

2021–2021 and should be submitted on or before September 29, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>23</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92845; File No. SR–NYSE–2021–48]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Delete the Order Audit Trail System Rules in the Rule 7400 Series

September 1, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b–4 thereunder,<sup>2</sup> notice is hereby given that on August 30, 2021, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

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

The Exchange proposes to delete the Order Audit Trail System (“OATS”) rules in the Rule 7400 Series as these Rules provide for the collection of information that is duplicative of the data collection requirements of the CAT. Further, the Financial Industry Regulatory Authority (“FINRA”) has determined to eliminate its OATS rules. The proposed rule change is available on the Exchange’s website at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of,

and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

##### 1. Purpose

Rule 613 of Regulation NMS requires national securities exchanges and FINRA to create, implement, and maintain a consolidated audit trail to 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. The Participants filed the Plan to comply with Rule 613 of Regulation NMS under the Act. The Plan was published for comment in the **Federal Register** on May 17, 2016,<sup>3</sup> and approved by the Commission, as modified, on November 15, 2016.<sup>4</sup>

On August 14, 2020, FINRA filed with the Commission a proposed rule change to delete the OATS rules once Industry Members are effectively reporting to the CAT (the “OATS Retirement Filing”).<sup>5</sup> On October 29, 2020, FINRA filed Amendment No. 1 to the proposed rule change (“Amendment No. 1”) and a response to the comments that were submitted on the original filing (“Response to Comments”).<sup>6</sup> On November 30, 2020, the Commission approved the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.<sup>7</sup> On June 17, 2021, FINRA filed a proposed rule change setting forth the basis for its determination that the accuracy and reliability of the CAT meet the

<sup>3</sup> See Securities Exchange Act Release No. 77724 (April 27, 2016), 81 FR 30614 (May 17, 2016).

<sup>4</sup> See Securities Exchange Act Release No. 79318 (November 15, 2016), 81 FR 84696 (November 23, 2016) (“Order Approving the National Market System Plan Governing the Consolidated Audit Trail”) (“Approval Order”).

<sup>5</sup> See Securities Exchange Act Release No. 89679 (August 26, 2020), 85 FR 54461 (September 1, 2020) (Notice of Filing of File No. SR–FINRA–2020–024).

<sup>6</sup> See Letter from Lisa C. Horrigan, Associate General Counsel, FINRA, to Vanessa Countryman, Secretary, Commission, dated October 29, 2020.

<sup>7</sup> See Securities Exchange Act Release No. 90535 (November 30, 2020), 85 FR 78395 (December 4, 2020) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of SR–FINRA–2020–024).

standards approved by the Commission in the OATS Retirement Filing for purposes of eliminating the OATS rules.<sup>8</sup> The FINRA proposal stated that FINRA would retire OATS effective September 1, 2021.

After conducting an analysis of its rules in accordance with the CAT NMS Plan, the Exchange has determined that the information collected pursuant to the OATS rules is intended to be collected by CAT. Further, the Exchange believes that the Rule 7400 Series will no longer be necessary and proposes to delete such rules from the Exchange’s rulebook unless FINRA decides not to retire OATS as scheduled in which case member organizations will still be required to report to OATS. Discussed below is a description of the duplicative rule requirements as well as the timeline for eliminating the duplicative rules followed by a discussion on the OATS Retirement Filing that formed the basis for retiring OATS.

#### Duplicative OATS Requirements

The Rule 7400 Series consists of Rules 7410 through 7470 and sets forth the recording and reporting requirements of the OATS Rules. The OATS Rules require all Exchange member organizations and associated persons to record in electronic form and report to FINRA, on a daily basis, certain information with respect to orders originated, received, transmitted, modified, canceled, or executed by members in all NMS stocks, as that term is defined in Rule 600(b)(47) of Regulation NMS,<sup>9</sup> traded on the Exchange, including NYSE-listed securities. The Exchange relies on the information reported to OATS either to conduct surveillance or to facilitate surveillance conducted by FINRA pursuant to a regulatory services agreement (“RSA”). This information is used by Exchange and FINRA staff to conduct surveillance and investigations of member firms for violations of Exchange and FINRA rules and federal securities laws. The Exchange believes it is appropriate to retire OATS because the requirements of the Rule 7400 Series are duplicative of information available in the CAT and thus will no longer be necessary now that the CAT is operational.

