handling or execution systems utilize time stamps in increments finer than milliseconds, paragraph (a)(2) of proposed Rule 6860 requires such

Industry Member to record and report Industry Member Data to the Central Repository with time stamps in such finer increment, subject to paragraph (b) of proposed Rule 6860 regarding Manual Order Events and Allocation Reports.

##### 2. One Second Time Stamps/Electronic Order Capture

Paragraph (b) of proposed Rule 6860 sets forth the permissible time stamp increments for Manual Order Events and Allocation Reports. Specifically, paragraph (b)(1) of proposed Rule 6860 permits each Industry Member to record and report Manual Order Events to the Central Repository in increments up to and including one second, provided that each Industry Member is required to record and report the Electronic Capture Time in milliseconds. In addition, paragraph (b)(2) of proposed Rule 6860 permits each Industry Member to record and report the time of Allocation Reports in increments up to and including one second.

#### *G. Time Stamp and Clock Synchronization Rule Violations (Rule 6865)*

Proposed Rule 6865 describes potential violations of the time stamp and clock synchronization time period requirements set forth in the proposed Rule 6800 Series. Proposed Rule 6865 states that an Industry Member that engages in a pattern or practice of reporting Reportable Events with time stamps generated by Business Clocks that are not synchronized according to the requirements set forth in this Rule Series without reasonable justification or exceptional circumstances may be considered in violation of this Rule. FINRA states that this provision implements the requirements of Section 6.8 of the CAT NMS Plan which requires the Compliance Rule to provide that a pattern or practice of reporting events outside of the required clock synchronization time period without reasonable justification or exceptional circumstances may be considered a violation of Rule 613 of Regulation NMS or the CAT NMS Plan.

#### *H. Connectivity and Data Transmission (Rule 6870)*

Proposed Rule 6870 addresses connectivity and data transmission requirements related to the CAT.

##### 1. Data Transmission

Paragraph (a) of proposed Rule 6870 describes the format(s) for reporting Industry Member Data to the Central Repository. Specifically, paragraph (a) of proposed Rule 6870 requires each

Industry Member to transmit data as required under the CAT NMS Plan to the Central Repository utilizing such format(s) as may be provided by the Plan Processor and approved by the Operating Committee. FINRA states that this provision implements the formatting requirements as set forth in Section 6.4(a) of the CAT NMS Plan.

##### 2. Connectivity

Paragraph (b) of proposed Rule 6870 addresses connectivity requirements related to the CAT. Paragraph (b) of proposed Rule 6870 requires each Industry Member to connect to the Central Repository using a secure method(s), including, but not limited to, private line(s) and virtual private network connection(s). FINRA states that this provision implements the connectivity requirements set forth in Section 4 of Appendix D to the CAT NMS Plan.

##### 3. CAT Reporting Agent

Paragraph (c) permits Industry Members to enter into an agreement with CAT Reporting Agents to fulfill their data reporting obligations related to the CAT.<sup>59</sup> Any such agreement must be evidenced in writing, which specifies the respective functions and responsibilities of each party to the agreement that are required to effect full compliance with the requirements of the proposed Rule 6800 Series. Paragraph (c)(2) of proposed Rule 6870 requires that all written documents evidencing an agreement with a CAT Reporting Agent be maintained by each party to the agreement. Paragraph (c)(3) states that each Industry Member remains primarily responsible for compliance with the requirements of the proposed Rule 6800 Series, notwithstanding the existence of an agreement described in paragraph (c) of proposed Rule 6870.

#### *I. Development and Testing (Rule 6880)*

FINRA proposes Rule 6880 to address requirements for Industry Members related to CAT development and testing.

##### 1. Development

Paragraph (a) of proposed Rule 6880 sets forth the testing requirements and deadlines for Industry Members to develop and commence reporting to the Central Repository. FINRA states that these requirements are set forth in Appendix C to the CAT NMS Plan.

Paragraph (a)(1) sets forth the deadlines related to connectivity and

<sup>59</sup> FINRA represents that paragraph (c) is based on FINRA Rule 7450(c), which permits OATS Reporting Members to enter into agreements with Reporting Agents to fulfill the OATS obligations of the OATS Reporting Member.

<sup>58</sup> 17 CFR 242.613(d)(3).

acceptance testing. Industry Members (other than Small Industry Members) are required to begin connectivity and acceptance testing with the Central Repository no later than August 15, 2018, and Small Industry Members are required to begin connectivity and acceptance testing with the Central Repository no later than August 15, 2019.

Paragraph (a)(2) sets forth the deadlines related to reporting Customer and Industry Member information. Paragraph (a)(2)(i) requires Industry Members (other than Small Industry Members) to begin reporting Customer and Industry Member information, as required by Rules 6840(a) and 6850, respectively, to the Central Repository for processing no later than October 15, 2018. Paragraph (a)(2)(ii) requires Small Industry Members to begin reporting Customer and Industry Member information, as required by Rules 6840(a) and 6850, respectively, to the Central Repository for processing no later than October 15, 2019.

