

p.m. until 9:00 p.m. (CT), at the Palo Community Center, located at 2800 Hollenbeck Road, in Palo, Iowa. The virtual public meeting will occur during the week of October 4, 2021, and will be noticed separately with details provided on the NRC's public meeting website at <https://www.nrc.gov/pmns/mtg>.

The NRC is continuing to closely monitor the Coronavirus Disease 2019 public health emergency and will make changes or cancellations to these meetings as necessary to protect public health and safety. The most current information for both the planned DAEC PSDAR meetings will be available on the NRC's public meeting website previously referenced, or by contacting the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document. The NRC requests that comments that are not provided during the meetings be submitted in writing, as noted in section I, "Obtaining Information and Submitting Comments," of this document, by December 20, 2021.

Dated: September 2, 2021.

For the Nuclear Regulatory Commission.

**Bruce A. Watson,**

*Chief, Reactor Decommissioning Branch, Division of Decommissioning, Uranium Recovery, and Waste Programs, Office of Nuclear Material Safety and Safeguards.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-92868; File No. SR-IEX-2021-10]

### Self-Regulatory Organizations; Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Eliminate IEX Rule 11.420 (Order Audit Trail System ("OATS") Requirements) To Reflect the September 1, 2021 Retirement of OATS

September 2, 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 31, 2021, the Investors Exchange LLC ("IEX" 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

Pursuant to the provisions of Section 19(b)(1) of the Act, and Rule 19b-4 thereunder, IEX is filing with the Commission a proposed rule change to eliminate IEX Rule 11.420 (Order Audit Trail System ("OATS") Requirements) to reflect that as of September 1, 2021, the Financial Industry Regulatory Authority, Inc. ("FINRA") will have retired OATS, and Industry Members will be effectively reporting to the consolidated audit trail ("CAT") adopted pursuant to the National Market System Plan Governing the Consolidated Audit Trail (the "CAT NMS Plan" or "Plan").

The text of the proposed rule change is available at the Exchange's website at [www.iextrading.com](http://www.iextrading.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

IEX is filing with the Commission a proposed rule change to eliminate IEX Rule 11.420 to reflect that as of September 1, 2021, FINRA will have retired OATS, and Industry Members will be effectively reporting to the CAT adopted pursuant to the CAT NMS Plan.

###### I Background

IEX, FINRA, and the other national securities exchanges (collectively, the "Participants")<sup>3</sup> filed with the

Commission, pursuant to Section 11A of the Exchange Act<sup>4</sup> and Rule 608 of Regulation NMS thereunder,<sup>5</sup> the CAT NMS Plan.<sup>6</sup> The Participants filed the Plan to comply with Rule 613 of Regulation NMS under the Exchange Act.<sup>7</sup> The Plan was published for comment in the **Federal Register** on May 17, 2016,<sup>8</sup> and approved by the Commission, as modified, on November 15, 2016.<sup>9</sup> On March 15, 2017, the Commission approved the new IEX Rule Series 11.600<sup>10</sup> to implement provisions of the CAT NMS Plan that are applicable to IEX Members.<sup>11</sup>

The CAT NMS Plan is intended to create, implement, and maintain a consolidated audit trail that will capture in a single consolidated data source 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.<sup>12</sup> Among other things, the CAT NMS Plan, as modified by the Commission, 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>13</sup> The Plan notes that "the

<sup>4</sup> 15 U.S.C. 78k-1.

<sup>5</sup> 17 CFR 242.608.

<sup>6</sup> See Letter from the Participants to Brent J. Fields, Secretary, Commission, dated September 30, 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.

<sup>7</sup> 17 CFR 242.613.

<sup>8</sup> See Securities Exchange Act Rel. No. 77724 (Apr. 27, 2016), 81 FR 30614 (May 17, 2016).

<sup>9</sup> See Securities Exchange Act Rel. No. 79318 (Nov. 15, 2016), 81 FR 84696 (Nov. 23, 2016).