<sup>8</sup> See Securities Exchange Act Release No. 92239 (June 23, 2021), 86 FR 34293 (June 29, 2021) (SR–FINRA–2021–017) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Retirement of FINRA’s Order Audit Trail System).

<sup>9</sup> 17 CFR 242.600(B)(47).

<sup>23</sup> 17 CFR 200.30–3(a)(12).

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

<sup>2</sup> 17 CFR 240.19b–4.

### Timeline for Elimination of Duplicative Rules

The CAT NMS Plan states that the elimination of rules that are duplicative of the requirements of the CAT and the retirement of the related systems should be effective at such time as CAT Data meets minimum standards of accuracy and reliability.<sup>10</sup> As discussed in more detail in the OATS Retirement Filing, FINRA believes that OATS may be retired effective September 1, 2021 given the error rate thresholds have been met, and FINRA has determined that its usage of the CAT Data has not revealed material issues that have not been corrected and further confirmed that the CAT includes all data necessary to allow FINRA to continue to meet its surveillance obligations.

### OATS Retirement Filing

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

In the OATS Retirement Filing, FINRA explained that its review of CAT Data and error rates would be based on data and linkages in the initial phase of reporting (or "Phase 2a"), which replicate the data in OATS today and thus are most relevant for OATS retirement purposes. Phase 2a Data includes all events and scenarios covered by OATS and applies only to equities. FINRA did not consider options order events or Phase 2c data and validations, which are not in OATS today, for purposes of OATS retirement.

As described below, FINRA has determined that the CAT meets the accuracy and reliability standards

approved by the Commission in the OATS Retirement Filing.

### (1) Maximum Error Rates

As discussed in the OATS Retirement Filing, FINRA believes that relevant error rates are the primary, but not the sole, metric by which to determine the CAT's accuracy and reliability and will serve as the baseline requirement needed before OATS can be retired. FINRA proposed that, before OATS could be retired, the CAT would generally need to achieve a sustained error rate for Industry Member reporting in five categories for a period of at least 180 days of 5% or lower, measured on a pre-correction or as-submitted basis, and 2% or lower on a post-correction basis (measured at T+5).<sup>11</sup> FINRA proposed to average the error rates across the period, rather than require a 5% pre-correction and 2% post-correction maximum each day for 180 consecutive days. FINRA also proposed to measure the error rates in the aggregate, rather than on a firm-by-firm basis. Finally, FINRA proposed to measure the error rates separately for each of the five categories, rather than evaluate all categories in the aggregate. As noted above, FINRA's assessment of the error rates for Industry Member reporting is based solely on Phase 2a CAT reporting for equity events since options orders are not included in OATS today.

As discussed in the OATS Retirement Filing, FINRA measured the error rates in each of the five categories discussed below during the period from October 26, 2020 through April 26, 2021 (the "applicable period"). FINRA commenced this period on October 26, 2020, which was the date that Industry Members were required to begin correcting all errors for inter-firm linkages and exchange/TRF/ORF match validations. As discussed in the Response to Comments, although the production environment for inter-firm linkage and exchange/TRF/ORF match validations was open for testing as of September 28, 2020, FINRA did not believe it would be appropriate for the 180-day period to commence prior to the October 26, 2020 compliance date.<sup>12</sup>

<sup>11</sup> As clarified in the OATS Retirement Filing, although FINRA does not believe that post-correction errors need to be de minimis before OATS can be retired, FINRA was not suggesting, with the proposal, that 2% would meet the ultimate objective of de minimis error rates for CAT. See CAT NMS Plan, Appendix C, note 102 (error rates after reprocessing of error corrections are ultimately expected to be de minimis for the CAT). See also Approval Order.

<sup>12</sup> See FINRA's Response to Comments, *supra* note 7.

*Rejection Rates and Data Validations.* As described in the OATS Retirement Filing, the Plan Processor must perform certain basic data validations,<sup>13</sup> and if a record does not pass these basic data validations, it must be rejected and returned to the CAT Reporter to be corrected and resubmitted. FINRA proposed that over the 180-day period, aggregate rejection rates must be no more than 5% pre-correction or 2% post-correction across all Industry Member Reporters. FINRA has determined that, over the applicable period, aggregate rejection rates across all Industry Member Reporters were 0.03% pre-correction and 0.01% post-correction.