Paragraph (a)(3) sets forth the deadlines related to the submission of order data. Under paragraph (a)(3)(i), Industry Members (other than Small Industry Members) are permitted, but not required, to submit order data for testing purposes beginning no later than May 15, 2018. In addition, Industry Members (other than Small Industry Members) are required to participate in the coordinated and structured testing of order submission, which will begin no later than August 15, 2018. Under paragraph (a)(3)(ii), Small Industry Members are permitted, but not required, to submit order data for testing purposes beginning no later than May 15, 2019. In addition, Small Industry Members are required to participate in the coordinated and structured testing of order submission, which will begin no later than August 15, 2019.

Paragraph (a)(4) states that Industry Members are permitted, but not required to, submit Quote Sent Times on Options Market Maker quotes to Exchanges, beginning no later than October 15, 2018, for testing purposes.

## 2. Testing

Paragraph (b) of proposed Rule 6880 implements the requirement under the CAT NMS Plan that Industry Members participate in required industry testing with the Central Repository. Specifically, proposed Rule 6880 requires that each Industry Member participate in testing related to the Central Repository, including any industry-wide disaster recovery testing, pursuant to the schedule established pursuant to the CAT NMS Plan. FINRA

states that it intends to announce to its Industry Members the schedule established pursuant to the CAT NMS Plan via *Regulatory Notice*.

## J. Recordkeeping (Rule 6890)

Proposed Rule 6890 sets forth the recordkeeping obligations related to the CAT for Industry Members. Proposed Rule 6890 requires each Industry Member to maintain and preserve records of the information required to be recorded under the proposed Rule 6800 Series for the period of time and accessibility specified in Exchange Act Rule 17a-4(b).<sup>60</sup> The records required to be maintained and preserved under the proposed Rule 6800 Series may be immediately produced or reproduced on “micrographic media” as defined in Rule 17a-4(f)(1)(i)<sup>61</sup> or by means of “electronic storage media” as defined in Rule 17a-4(f)(1)(ii)<sup>62</sup> that meet the conditions set forth in Rule 17a-4(f)<sup>63</sup> and be maintained and preserved for the required time in that form. Proposed Rule 6890 is based on Rule 7440(a)(5), which sets forth the recordkeeping requirements related to OATS.

## K. Timely, Accurate and Complete Data (Rule 6893)

### 1. General

FINRA notes that Rule 613 of Regulation NMS and the CAT NMS Plan emphasize the importance of the timeliness, accuracy, completeness and integrity of the data submitted to the CAT.<sup>64</sup> Accordingly, paragraph (a) of proposed Rule 6893 requires that Industry Members record and report data to the Central Repository as required by the proposed Rule 6800 Series in a manner that ensures the timeliness, accuracy, integrity and completeness of such data. FINRA states that proposed Rule 6893 implements the Plan’s requirement with respect to the importance of timely, accurate and complete data with regard to Industry Members.

### 2. LEIs

In addition, without limiting the general requirement as set forth in paragraph (a), paragraph (b) of proposed Rule 6893 requires Industry Members to accurately provide the LEIs in their records as required by the proposed Rule 6800 Series and states that Industry Members may not knowingly submit inaccurate LEIs to the Central

Repository. FINRA notes that paragraph (b) notes, however, that this requirement does not impose any additional due diligence obligations on Industry Members with regard to LEIs for CAT purposes. Accordingly, FINRA states that this provision does not impose any due diligence obligations beyond those that may exist today with respect to information associated with an LEI. Although Industry Members will not be required to perform additional due diligence with regard to the LEIs for CAT purposes, Industry Members will be required to accurately provide the LEIs in their records and may not knowingly submit inaccurate LEIs to the CAT. FINRA believes that paragraph (b) is consistent with the Approval Order for the CAT NMS Plan regarding an Industry Member’s obligations regarding LEIs.<sup>65</sup>

### 3. Compliance With Error Rate

Paragraph (c) states that, if an Industry Member reports data to the Central Repository with errors such that its error percentage exceeds the maximum Error Rate established by the Operating Committee pursuant to the CAT NMS Plan, then such Industry Member would not be in compliance with the Rule 6800 Series. As discussed above, the initial maximum Error Rate is 5%, although the Error Rate is expected to be reduced over time. FINRA states that it intends to announce to its Industry Members changes to the Error Rate established pursuant to the CAT NMS Plan via *Regulatory Notice*.

### 4. Compliance Thresholds

Paragraph (d) of proposed Rule 6893 addresses compliance thresholds related to reporting data to the CAT. Proposed Rule 6893 states that each Industry Member is required to meet a separate compliance threshold which will be an Industry Member-specific rate that may be used as the basis for further review or investigation into the Industry Member’s performance with regard to the CAT (the “Compliance Thresholds”). FINRA notes that Compliance Thresholds will compare an Industry Member’s error rate to the aggregate Error Rate over a period of time to be defined by the Operating Committee. Compliance Thresholds will be set by the Operating Committee, and will be calculated at intervals to be set by the Operating Committee.<sup>66</sup> Compliance Thresholds will include compliance with the data reporting and clock synchronization requirements.

<sup>60</sup> 17 CFR 240.17a-4(b).

<sup>61</sup> 17 CFR 240.17a-4(f)(1)(i).

<sup>62</sup> 17 CFR 240.17a-4(f)(1)(ii).

<sup>63</sup> 17 CFR 240.17a-4(f).

<sup>64</sup> See 17 CFR 242.613(e)(4)(i)(D)(ii); and CAT NMS Plan, *supra* note 11 at Section 6.5(d).