<sup>10</sup> See Securities Exchange Act Rel. No. 80255 (March 15, 2017), 82 FR 14563 (March 21, 2017).

<sup>11</sup> See IEX Rule 1.160(s).

<sup>12</sup> See, e.g., Securities Exchange Act Release No. 67457 (July 18, 2012), 77 FR 45722, 45723 (August 1, 2012).

<sup>13</sup> See CAT NMS Plan, Appendix C, Section C.9. In compliance with this requirement, on May 15, 2017, IEX, alongside the other Participants, filed a proposed rule change to eliminate the OATS Rules and amend IEX Rule 8.220 (the Electronic Blue Sheets or "EBS" rule). See Securities Exchange Act Release No. 80788 (May 26, 2017), 82 FR 25400 (June 1, 2017) (SR-IEX-2017-18) ("original proposal"). IEX filed an amendment to the original proposal on August 24, 2017. See Letter from Claudia Crowley to Brent Fields dated August 24, 2017, available at <https://www.sec.gov/comments/sr-iex-2017-18/iex201718-2243339-160872.pdf>. The original proposal was subsequently withdrawn but provided similar views and mechanisms for eliminating the OATS rule as this proposed rule change does, and, as noted above, also proposed to amend the EBS rules. See Securities Exchange Act Release No. 82524 (January 17, 2018), 83 FR 3239 (January 23, 2018) (Notice of Withdrawal of File No. SR-IEX-2017-18). IEX notes that the current filing addresses only the elimination of the OATS rule.

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

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

<sup>3</sup> For a complete list of Participants, see Exhibit A to the Limited Liability Company Agreement of Consolidated Audit Trail, LLC, available at [www.catnmsplan.com/sites/default/files/2020-07/LLC-Agreement-of-Consolidated-Audit-Trail-LLC-as-of-7.24.20.pdf](http://www.catnmsplan.com/sites/default/files/2020-07/LLC-Agreement-of-Consolidated-Audit-Trail-LLC-as-of-7.24.20.pdf).

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>14</sup> Specifically, the Plan requires the rule filing to discuss the following:

- Specific accuracy and reliability standards that will determine when duplicative systems will be retired, including, but not limited to, whether the attainment of a certain Error Rate should determine when a system duplicative of the CAT can be retired;
- whether the availability of certain data from Small Industry Members<sup>15</sup> two years after the Effective Date would facilitate a more expeditious retirement of duplicative systems; and
- whether individual Industry Members can be exempted from reporting to duplicative systems once their CAT reporting meets specified accuracy and reliability standards, including, but not limited to, ways in which establishing cross-system regulatory functionality or integrating data from existing systems and the CAT would facilitate such Individual Industry Member exemptions.<sup>16</sup>

On November 30, 2020, the Commission approved a FINRA rule filing proposing to eliminate the FINRA OATS system once FINRA members are effectively reporting to the CAT and the CAT’s accuracy and reliability meet certain standards.<sup>17</sup> Specifically, FINRA

Proposed amendments to the EBS rules would be subject to a separate rule filing made in conjunction with SEC rulemaking to amend Rule 17a–25 under the Exchange Act. 17 CFR 240.17a–25.

<sup>14</sup> See CAT NMS Plan, Appendix C, Section C.9.

<sup>15</sup> “Small Industry Member” is defined in IEX Rule 11.610(pp) as an Industry Member that qualifies as a small broker-dealer as defined in Rule 0–10(c) of the Exchange Act. On April 20, 2020, the Commission granted exemptive relief from certain provisions of the CAT NMS Plan related to broker-dealers that do not qualify as Small Industry Members solely because such broker-dealers satisfy Rule 0–10(i)(2) under the Exchange Act in that they introduce transactions on a fully disclosed basis to clearing firms that are not small businesses or small organizations (referred to as “Introducing Industry Members”). Specifically, the Commission provided exemptive relief from requiring Introducing Industry Members to comply with the requirements of the CAT NMS Plan that apply to Industry Members other than Small Industry Members (“Large Industry Members”), provided that the Participants require such Introducing Industry Members to comply with the requirements of the CAT NMS Plan that apply to Small Industry Members. See Securities Exchange Act Release No. 88703 (April 20, 2020), 85 FR 23115 (April 24, 2020) (Order Granting Limited Exemptive Relief Related to Certain Introducing Brokers From the Requirements of the CAT NMS Plan) (the “Introducing Brokers Exemptive Order”). As used herein, the term “Small Industry Member” includes Introducing Industry Members in accordance with the Introducing Brokers Exemptive Order.