*Intra-Firm Linkages.* As described in the OATS Retirement Filing, the Plan Processor must be able to link all related order events from all CAT Reporters involved in the lifecycle of an order. At a minimum, this requirement includes the creation of an order lifecycle between all order events handled within an individual CAT Reporter, including orders routed to internal desks or departments with different functions (e.g., an internal ATS). FINRA proposed that aggregate intra-firm linkage rates across all Industry Member Reporters must be at least 95% pre-correction and 98% post-correction. FINRA has determined that, over the applicable period, aggregate intra-firm linkage rates across all Industry Member Reporters were 99.97% pre-correction and 99.99% post-correction.

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

*Order Linkage Rates.* As described in the OATS Retirement Filing, in addition to creating linkages within and between broker-dealers, the Plan Processor must be able to create lifecycles to link various pieces of related orders. For example, the Plan requires linkages of

<sup>13</sup> Appendix D of the CAT NMS Plan, Section 7.2, for example, requires that certain file validations (e.g., file transmission and receipt are in the correct formats, confirmation of a valid SRO-Assigned Market Participant Identifier, etc.), and syntax and context checks (e.g., format checks, data type checks, consistency checks, etc.) be performed on all submitted records.

<sup>10</sup> Appendix C of CAT NMS Plan, Approval Order at 85010.

order information to create an order lifecycle from origination or receipt to cancellation or execution. This category essentially combines all of the order-related linkages to capture an overall snapshot of order linkages in the CAT.<sup>14</sup> FINRA proposed that there be at least a 95% pre-correction and 98% post-correction rate for order linkages that are required in Phase 2a. FINRA has determined that during the applicable period there was a 99.66% pre-correction and 99.93% post-correction rate for order linkages required in Phase 2a.<sup>15</sup>

*Exchange and TRF/ORF Match Rates.* As described in the OATS Retirement Filing, an order lifecycle must be created to link orders routed from broker-dealers to exchanges and executed orders and trade reports. FINRA proposed at least a 95% pre-correction and 98% post-correction aggregate match rate across all equity exchanges<sup>16</sup> for orders routed from Industry Members to an exchange and, for over-the-counter executions, the same match rate for orders linked to trade reports. FINRA determined that, during the applicable period, there was a 99.51% pre-correction and 99.87% post-correction aggregate match rate across all equity exchanges for orders routed from Industry Members to an exchange and, for over-the-counter executions, there was a 99.34% pre-

correction and 99.53% post-correction rate for orders linked to trade reports submitted to the FINRA Trade Reporting Facilities and OTC Reporting Facility.

As set forth above, the error rates for Industry Member reporting over the applicable period were well below the maximum rates established in the OATS Retirement Filing. FINRA also noted that the overall post-correction error rate for Phase 2a Industry Member reporting of 1.01% is comparable to the current overall OATS post-correction error rate, which generally is at or slightly below 1%. Therefore, FINRA has determined that, based on the error rates for Industry Member reporting, the CAT Data meets the accuracy and reliability baseline standards required for OATS retirement.

## (2) FINRA's Use of CAT Data

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

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

OATS for purposes of FINRA's surveillance program.

As discussed in the OATS Retirement Filing, today, FINRA's surveillance patterns rely on the cross-market data model ("CMDM"), which comprises linked OATS data, equity exchange data feeds from each of the exchanges with which FINRA has entered into a RSA, and transactions reported to FINRA's equity trade reporting facilities. The CMDM will be retired and replaced by a newly created surveillance data mart, the Pattern Optimized Datamart ("POD"), which incorporates both equities and options data. At that point, FINRA's patterns will rely on CAT Data in POD, i.e., Plan Participant and Industry Member data reported in CAT format and linked by CAT.<sup>17</sup> FINRA notes that the Plan Participants transitioned to reporting via the CAT technical specification as of April 26, 2021, and full Plan Participant equities reporting and linkage validations in accordance with the CAT specification commenced on June 1, 2021.<sup>18</sup> Successful completion of the transition to the CAT specification for Plan Participants is a prerequisite for FINRA to retire the CMDM and leverage CAT Data and linkages in POD for its surveillance patterns. As of the date of this filing, FINRA has completed all planned activities on schedule, including substantially completing the process of integrating CAT Data into POD and successfully running large amounts of production CAT Data for the month of May through POD.<sup>19</sup> FINRA anticipates completing additional activities before the proposed OATS retirement date, including, e.g., planned user acceptance testing.<sup>20</sup>

<sup>17</sup> FINRA's Response to Comments noted this dependency, stating that the process of transitioning FINRA's surveillance patterns to CAT Data necessarily includes, among other things, ingestion of all Industry Member and Plan Participant data and linkages in CAT format. See Response to Comments, supra note 7, at 4. The Response to Comments further noted that the Plan Participants would be reporting to CAT via another mechanism until April 2021.