<sup>65</sup> See Approval Order, *supra* note 14, at 84745.

<sup>66</sup> See CAT NMS Plan, *supra* note 11 at Appendix C.

Proposed Rule 6893 states that an Industry Member's performance with respect to its Compliance Threshold will not signify, as a matter of law, that such Industry Member has violated this proposed rule series.

#### L. Compliance Dates (Rule 6895)

##### 1. General

Proposed Rule 6895 sets forth the compliance dates for the various provisions of the proposed Rule 6800 Series. Paragraph (a) of proposed Rule 6895 states that, except as set forth in paragraphs (b) and (c) of this Rule or otherwise set forth in this Rule Series, the compliance date for the proposed Rule 6800 Series will be the date of Commission approval of the proposed rule change.

##### 2. Clock Synchronization

Paragraph (b) of proposed Rule 6895 establishes the compliance dates for the clock synchronization requirements as set forth in proposed Rule 6820. Paragraph (b)(1) states that each Industry Member shall comply with Rule 6820 with regard to Business Clocks that capture time in milliseconds commencing on or before March 15, 2017. Paragraph (b)(2) states that each Industry Member shall comply with Rule 6820 with regard to Business Clocks that do not capture time in milliseconds commencing on or before February 19, 2018. FINRA states that the compliance date set forth in paragraph (b)(1) reflects the exemptive relief requested by the Participants with regard to the clock synchronization requirements related to Business Clocks that do not capture time in milliseconds.<sup>67</sup>

##### 3. CAT Data Reporting

Paragraph (c) of proposed Rule 6895 establishes the compliance dates for the data recording and reporting requirements for Industry Members. Paragraph (c)(1) requires each Industry Member (other than Small Industry Members) to record and report the Industry Member Data to the Central Repository by November 15, 2018. Paragraph (c)(2) requires that each Industry Member that is a Small Industry Member to record and report the Industry Member Data to the Central Repository by November 15, 2019.

<sup>67</sup> See *infra* notes 75 and 77, and accompanying text (discussing the Participants' Clock Synchronization Exemption Request and Order Granting Limited Exemptive Relief, Pursuant to Rule 608(e) of the Securities Exchange Act of 1934, from the Clock Synchronization Compliance Deadline Specified in Section 6.7(a)(ii) of the National Market System Plan Governing the Consolidated Audit Trail).

FINRA states that such compliance dates are consistent with the compliance dates set forth in Rule 613(a)(3)(v) and (vi),<sup>68</sup> and Section 6.7(a)(v) and (vi) of the CAT NMS Plan.

#### IV. Summary of Comments

As noted above, the Commission received three comment letters on the proposed rule change and a response letter from the Participants.<sup>69</sup> Two commenters raised concerns about the clock synchronization requirements for Allocation Reports.<sup>70</sup> One commenter noted that the CAT NMS Plan states that the Participants have not yet determined how the "time of allocation" will be defined and that the Participants stated they would address this in the Technical Specifications.<sup>71</sup> Given that the time of allocation had not yet been defined, this commenter stated that "it was not possible to ensure clock synchronization requirements on Allocation Reports at this time."<sup>72</sup> Another commenter asked for clarification whether the Clock Synchronization Exemption Request, as discussed below, filed by the Participants extends to time stamps required for Allocation Reports, and for clarification regarding when time stamps on manual orders and electronic capture of manual orders need to be captured.<sup>73</sup>

The Participants noted in their Response Letter that Section 6.7(a)(ii) of the CAT NMS Plan requires that Industry Members must synchronize their Business Clocks and certify that they have satisfied applicable Business Clock synchronization requirements by March 15, 2017.<sup>74</sup> However, the Participants noted that, on January 17, 2017, they filed with the Commission a request for exemptive relief from Section 6.7(a)(ii) of the CAT NMS Plan (the "Clock Synchronization Exemption Request").<sup>75</sup> The Clock Synchronization Exemption Request requested that the Commission permit the Participants to extend the Business Clock synchronization compliance date in Section 6.7(a)(ii) of the CAT NMS Plan from March 15, 2017 to February 19, 2018 for Industry Members' Business Clocks that do not capture time in

<sup>68</sup> 17 CFR 242.613(a)(3)(v), (vi).

<sup>69</sup> See *supra* note 7.

<sup>70</sup> Thomson Reuters Letter at 1; FIF Letter at 1.

<sup>71</sup> Thomson Reuters Letter at 1.

<sup>72</sup> Thomson Reuters Letter at 1–2. See also FIF Letter at 2.

<sup>73</sup> FIF Letter at 1, 2.

<sup>74</sup> Participants' Response Letter at 2.