<sup>16</sup> See *supra* note 14.

<sup>17</sup> See Securities Exchange Act Release No. 90535 (November 30, 2020), 85 FR 78395 (December 4,

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<sup>18</sup> 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 (hereafter the “threshold requirements”), 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 in the initial phase of reporting (“Phase 2a”) of Industry Member Data.

In the OATS Retirement Plan Order, the Commission approved FINRA’s proposal for how it would measure the CAT Data’s accuracy and reliability. Specifically, the Commission endorsed FINRA’s proposal that FINRA’s review of CAT Data and error rates would be based on data and linkages in 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. And FINRA would not consider options order events or Phase 2c data and validations, which are not in OATS today, for purposes of OATS retirement.<sup>19</sup>

On June 17, 2021, FINRA made an immediately effective filing setting forth the basis for its determination that the accuracy and reliability of the CAT met the standards approved by the Commission in the OATS Retirement Plan Order and designating September 1, 2021 as the date on which FINRA would retire OATS.<sup>20</sup> Specifically, FINRA determined that the CAT met the threshold requirements endorsed by the Commission in the OATS Retirement Plan Order for Industry Member reporting in each of the following categories:

#### A. Rejection Rates and Data Validations

As described in the OATS Retirement Filing, the Plan Processor must perform

2020) (SR–FINRA–2020–024) (“OATS Retirement Plan Order”).

<sup>18</sup> As set forth in the OATS Retirement Plan Order, the 180 day “applicable period” ran from October 26, 2020 to April 26, 2021. October 26, 2020 was the date that Industry Members were required to begin correcting all errors for inter-firm linkages and exchange/TFR/ORF match validations.

<sup>19</sup> See *supra* note 17.

<sup>20</sup> See Securities Exchange Act Release No. 92239 (June 23, 2021), 86 FR 34293 (June 29, 2021) (SR–FINRA–2021–017) (“OATS Retirement Filing”).

certain basic data validations, 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.<sup>21</sup> FINRA determined that for the applicable period, aggregate rejection rates across all Industry Member Reporters were 0.03% pre-correction and 0.01% post-correction, which far exceeds the threshold requirements of a 5% or lower pre-correction error rate and a 2% or lower post-correction error rate.

#### B. 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 determined that for the applicable period, the intra-firm linkage accuracy rates across all Industry Member Reporters were 99.07% pre-correction and 99.99% post-correction, which far exceeds the threshold requirements of 95% or higher pre-correction and 98% or higher post-correction (in other words, the intra-firm linkages accuracy far exceeds the threshold requirement that there be less than 5% inaccuracy pre-correction and less than 2% inaccuracy post-correction).

#### C. 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 determined that for the applicable period, the intra-firm linkage accuracy rates across all Industry Member Reporters were 99.08% pre-correction and 99.84% post-correction, which far exceed the threshold requirements of 95% or higher pre-correction and 98% or higher post-correction (in other words, the inter-firm linkages accuracy far exceeds the threshold requirement that there be less than 5% inaccuracy pre-correction and less than 2% inaccuracy post-correction).

<sup>21</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.