<sup>18</sup> For example, according to the CAT Reporting Technical Specification for Plan Participants (version 4.0.0-r4 dated April 20, 2021), additional linkage error feedback for off-exchange trade reports was effective as of June 1, 2021. The Technical Specifications can be found on the CAT NMS Plan website at [www.catnmsplan.com/sites/default/files/2021-04/04.20.2021-CAT-ReportingTechnical-Specifications-for-Participants-4.0.0-r4.pdf](http://www.catnmsplan.com/sites/default/files/2021-04/04.20.2021-CAT-ReportingTechnical-Specifications-for-Participants-4.0.0-r4.pdf).

<sup>19</sup> FINRA notes that additional POD releases are scheduled; however, these releases introduce minor enhancements to POD, as opposed to significant changes that would impact the way data is ingested or processed in POD.

<sup>20</sup> FINRA notes that user acceptance testing is the final stage of any software development life cycle and enables actual users to test the system to confirm that it is able to carry out the required tasks it was designed to address in real-world situations.

<sup>14</sup> See FINRA's Response to Comments, supra note 7.

<sup>15</sup> FINRA noted that in Phase 2a, linkage is required between the representative street side order and the order being represented when the representative order was originated specifically to represent a single order (received either from a customer or another broker-dealer) and there is: (1) An existing direct electronic link in the firm's system between the order being represented and the representative order, and (2) any resulting executions are immediately and automatically applied to the represented order in the firm's system. As set forth in the OATS Retirement Filing, while such linkages are not required in OATS, FINRA believes that it is appropriate to evaluate them for purposes of retiring OATS because they represent a significant enhancement to the data currently available in OATS and will enhance the quality of the equity audit trail. However, FINRA also explained in the Response to Comments that if all other proposed criteria have been met, FINRA would not anticipate delaying OATS retirement based on Phase 2a representative order linkage error rates alone. In evaluating whether the standards for OATS retirement have been met, FINRA determined that the error rates for the Phase 2a representative order linkages did not have a significant negative impact on the overall error rates for order linkages. Accordingly, FINRA did not need to separately evaluate or exclude Phase 2a representative order linkage rates in measuring the error rates over the applicable period. For example, if the intra-firm linkage error rate had been above 5% over the applicable period, FINRA would have evaluated whether the error rate was the result of unlinked representative orders to create an apples-to-apples comparison to OATS.

<sup>16</sup> See Amendment No. 1.

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

With respect to Plan Participant data, FINRA notes in the OATS Retirement Filing that the test environment for Plan Participant reporting in accordance with the CAT specification opened on February 15, 2021.<sup>21</sup> Plan Participant equity reporting in accordance with the CAT specification in the test environment had a very high compliance rate for data ingestion and validation, and compliance in the production environment is comparable. In addition, starting on April 26, 2021, CAT began linking copies of Industry Member and Plan Participant data reported via the CAT specification in a test environment, and at that point, FINRA began its evaluation of the quality of these linkages. Based on this review and evaluation, in the OATS Retirement Filing, FINRA stated that it believes that the linkages between Plan Participant data and Industry Member data in CAT are comparable to the linkages between RSA exchange data and OATS data in the CMDM today.<sup>22</sup> FINRA CAT and the Plan Participants have now met the necessary criteria for a full cutover from the RSA specification to the CAT specification, including, *e.g.*, achieving comparable data ingestion validation and inter-venue linkage rates (within a variance of under one percent) between RSA and CAT specification submissions.

<sup>21</sup> See, *e.g.*, CAT Q1 2021 Quarterly Progress Report dated April 30, 2021, available at [www.catnmsplan.com/sites/default/files/2021-05/CAT-Q1-2021-QPR.pdf](http://www.catnmsplan.com/sites/default/files/2021-05/CAT-Q1-2021-QPR.pdf).

<sup>22</sup> FINRA notes that the CAT uses the same code in both the test and production environments. Thus, FINRA believes that linkages in the test environment are reliable indicators of linkages in the production environment.