<sup>75</sup> See Letter from Participants to Brent J. Fields, Secretary, Commission, dated January 17, 2017 ("Clock Synchronization Exemption Request Letter").

milliseconds.<sup>76</sup> On March 2, 2017, the Commission granted the Exemption Request.<sup>77</sup>

The Participants also noted that the Operating Committee of the CAT NMS Plan recently approved guidance that clarifies that, for purposes of the initial March 15, 2017 Business Clock synchronization and certification deadlines, "Business Clocks" include those clocks that currently capture time in milliseconds and that are used to record time related to "Reportable Events," as defined under the Plan, including, without limitation, the original receipt or origination, modification, cancellation, routing, execution (in whole or in part) and allocation of an order, and receipt of a routed order, in Eligible Securities (*i.e.*, NMS Securities and OTC Equity Securities).<sup>78</sup> The Participants represented that each Participant has, or will, issue this guidance to its members. The Participants further stated in their response letter that to align the compliance rule with the Exemption Request, Business Clocks used solely for the time of allocation on Allocation Reports must comply with the March 15, 2017 synchronization deadline to the extent that such Business Clocks currently capture time in milliseconds.<sup>79</sup>

With respect to time stamps on manual orders and electronic capture of manual orders the Participants acknowledged in their response letter that additional information will be provided in Technical Specifications prepared by the Plan Processor and approved by the Operating Committee.<sup>80</sup> The Participants noted that the Technical Specifications also will define the "time of the allocation." The Participants stated that as a result, they cannot issue additional information or definitions at this time since the development and construction of the CAT System and Central Repository are underway. The Participants represented that they intend to work with the Plan Processor to define various terms, including "time of the allocation," and to provide Technical Specifications approved by the Operating Committee before

<sup>76</sup> *Id.*

<sup>77</sup> See Order Granting Limited Exemptive Relief, Pursuant to Rule 608(e) of the Securities Exchange Act of 1934, from the Clock Synchronization Compliance Deadline Specified in Section 6.7(a)(ii) of the National Market System Plan Governing the Consolidated Audit Trail, Securities Exchange Act Release No. 80142 (March 2, 2017), 82 FR 13034 (March 8, 2017) ("Clock Synchronization Exemption Order").

<sup>78</sup> Participants' Response Letter at 2.

<sup>79</sup> *Id.* at 3.

<sup>80</sup> *Id.*

Industry Members will be required to report to the Central Repository on November 15, 2018 (or November 15, 2019 for Small Industry Members) or comply with the February 19, 2018 Business Clock synchronization requirement.

One commenter discussed several concerns related to the clock synchronization requirements of proposed FINRA Rule 6820(b).<sup>81</sup> This commenter noted that “retention of a complete log of clock synchronization events is an additional business cost without providing compensatory regulatory benefit.”<sup>82</sup> This commenter urged FINRA to collect clock synchronization data based on the data received as a result of the requirements of FINRA Rule 4590 to see if such a log of clock synchronization is “required to effectively surveil for compliance with clock synchronization standards” and requested that the Commission require FINRA to assess the effectiveness of the logging requirement.<sup>83</sup> This commenter also noted that there is a two year difference in the log retention requirements between FINRA Rule 4590 and proposed Rule 6820(b) and stated that the extra two years of log retention represents an additional business cost for storage and clock management.<sup>84</sup>

In response, the Participants stated that they believe that it is appropriate for Industry Members to maintain a log of all clock synchronization events in order to demonstrate the Industry Members’ compliance with the Proposed Compliance Rule and the CAT NMS Plan and to retain such log for five-years.<sup>85</sup> The Participants noted that the Business Clock synchronization log was discussed and considered in the CAT NMS Plan Proposing and Adopting Releases, and that the Commission considered an alternative where Industry Members would record only exceptions to the clock synchronization requirement. Because the CAT NMS Plan contains the requirement that logs be created and retained for five years, the Participants stated that the retention period set forth in the Participants’ Proposed Compliance Rules, including proposed FINRA Rule 6820, is consistent with the data retention period applicable to the Central Repository as set forth in Rule 613(e)(8).

With respect to the clock synchronization procedures in FINRA’s proposed Rule 6800 Series, one commenter also stated that proposed

Rule 6820 “does not contain any definition of clock synchronization certification procedures and schedules, reporting procedures for violation notification or any specifics regarding documentation requirements.”<sup>86</sup> This commenter requested that the date for compliance with the clock synchronization procedures be delayed, and requested that there be the adoption of “one set of procedures for clock synchronization management and reporting to regulators be adopted across FINRA and CAT.”<sup>87</sup>

In response, the Participants stated that they agree it would be helpful to provide Industry Members with additional guidance regarding Industry Members’ compliance with the clock synchronization and certification requirements set forth in the CAT NMS Plan and the Proposed Compliance Rules.<sup>88</sup> Accordingly, the Participants stated that they have issued, or intend to issue, to their members guidance approved by the Operating Committee regarding clock synchronization and certification procedures and schedules, and documentation requirements (*i.e.*, regarding the logging of clock synchronization events). The Participants represented that they intend to issue this guidance prior to the initial March 15, 2017 compliance deadline. The Participants also noted that thereafter the Participants will issue additional guidance approved by the Operating Committee regarding the reporting of violations of applicable clock synchronization thresholds. Accordingly, the Participants stated that they believe that the Proposed Compliance Rules need not be amended at this time.