#### D. Order Linkage Rates

As described in the OATS Retirement Filing, in addition to creating linkages within and between broker-dealers, the Plan Processor must be able to create lifecycles to link various pieces of related orders. For example, the Plan requires linkages of order information to create an order lifecycle from origination or receipt to cancellation or execution. This category essentially combines all of the order-related linkages to capture an overall snapshot of order linkages in the CAT.<sup>22</sup> FINRA determined that for the applicable period, the order-related linkage accuracy rates across all Industry Member Reporters were 99.66% pre-correction and 99.93% post-correction, which far exceed the threshold requirements of 95% or higher pre-correction and 98% or higher post-correction (in other words, the order linkages accuracy far exceeds the threshold requirement that there be less than 5% inaccuracy pre-correction and less than 2% inaccuracy post-correction).

#### E. 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 determined that for the applicable period, the match rate across all equity exchanges for orders routed from Industry Members to an exchange was 99.51% pre-correction and 99.87% post-correction. This match rate far exceeds the threshold requirements of 95% or higher pre-correction and 98% or higher post-correction (in other words, the match rate accuracy far exceeds the threshold requirement that there be less than 5% inaccuracy pre-correction and less than 2% inaccuracy post-correction).

Based upon the accuracy and reliability of the above five categories of CAT Data, FINRA determined that the CAT Data met the accuracy and reliability standards required for OATS retirement.<sup>23</sup>

#### II. FINRA's Use of CAT Data

Additionally, the OATS Retirement Plan Order set forth that before retiring OATS, FINRA's use of CAT data 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;<sup>24</sup> 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.

As set forth in FINRA's OATS Retirement Filing, by September 1, 2021, FINRA will be ready to retire its use of OATS data for cross-market surveillance, and replace it with a newly created surveillance data mart, the Pattern Optimized Datamart ("POD"), which incorporates equities (and options) data submitted by both Participants such as IEX and Industry Members. IEX, like other Participants, transitioned from reporting to FINRA via the RSA specification, to reporting via the CAT technical specification as of April 26, 2021, and full Participant equities reporting and linkage validations commenced on June 1, 2021.<sup>25</sup> Successful completion of the transition to the CAT specification for Participants was a prerequisite for FINRA to retire the OATS-based cross market surveillance patterns and leverage CAT Data and linkages in POD for its surveillance patterns. 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>26</sup> FINRA anticipates completing additional activities before the proposed OATS retirement date of September 1, 2021, including planned user acceptance testing.<sup>27</sup>

Additionally, FINRA has confirmed that all of the data required to support the transition from OATS to CAT is available in CAT.<sup>28</sup> Specifically, FINRA, supported by the Participants, conducted a mapping of all OATS data

<sup>24</sup> FINRA conducts surveillance on behalf of IEX pursuant to the Regulatory Service Agreement entered into by IEX and FINRA ("RSA"). Therefore, any references in this rule filing to FINRA surveillance include FINRA's use of either OATS or CAT Data in furtherance of the regulatory services it provides on behalf of IEX.

<sup>25</sup> For example, according to the CAT Reporting Technical Specification for Participants (version 4.0.0-r4 dated April 20, 2021), additional linkage error feedback for off-exchange trade reports was effective as of June 1, 2021. The Technical Specifications can be found on the CAT NMS Plan website at [www.catnmsplan.com/sites/default/files/2021-04/04.20.2021-CAT-Reporting-Technical-Specifications-for-Participants-4.0.0-r4.pdf](http://www.catnmsplan.com/sites/default/files/2021-04/04.20.2021-CAT-Reporting-Technical-Specifications-for-Participants-4.0.0-r4.pdf).

<sup>26</sup> See *supra* note 20.

<sup>27</sup> As noted in the FINRA OATS Retirement Filing, user acceptance testing is the final stage of any software development lifecycle and enables actual users to test the system to confirm it is able to carry out the required tasks it was designed to address in real-world situations.