Accordingly, the Operating Committee approved the cutover from the RSA specification to the CAT specification as the official source of Plan Participant data as of June 1, 2021, and today, all Industry Member and Plan Participant equities data reported via the CAT specification is linked in the CAT production environment.

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

Based on these results, as well as the results of its quantitative and qualitative reviews of CAT Data and successful efforts integrating CAT Data into POD, in the OATS Retirement Filing, FINRA stated that it believes that the complete portfolio of equity surveillance patterns will be capable of consuming CAT Data and achieving comparable (or better) output results.

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

FINRA can perform expedited analytics, as required by market events.

As discussed in the OATS Retirement Filing, FINRA is finalizing the development and certification of its surveillance patterns to run on CAT Data on a rolling basis and, in accordance with its existing SDLC procedures, will run a month's worth of data and compare the output before certifying each pattern. For those equity patterns that will be subject to certification after OATS retirement, FINRA anticipates that there would be sufficient time to identify and remediate any issues prior to running the patterns in accordance with the current established cadence. FINRA does not anticipate significant issues arising from additional scheduled POD releases or in the final stages of its pattern development and certification efforts.

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

Specifically, with regard to the additional standards approved in the OATS Retirement Filing, through its use of CAT Data to date, as described above, FINRA believes that these standards have been satisfied. With respect to the first factor, FINRA does not believe that there are any material issues that have not been corrected (or could not be corrected in the course of operation of CAT, as approved by the Operating

Committee)<sup>23</sup> that would impact FINRA's ability to incorporate and use CAT Data in FINRA's surveillance program. For example, the Plan requires that raw unprocessed data that has been ingested by the Plan Processor must be available to Participant regulatory staff and the SEC prior to 12:00 p.m. Eastern Time on T+1, and access to all iterations of processed data must be available to Participant regulatory staff and the SEC between 12:00 p.m. Eastern Time on T+1 and T+5.<sup>24</sup> The Plan Processor also must ensure that regulators have access to corrected and linked order data by 8:00 a.m. Eastern Time on T+5.<sup>25</sup> Additionally, after ingestion by the Central Repository, the raw unprocessed data must be transformed into a format appropriate for data querying and regulatory output.<sup>26</sup> The user-defined direct queries and bulk extracts must provide authorized users with the ability to retrieve CAT Data via a query tool or language that allows users to query all available attributes and data sources.<sup>27</sup> FINRA's use of the CAT Data has not uncovered any processing delays or other material issues impacting the availability of, and FINRA's access to, the data.

With respect to the second factor, FINRA stated in the OATS Retirement Filing that it believes that the CAT includes all data necessary for FINRA to meet its surveillance obligations after the retirement of OATS. FINRA must ensure that the CAT, as the single source of order and trade data, can enable FINRA to conduct accurate and effective market surveillance in accordance with its regulatory obligations.<sup>28</sup> As noted above, Phase 2a

<sup>23</sup> FINRA notes that FINRA CAT tracks known issues relating to Industry Member and Plan Participant reporting. See, e.g., [catnmsplan.com/CAT-Transaction-Known-Issues-List](https://catnmsplan.com/CAT-Transaction-Known-Issues-List). FINRA regularly reviews and analyzes FINRA CAT's list of current and resolved issues and does not believe that any of these issues would impact its ability to incorporate and use CAT Data in its surveillance program.

<sup>24</sup> See CAT NMS Plan, Appendix D, Section 6.2.

<sup>25</sup> See CAT NMS Plan, Appendix C, Section A.2(a).

<sup>26</sup> See CAT NMS Plan, Appendix C, Section A.1(b).

<sup>27</sup> See CAT NMS Plan, Section 6.10(c).

<sup>28</sup> As discussed in the OATS Retirement Filing, OATS was originally proposed to fulfill one of the undertakings contained in an order issued by the Commission relating to the settlement of an enforcement action against FINRA (f/k/a National Association of Securities Dealers, Inc. ("NASD")) for failure to adequately enforce its rules. See Securities Exchange Act Release No. 39729 (March 6, 1998), 63 FR 12559 (March 13, 1998) (Order Approving File No SR-NASD-97- 56) ("OATS Approval Order"); see also Securities Exchange Act Release No. 37538 (August 8, 1996); Administrative Proceeding File No. 3-9056 ("SEC Order"). In the OATS Approval Order, the Commission concluded that OATS satisfied the conditions of the SEC Order