Two commenters also discussed the application of the Firm Designated ID requirement in the CAT NMS Plan. Both commenters noted that the Proposed Compliance Rules require each Industry Member to provide a Firm Designated ID “for each Customer,” whereas a “Firm Designated ID,” in relevant part, is defined as a “unique identifier for each trading account. Both commenters requested that the Participants amend the language of the Proposed Compliance Rules to reflect the Exemption Order.<sup>89</sup>

In response the Participants stated that they recognize that the definition of Firm Designated ID and the reporting requirements set forth in Section 6.3 of the CAT NMS Plan, as well as the

parallel provisions in the proposed Participant Compliance Rules, including FINRA’s definition of “Firm Designated ID” in Rule 6810 are somewhat unclear.<sup>90</sup> The Participants noted that the Customer Information Approach is intended to require that each broker-dealer assign a unique Firm Designated ID at the account level, rather than the customer level. Accordingly, the Participants state that Section 6.3(d)(i)(A) of the CAT NMS Plan, which refers to the assignment of a “Firm Designated ID(s) for each Customer,” should not be interpreted to mean that each Customer must have a unique Firm Designated ID, rather, a Firm Designated ID must be assigned at the account level, so that multiple Customers may have the same Firm Designated ID. The Participants further stated that they will consider issuing additional guidance, subject to the approval of the Operating Committee of the CAT NMS Plan, to Industry Members on this issue and, as necessary, whether to amend the CAT NMS Plan to clarify the use of Firm Designated IDs.

One commenter suggested that the Participants consider firms that are exempt from reporting to OATS as “Small Industry Members,” stating that “this should be so easy and so obviously warranted (given the huge incremental cost of first-time order reporting for those firms that choose to remain independent and comply) that we cannot imagine any objection.”<sup>91</sup> This commenter also requested that a cost and benefit analysis should be performed to review the impact of the CAT on firms currently exempt from OATS.<sup>92</sup>

In response, the Participants stated they believe that the definition of Small Industry Member for purposes of the CAT NMS Plan and Participant Compliance Rules is appropriate and need not be amended.<sup>93</sup> The Participants noted that as a threshold matter, this definition was created and adopted by the Commission rather than the Participants, and that the definition of “Small Industry Member” in the CAT NMS Plan refers to the definition of

<sup>90</sup> Participants’ Response Letter at 5. The Participants noted that Bats BZX Exchange, Inc.’s proposed Rule 4.7(a)(1)(A)(i) and 4.7(a)(2)(C) refers to “Customer” rather than “account.” *See, e.g.*, Bats BZX Exchange, Inc.’s Proposed Compliance Rule Notice of Filing of a Proposed Rule Change to Adopt Rules 4.5 Through 4.16 to Implement the Compliance Rule Regarding the National Market System Plan Governing the Consolidated Audit Trail, Securities Exchange Act Release No. 79927 (February 2, 2017), 82 FR 9874 (February 8, 2017).

<sup>91</sup> Wachtel Letter at 1.

<sup>92</sup> Wachtel Letter at 1, 3.

<sup>93</sup> Participants’ Response Letter at 6.

<sup>81</sup> FIF Letter at 2.

<sup>82</sup> FIF Letter at 2.

<sup>83</sup> FIF Letter at 2.

<sup>84</sup> FIF Letter at 2.

<sup>85</sup> Participants’ Response Letter at 4.

<sup>86</sup> FIF Letter at 3.

<sup>87</sup> FIF Letter at 3.

<sup>88</sup> Participants’ Response Letter at 5.

<sup>89</sup> FIF Letter at 3–4; Thomson Reuters Letter at 2–5.

“small broker-dealer” in Rule 613 of Regulation NMS. Rule 613(a)(3)(v) and (vi) define “small broker-dealer” by using the definition set forth in Rule 0–10(c) under the Exchange Act.<sup>94</sup> In adopting Rule 613, the Participants noted that the Commission explained that defining “small broker-dealer” by reference to Rule 0–10(c) “is appropriate because it is an existing regulatory standard that is an indication of small entities for which regulators should be sensitive when imposing regulatory burden.”<sup>95</sup> The Participants stated that they cannot modify the definition of “Small Industry Member” because it is based on the definition of small broker-dealer in Rule 613 and that the Commission would have to effectuate any change to the requirement that broker-dealers (other than “small broker-dealers”) must report to the CAT no later than two years after the Effective Date.<sup>96</sup> The Participants also noted that after the CAT is operational and the Central Repository begins to collect data, the Participants will conduct various assessments, as set forth in Section 6.6 of the CAT NMS Plan, regarding the operations and efficiency of the Plan Processor, CAT and Central Repository. As necessary, the Participants will consider whether to amend any requirements in the CAT NMS Plan or Proposed Compliance Rules, provided that such amendments are necessary or appropriate and comply with Rule 613 of Regulation NMS.

## V. Discussion and Commission Findings

After carefully considering the proposed rule change, the comments submitted, and the Participants’ response to the comments,<sup>97</sup> the Commission finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national

<sup>94</sup> Rule 0–10(c) defines a “small broker-dealer” as one that has total capital of less than \$500,000 on the date in the prior fiscal year as of which its audited financial statements were filed (or on the last business day of the preceding fiscal year if not required to file such statements), and those not affiliated with any other person that is not a small business or small organization. See Rule 0–10(c).

<sup>95</sup> See Approval Order, *supra* note 14 at 45722, 45804.

<sup>96</sup> Participants’ Response Letter at 6. The Participants added that “[s]eparately, the Commission explained that the CAT NMS Plan ‘attempts to mitigate its impact on [OATS-exempt or excluded broker-dealers or limited purpose broker-dealers] by proposing to follow a cost allocation formula that should charge lower fees to smaller broker-dealers.’” Accordingly, the Participants stated that they do not believe that an additional cost-benefit analysis is necessary at this time. Participants’ Response Letter at 7.