Data includes all events and scenarios covered by OATS and is the most relevant for OATS retirement purposes. FINRA Rule 7440 describes the OATS requirements for recording information, which includes information related to the receipt or origination of orders, order transmittal, and order modifications, cancellations and executions. Large Industry Members and Small Industry Members that currently are reporting to OATS were required to submit data to the CAT for these same events and scenarios commencing in Phase 2a. FINRA's testing, analysis and use of the CAT Data (including integration into POD), as described above, has confirmed that the CAT includes all data necessary for FINRA to meet its surveillance obligations and that CAT is a reliable substitute for OATS. In addition, based on its qualitative data reviews, FINRA has concluded that Industry Member CAT Data, in the aggregate, is a sufficient replacement for OATS for purposes of FINRA's surveillance program.

With respect to the third factor, FINRA stated in the OATS Retirement Filing that it believes that the Plan Processor is sufficiently meeting its obligations under the CAT NMS Plan relating to the reporting and linkage of Phase 2a Data. As detailed in the Implementation Plan and Quarterly Progress Reports submitted by the Plan Participants, the Plan Processor has met its targeted completion dates for the milestones for Phase 2a, including, for example, production Go-Live for Equities 2a file submission and data integrity validation (Large Industry Members and Small OATS Reporters) on June 22, 2020; Production Go-Live for Equities 2a Intrafirm Linkage validations on July 27, 2020; and production go-live for firm-to-firm linkage validations for equities (Large Industry Members and Small OATS Reporters) and exchange and TRF/ORF linkage validations for equities (Large Industry Members and Small OATS Reporters) on October 26, 2020.<sup>29</sup>

Based on the foregoing, FINRA has determined that the CAT meets the accuracy and reliability standards approved by the Commission in the OATS Retirement Filing for purposes of eliminating the OATS Rules. FINRA has determined to retire OATS and remove the OATS rules from its rulebook effective September 1, 2021. Firms must

and was consistent with the Exchange Act. See 63 FR 12559, 12566-67. FINRA believes that it will continue to be in compliance with the requirements of the SEC Order once the OATS Rules are deleted.

<sup>29</sup> The Implementation Plan and Quarterly Progress Reports are available at [www.catnmsplan.com/implementation-plan](https://www.catnmsplan.com/implementation-plan).

continue to report to OATS all order events that occur on or prior to August 31, 2021. Reports submitted to OATS for order events that occur after August 31, 2021 will be rejected. In other words, August 31, 2021 will be the last "OATS Business Day," as defined under FINRA Rule 7450(b)(3), for which OATS will accept order events and perform routine processing (including incorporation of corrections and repairs of rejections) occurring within the normal OATS timeframe for such activities. OATS will continue to accept reports for order events that occur on or prior to August 31, 2021 (including, but not limited to, late and corrected reports for such order events) through September 16, 2021. Firms must ensure that their OATS reporting is accurate and complete for all order events that occur on or prior to August 31, 2021.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>30</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>31</sup> in particular, because it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and 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.

In particular, the Exchange believes that the proposed rule change is consistent with Section C.9 of Appendix C to the Plan, which requires each Participant to "file with the SEC the relevant rule change filing to eliminate or modify its duplicative rules within six (6) months of the SEC's approval of the CAT NMS Plan."<sup>32</sup> The Plan notes that "the elimination of such rules and the retirement of such systems [will] be effective at such time as CAT Data meets minimum standards of accuracy and reliability."<sup>33</sup> Accordingly, the Exchange believes the proposed rule change implements, supports, interprets or clarifies the provisions of the Plan, and is designed to assist the Exchange and its member organizations in meeting regulatory obligations pursuant to, and milestones established by, the Plan. In approving the Plan, the SEC

<sup>30</sup> 15 U.S.C. 78f(b).

<sup>31</sup> 15 U.S.C. 78f(b)(5).

<sup>32</sup> Appendix C of CAT NMS Plan, Approval Order at 85010.

<sup>33</sup> *Id.*

noted that it “is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act.”<sup>34</sup> To the extent that this proposal implements, interprets or clarifies the Plan and applies specific requirements to member organizations, the Exchange believes that this proposal furthers the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Act.

#### *B. Self-Regulatory Organization’s Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change is not designed to address any competitive issue but rather implement provisions of the CAT NMS Plan, and is designed to assist the Exchange in meeting its regulatory obligations pursuant to the Plan.