<sup>97</sup> See *supra* note 7.

securities association.<sup>98</sup> Specifically, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act,<sup>99</sup> which requires, among other things, that FINRA’s rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and are not designed to permit unfair discrimination between customers, issuers, brokers or dealers. In addition, the Commission finds that the proposed rule change is consistent with Section 15A(b)(9) of the Act,<sup>100</sup> which requires that FINRA rules not impose any burden on competition that is not necessary or appropriate.

Rule 613(g) of Regulation NMS provides that each national securities exchange and national securities association shall file with the Commission pursuant to section 19(b)(2) of the Act and Rule 19b–4 on or before 60 days from approval of the CAT NMS Plan a proposed rule change to require its members to comply with the requirements of this section and the national market system plan approved by the Commission. In addition, Rule 608(c) of Regulation NMS provides that “[e]ach self-regulatory organization shall comply with the terms of any effective national market system plan of which it is a sponsor or participant. Each self-regulatory organization also shall, absent reasonable justification or excuse, enforce compliance with any such plan by its members and persons associated with its members.”<sup>101</sup> FINRA, as a Participant in the Plan, has an obligation to comply, and enforce compliance by its members, with the terms of the Plan. Accordingly, FINRA filed this proposed rule change to adopt the FINRA Rule 6800 Series, which would impose compliance obligations on FINRA members. As discussed below, the Commission also believes the proposal is consistent with the Act because it is designed to assist FINRA in meeting its regulatory obligations pursuant to Rule 608 of Regulation NMS and the Plan.

### A. Definitions (Rule 6810)

The Commission finds that proposed FINRA Rule 6810 is consistent with the

<sup>98</sup> In approving this proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>99</sup> 15 U.S.C. 78o–3(b)(6).

<sup>100</sup> 15 U.S.C. 78o–3(b)(9).

<sup>101</sup> 17 CFR 242.608(c).

Act as it implements the CAT NMS Plan. With the exception of the term “CAT Reporting Agent,” the definitions in proposed Rule 6810 are consistent with the definitions of Article I, Section 1.1 of the CAT NMS Plan. With respect to the inclusion of a definition for “CAT Reporting Agent,” FINRA notes that the CAT NMS Plan permits an Industry Member to use a third party, such as a vendor, to report the required data to the Central Repository on behalf of an Industry Member, and that as defined, a “CAT Reporting Agent” would be one type of Data Submitter, which term is defined in the CAT NMS Plan.

The Commission notes that two commenters discussed the need for further clarification on the application of the term “Firm Designated ID.” The Participants responded that the Customer Information Approach is intended to require that each broker-dealer assign a unique Firm Designated ID at the account level, rather than the customer level.<sup>102</sup> Accordingly, a Firm Designated ID must be assigned at the account level, so multiple Customers may be associated with the same Firm Designated ID. The Commission believes that the definition of the term Firm Designated ID and its applicability to accounts is consistent with the Customer Information Approach and the CAT NMS Plan.

### B. Clock Synchronization (Rule 6820)

The Commission finds that proposed Rule 6820 is consistent with the Act as it implements the clock synchronization provisions of the CAT NMS Plan. The Commission notes that proposed Rule 6820 sets out the clock synchronization requirements for FINRA industry members and that these clock synchronization requirements, including the synchronization standards, tolerance levels, documentation, certification and violation reporting are consistent with and implement the clock synchronization requirements of the CAT NMS Plan.

As noted above, two commenters raised concerns about the clock synchronization requirements in proposed Rule 6820, including whether the synchronization requirements of the rule apply to Business Clocks that capture Manual Order Events; the definition of “time of allocation,” the necessity of the clock synchronization log; and the details concerning the clock synchronization certification. The Participants responded by clarifying the applicability of the clock synchronization requirements to

<sup>102</sup> Participants’ Response Letter 5.

Allocation Reports, and by stating that the Participants intend to work with the Plan Processor to define various terms, including “time of allocation,” and to provide Technical Specifications approved by the Operating Committee—relating to time stamps on manual orders and electronic capture of manual orders, as well as the “time of allocation”—before Industry Members will be required to report to the Central Repository on November 15, 2018 (or November 15, 2019 for Small Industry Members) or comply with the February 19, 2018 Business Clock synchronization requirement.<sup>103</sup> The Participants also provided further details about the utility of the synchronization logs and discussed the clock synchronization certification requirements. The Commission believes that the Participants’ response is reasonable and consistent with the Act.

#### *C. Industry Member Data Reporting (Rule 6830)*

The Commission finds that proposed Rule 6830—which sets forth the data reporting requirements for Industry Members—is consistent with the Act as it implements the data reporting requirements for Industry Members that are required by the CAT NMS Plan. As noted above, proposed Rule 6830 is divided into five sections which address (1) recording and reporting Industry Member Data, (2) timing of the recording and reporting, (3) the applicable securities covered by the recording and reporting requirements, (4) the security symbology to be used in the recording and reporting,<sup>104</sup> and (5) error correction requirements.

#### *D. Customer Information Reporting (Rule 6840)*

The Commission finds that proposed Rule 6840—which sets forth the requirements regarding the data reported to the CAT in order to identify Customers—is consistent with the Act as it implements the reporting provisions of the CAT NMS Plan relating to the identification of Customers.

<sup>103</sup> Participants’ Response Letter at 3. See also Clock Synchronization Exemption Request Letter, *supra* note 75, and Clock Synchronization Order, *supra* note 77.

<sup>104</sup> The Commission notes that, with respect to the security symbology that must be reported by an Industry Member for an Eligible Security that is not Exchange-listed, proposed Rule 6830(d)(2) states that an Industry Member should use the symbology format approved by the Operating Committee. FINRA represents that for such securities, there is no listing exchange to provide the symbology format and that the requisite symbology format has not been determined at this time.

#### *E. Industry Member Information Reporting (Rule 6850)*

The Commission finds that proposed Rule 6850—which sets forth the requirements for Industry Members regarding the data that they must report to identify such Industry Member, including the timeframe for reporting such identifying information—is consistent with the Act as it implements the Industry Member reporting provisions of the CAT NMS Plan.

#### *F. Time Stamps (Rule 6860)*

The Commission finds that proposed Rule 6860—which sets forth the time stamp increments to be used by Industry Members in their CAT Reporting—is consistent with the Act as it implements the time stamp provisions of the CAT NMS Plan. In general, proposed Rule 6860(a)(1) requires Industry Members to record and report Industry Member Data to the Central Repository in milliseconds, but paragraph (a)(2) provides that, to the extent any Industry Member’s order handling or execution systems utilize time stamps in increments finer than milliseconds, such Industry Member is to record and report Industry Member Data to the Central Repository with time stamps in such finer increment. Proposed Rule 6860(b) addresses the need for Industry Members to capture Manual Order Events in increments up to and including one second, provided that each Industry Member is required to record and report the Electronic Capture Time in milliseconds.

#### *G. Time Stamp and Clock Synchronization Rule Violations (Rule 6865)*

The Commission finds that proposed Rule 6865 is consistent with the Act as it implements the clock synchronization rule violation provisions of the CAT NMS Plan. The Commission notes that proposed Rule 6865 describes potential violations of clock synchronization as well as the time stamp time period requirements set forth in the CAT NMS Plan, and specifically states that an Industry Member that engages in a pattern or practice of reporting Reportable Events with time stamps generated by Business Clocks that are not synchronized according to the requirements set forth in the Rule 6800 Series without reasonable justification or exceptional circumstances may be considered in violation of this Rule.

#### *H. Connectivity and Data Transmission (Rule 6870)*

The Commission finds that proposed Rule 6870—which addresses connectivity and data transmission

requirements related to the CAT—is consistent with the Act as it implements the connectivity and data transmission provisions of the CAT NMS Plan. Proposed Rule 6870(a) requires each Industry Member to transmit data as required under the CAT NMS Plan to the Central Repository utilizing such format(s) as may be provided by the Plan Processor and approved by the Operating Committee, and proposed Rule 6870(b) requires each Industry Member to connect to the Central Repository using a secure method(s), including, but not limited to, private line(s) and virtual private network connection(s). Proposed Rule 6870(c) permits Industry Members to use CAT Reporting Agents to fulfill their data reporting obligations related to the CAT. The Commission notes that Rule 6870(c) is substantively similar to FINRA Rule 7450(c), in that proposed Rule 6870(c), like FINRA Rule 7450(c), permits OATS Reporting Members to enter into agreements with Reporting Agents to fulfill the OATS obligations of the OATS Reporting Member, specifies responsibilities and procedures for maintaining such agreements between the OATS Reporting Member and the Reporting Members, and clarifies that an OATS Reporting Member remains primarily responsible for compliance with the OATS reporting rules.

#### *I. Development and Testing (Rule 6880)*

The Commission finds that proposed Rule 6880 is consistent with the Act as it implements the development and testing provisions of the CAT NMS Plan. Proposed Rule 6880(a)(1) addresses Industry Members’ connectivity and testing requirements, including connectivity and acceptance testing timelines. Proposed Rule 6880(a)(2) addresses the requirements relating to Industry Members’ reporting of Customer and Industry Member information. Proposed Rule 6880(a)(3)–(4) addresses the submission of order data, including the Quote Sent time to be reported by Options Market Makers. Proposed Rule 6880(b) requires that each Industry Member shall participate in the testing related to the Central Repository, including any industry-wide disaster recovery testing.

#### *J. Recordkeeping (Rule 6890)*

The Commission finds that proposed Rule 6890 is consistent with the Act. The Commission notes that proposed Rule 6890 requires each Industry Member to maintain and preserve, and specifies the manner in which such records must be maintained and preserved, information required to be recorded under the proposed Rule 6800

Series for the period of time and accessibility specified in Rule 17a-4(b).<sup>105</sup> Because proposed Rule 6890 incorporates Rule 17a-4(b) and implements the recordkeeping provision of the CAT NMS Plan, the Commission finds that proposed Rule 6890 is consistent with the Act.