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

No written comments were solicited or received with respect to the proposed rule change.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>35</sup> and Rule 19b-4(f)(6) thereunder.<sup>36</sup> Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>37</sup> and Rule 19b-4(f)(6)(iii) thereunder.<sup>38</sup> The Exchange states that

the proposed rule change would not significantly affect the protection of investors or the public interest because it seeks to delete the Exchange’s OATS rules to be consistent with FINRA’s announcement to retire its OATS rules effective September 1, 2021. The Exchange further believes that the proposed rule change would not impose any significant burden on competition because the proposed rule change is not designed to address any competitive issue but rather implement provisions of the CAT NMS Plan, and is designed to assist the Exchange in meeting its regulatory obligations pursuant to the Plan.

A proposed rule change filed under Rule 19b-4(f)(6)<sup>39</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>40</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative by September 1, 2021, the date that FINRA has announced that it will retire OATS and delete the OATS rules from its rulebook, unless FINRA decides not to retire OATS as scheduled. If FINRA decides not to retire OATS as scheduled, member organizations will still be required to report to OATS. As discussed above, the Exchange believes that the OATS reporting requirements in the Rule 7400 Series are duplicative of information available in the CAT and will no longer be necessary now that the CAT is operational. In addition, August 31, 2021, will be the last “OATS Business Day,” as defined under FINRA Rule 7450(b)(3), for which OATS will accept order events and perform routine processing, and reports submitted to OATS for order events that occur after August 31, 2021, will be rejected. The Commission believes that it is consistent with the protection of investors and the public interest for the Exchange to delete its OATS reporting rules at the same time that FINRA retires OATS. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative on September 1, 2021.<sup>41</sup>

of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>39</sup> 17 CFR 240.19b-4(f)(6).

<sup>40</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>41</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

At any time within 60 days of the filing of this proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

### **IV. Solicitation of Comments**

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

#### *Electronic Comments*

- Use the Commission’s internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2021-48 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.
- All submissions should refer to File Number SR-NYSE-2021-48. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission’s internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission’s Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should

<sup>34</sup> Approval Order at 84697.

<sup>35</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>36</sup> 17 CFR 240.19b-4(f)(6).

<sup>37</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>38</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange’s intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing

submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2021-48, and should be submitted on or before September 29, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>42</sup>

**J. Matthew DeLesDernier,**  
Assistant Secretary.

[FR Doc. 2021-19295 Filed 9-7-21; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34370; 812-15229]

### Investment Managers Series Trust and Hamilton Lane Advisors, L.L.C.; Notice of Application

September 1, 2021.

**AGENCY:** Securities and Exchange Commission (“Commission”).

**ACTION:** Notice.

Notice of an application under section 6(c) of the Investment Company Act of 1940 (“Act”) for an exemption from section 15(a) of the Act, as well as from certain disclosure requirements in rule 20a-1 under the Act, Item 19(a)(3) of Form N-1A, Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8) and 22(c)(9) of Schedule 14A under the Securities Exchange Act of 1934 (“1934 Act”), and sections 6-07(2)(a), (b), and (c) of Regulation S-X (“Disclosure Requirements”).

*Applicants:* Investment Managers Series Trust (the “Trust”), a Delaware statutory trust registered under the Act as an open-end management investment company with multiple series, which include the *361 Domestic Long/Short Equity Fund* and the *361 Global Long/Short Equity Fund* (each a “Fund”), and Hamilton Lane Advisors, L.L.C. (“Initial Adviser”), a Pennsylvania limited liability company registered as an investment adviser under the Investment Advisers Act of 1940 (“Advisers Act”) that serves as an investment adviser to the Funds (collectively with the Trust, the “Applicants”).

*Summary of Application:* The requested exemption would permit Applicants to enter into and materially amend subadvisory agreements with subadvisers without shareholder approval and would grant relief from the Disclosure Requirements as they relate to fees paid to the subadvisers.

*Filing Dates:* The application was filed on May 7, 2021, and amended on August 5, 2021, August 13, 2021, and August 31, 2021.

*Hearing or Notification of Hearing:* An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by emailing the Commission’s Secretary at *Secretarys-Office@sec.gov* and serving applicants with a copy of the request by email. Hearing requests should be received by the Commission by 5:30 p.m. on September 26, 2021, and should be accompanied by proof of service on the applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Pursuant to rule 0-5 under the Act, hearing requests should state the nature of the writer’s interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission’s Secretary at *Secretarys-Office@sec.gov*.

**ADDRESSES:** The Commission: *Secretarys-Office@sec.gov*. The Trust and the Initial Adviser: *diane.drake@mfac-ca.com* (with a copy to *laurie.dee@morganlewis.com*).

**FOR FURTHER INFORMATION CONTACT:** Erin Loomis Moore, Senior Counsel, at (202) 551-6721, or Parisa Haghshenas, Branch Chief, at (202) 551-6825 (Division of Investment Management, Chief Counsel’s Office).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained via the Commission’s website by searching for the file number or an Applicant using the “Company” name box, at <http://www.sec.gov/search/search.htm> or by calling (202) 551-8090.

#### I. Requested Exemptive Relief

1. Applicants request an order to permit the Adviser,<sup>1</sup> subject to the approval of the board of trustees of the Trust (collectively, the “Board”),<sup>2</sup> including a majority of the trustees who are not “interested persons” of the Trust

<sup>1</sup> The term “Adviser” means (i) the Initial Adviser, (ii) its successors, and (iii) any entity controlling, controlled by or under common control with, the Initial Adviser or its successors that serves as the primary adviser to a Subadvised Fund (as defined below). For the purposes of the requested order, “successor” is limited to an entity that results from a reorganization into another jurisdiction or a change in the type of business organization.

<sup>2</sup> The term “Board” also includes the board of trustees or directors of a future Subadvised Fund (as defined below), if different from the board of trustees of the Trust.

or the Adviser, as defined in section 2(a)(19) of the Act (the “Independent Trustees”), without obtaining shareholder approval, to: (i) Select investment subadvisers (“Subadvisers”) for all or a portion of the assets of one or more of the Funds pursuant to an investment subadvisory agreement with each Subadviser (each a “Subadvisory Agreement”); and (ii) materially amend Subadvisory Agreements with the Subadvisers.

2. Applicants also request an order exempting the Subadvised Funds (as defined below) from the Disclosure Requirements, which require each Fund to disclose fees paid to a Subadviser. Applicants seek relief to permit each Subadvised Fund to disclose (as a dollar amount and a percentage of the Fund’s net assets): (i) The aggregate fees paid to the Adviser and any Wholly-Owned Subadvisers; and (ii) the aggregate fees paid to Affiliated and Non-Affiliated Subadvisers (“Aggregate Fee Disclosure”).<sup>3</sup> Applicants seek an exemption to permit a Subadvised Fund to include only the Aggregate Fee Disclosure.<sup>4</sup>

3. Applicants request that the relief apply to Applicants, as well as to any future Fund and any other existing or future registered open-end management investment company or series thereof that intends to rely on the requested order in the future and that: (i) Is advised by the Adviser; (ii) uses the multi-manager structure described in the application; and (iii) complies with the terms and conditions of the application (each, a “Subadvised Fund”).<sup>5</sup>

4. 361 Capital, LLC (“361 Capital”) previously served as the investment adviser to the Funds. The Commission

<sup>3</sup> A “Wholly-Owned Subadviser” is any investment adviser that is (1) an indirect or direct “wholly-owned subsidiary” (as such term is defined in section 2(a)(43) of the 1940 Act) of the Adviser, (2) a “sister company” of the Adviser that is an indirect or direct “wholly-owned subsidiary” of the same company that indirectly or directly wholly owns the Adviser (the Adviser’s “parent company”), or (3) a parent company of the Adviser. A “Non-Affiliated Subadviser” is any investment adviser that is not an “affiliated person” (as defined in the 1940 Act) of a Fund or the Adviser, except to the extent that an affiliation arises solely because the Subadviser serves as a subadviser to one or more Funds. Section 2(a)(43) of the 1940 Act defines “wholly-owned subsidiary” of a person as a company 95 per centum or more of the outstanding voting securities of which are, directly or indirectly, owned by such a person.

<sup>4</sup> Applicants note that all other items required by sections 6-07(2)(a), (b) and (c) of Regulation S-X will be disclosed.

<sup>5</sup> All registered open-end investment companies that currently intend to rely on the requested order are named as Applicants. Any entity that relies on the requested order will do so only in accordance with the terms and conditions contained in the application.