*K. Timely, Accurate and Complete Data (Rule 6893)*

The Commission finds that proposed Rule 6893 is consistent with the Act as it implements the requirements for reporting timely, accurate and complete data to the CAT as set forth in the CAT NMS Plan. FINRA notes that proposed Rule 6893 implements the requirement in Rule 613 and the CAT NMS Plan that data reported to the CAT be timely, accurate and complete. Specifically, proposed Rule 6893(a) requires that Industry Members record and report data to the Central Repository as required by the proposed Rule 6800 Series in a manner that ensures the timeliness, accuracy, integrity and completeness of such data. Proposed Rule 6893(b) requires Industry Members to accurately provide the LEIs in their records as required by the proposed Rule 6800 Series and states that Industry Members may not knowingly submit inaccurate LEIs to the Central Repository. Paragraph (b) notes, however, that this requirement does not impose any additional due diligence obligations on Industry Members with regard to LEIs for CAT purposes. Proposed Rule 6893(c) and (d) require Industry Members to be in compliance with the Error Rate as set forth in the CAT NMS Plan and the Compliance Thresholds as discussed in the CAT NMS Plan and determined by the Operating Committee. Proposed Rule 6893 implements the CAT NMS Plan's provisions.

*L. Compliance Dates (Rule 6895)*

The Commission finds that the compliance dates in proposed Rule 6895 are consistent with the Act, as they implement the compliance dates for reporting data to the CAT as set forth in the CAT NMS Plan and an exemptive order issued by the Commission. Proposed Rule 6895(a) states that, except as set forth in paragraphs (b) and (c) of the Rule or otherwise set forth in this Rule Series, the compliance date for the proposed Rule 6800 Series will be the date of Commission approval of the proposed rule change.

<sup>105</sup> 17 CFR 240.17a-4(b). FINRA also notes that proposed Rule 6890 is based on Rule 7440(a)(5), which sets forth the recordkeeping requirements related to OATS.

Proposed Rule 6895(b)(1) states that each Industry Member that captures time in milliseconds shall comply with Rule 6820 with regard to Business Clocks on or before March 15, 2017. Paragraph (b)(2) states that each Industry Member that does not capture time in milliseconds shall comply with Rule 6820 with regard to Business Clocks on or before February 19, 2018. The Commission notes that the compliance date set forth in proposed Rule 6895(b)(2) reflects the exemptive relief requested by the Participants and granted by the Commission with regard to the clock synchronization requirements related to Business Clocks that do not capture time in milliseconds.<sup>106</sup>

Proposed Rule 6895(c)(1) requires each Industry Member (other than Small Industry Members) to record and report the Industry Member Data to the Central Repository by November 15, 2018. Proposed rule 6895(c)(2) requires that each Industry Member that is a Small Industry Member to record and report the Industry Member Data to the Central Repository by November 15, 2019.<sup>107</sup> Proposed Rule 6895(c)(1) and (c)(2) implement the CAT NMS Plan's provisions regarding the reporting of Industry Member data to the Central Repository.

The Commission notes that one commenter also requested that FINRA classify all firms currently exempt from reporting to OATS to be classified as a "Small Industry Member" as defined by the CAT NMS Plan.<sup>108</sup> The commenter notes that some OATS exempt firms would be classified as Large Industry Members but really should be subject to the three year implementation timeframe for Small Industry Members. The Participants responded that the definition of "Small Industry Member" is appropriate because it is an existing regulatory standard. The Commission believes that the proposed rule change's use of the "Small Industry Member" definition is consistent with the CAT NMS Plan.

The Commission notes that a commenter suggested that a cost/benefit analysis be performed to review the impact of CAT on firms currently exempt from reporting to OATS. The Participants responded the Commission had already undertaken into account the impact of CAT on firms currently exempt from OATS. The Commission likewise notes that it took into account

<sup>106</sup> See *supra* note 77.

<sup>107</sup> Such compliance dates are consistent with the compliance dates set forth in SEC Rule 613(a)(3)(v) and (vi), and Sections 6.7(a)(v) and (vi) of the CAT NMS Plan.

<sup>108</sup> Wachtel Letter at 1.

the impact of the Plan on firms currently exempt from reporting to OATS when it approved the CAT NMS Plan.

**VI. Conclusion**

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-FINRA-2017-003) is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>109</sup>

**Eduardo A. Aleman**,  
*Assistant Secretary*.

[FR Doc. 2017-05504 Filed 3-20-17; 8:45 am]

**BILLING CODE 8011-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

**Submission for OMB Review; Comment Request**

*Upon Written Request, Copies Available From:* Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549-0213

**ACTION:** Notice.

[SEC File No. TM-S7-11-10, OMB Control No. 3235-0671]

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget ("OMB") a request for approval of an amendment to a collection of information in connection with an National Market System (NMS) Plan filed with the Commission under Rule 613 (17 CFR 242.613), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

Rule 613 of Regulation NMS (17 CFR part 242) required national securities exchanges and national securities associations ("Participants") to jointly submit to the Commission a national market system ("NMS") plan to govern the creation, implementation, and maintenance of a consolidated audit trail ("CAT") and Central Repository for the collection of information for NMS securities. On February 27, 2015, the Participants submitted the CAT NMS Plan to the Commission.<sup>1</sup>

<sup>109</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> See Letter from Participants to Brent J. Fields, Secretary, Commission, dated February 27, 2015. The Participants filed the CAT NMS Plan on September 30, 2014. See Letter from the Participants, to Brent J. Fields, Secretary, Commission, dated September 30, 2014. The CAT