<sup>28</sup> See *supra* note 20.

to CAT data, and then completed a "gap analysis" to address any issues with the field-level mapping of OATS to CAT data. Furthermore, IEX, along with other Participants, has had a very high compliance rate in reporting CAT Data using the CAT specifications (both in the testing and production environments).<sup>29</sup> Reviewing the Participant submitted CAT Data and matching it with Industry Member data, FINRA determined that the data linkages in CAT are "comparable to the linkages between RSA exchange data and OATS data" currently used by FINRA.<sup>30</sup> Accordingly, the CAT NMS Plan Operating Committee approved the cutover from the RSA specification to the CAT specification as the official source of Participant data as of June 1, 2021, and today, all Industry Member and Participant equities data reported via the CAT specification is linked in the CAT production environment.

Thus, FINRA will use OATS data for surveillance patterns run through the end of the second quarter of 2021 and has already begun using CAT Data for its surveillance patterns for review periods beginning in the third quarter of 2021.<sup>31</sup> As detailed in the OATS Retirement Filing, FINRA will continue to 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.<sup>32</sup>

#### III. OATS May be Retired in Light of the Accuracy and Reliability of the CAT Data

IEX, like FINRA, believes that the three additional standards set forth in the OATS Retirement Order for retiring OATS have been satisfied. With respect to the first factor, IEX, like 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) that would impact FINRA's ability to incorporate and use CAT Data in FINRA's surveillance program, which it conducts on behalf of IEX pursuant to the RSA. 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

<sup>29</sup> For example, for the month of July 2021, IEX's compliance error rate for CAT Data reporting was 0.0435% (i.e., 99.9565% of records were successfully reported).

<sup>30</sup> See *supra* note 20.

<sup>31</sup> See *supra* note 20.

<sup>32</sup> See *supra* note 20.

<sup>22</sup> See Letter from Lisa C. Horrigan, Associate General Counsel, FINRA, to Vanessa Countryman, Secretary, Commission, dated October 29, 2020.

<sup>23</sup> See *supra* note 20.

Participant regulatory staff and the SEC between 12:00 p.m. Eastern Time on T+1 and T+5.<sup>33</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>34</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>35</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>36</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.<sup>37</sup>

With respect to the second factor, IEX, like FINRA, believes that the CAT includes all data necessary for FINRA to meet its surveillance obligations after the retirement of OATS. FINRA must ensure that the CAT, as the single source of order and trade data, can enable FINRA to conduct accurate and effective market surveillance in accordance with its regulatory obligations. As noted above, Phase 2a Data includes all events and scenarios covered by OATS and is the most relevant for OATS retirement purposes. 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, IEX, like FINRA, believes that the Plan Processor is sufficiently meeting its obligations under the CAT NMS Plan relating to the reporting and linkage of Phase 2a Data. As detailed in the Implementation Plan and Quarterly Progress Reports submitted by the Plan Participants, the Plan Processor has met its targeted completion dates for the milestones for Phase 2a, including, for example, production Go-Live for Equities 2a file submission and data integrity validation (Large Industry

Members and Small OATS Reporters) on June 22, 2020; Production Go-Live for Equities 2a Intrafirm Linkage validations on July 27, 2020; and production go-live for firm-to-firm linkage validations for equities (Large Industry Members and Small OATS Reporters) and exchange and TRF/ORF linkage validations for equities (Large Industry Members and Small OATS Reporters) on October 26, 2020.<sup>38</sup>

Based on the foregoing, IEX agrees with FINRA's determination that the CAT meets the accuracy and reliability standards approved by the Commission in the OATS Retirement Order for purposes of eliminating OATS. FINRA has determined to retire OATS effective September 1, 2021.<sup>39</sup> Firms must continue to report to OATS all order events that occur on or prior to August 31, 2021. Reports submitted to OATS for order events that occur after August 31, 2021 will be rejected. In other words, August 31, 2021 will be the last "OATS Business Day," as defined under 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. IEX Rule 11.420, like the FINRA OATS Rules, will be deleted from the IEX rulebook effective September 1, 2021.<sup>40</sup>

In light of the foregoing, IEX, like FINRA, believes that retiring OATS as of September 1, 2021 is appropriate, particularly given the potential risks of continuing to run OATS and CAT in parallel for an additional period of time. Such potential risks may include, for example, on an industry-wide basis: (1) Processing and storage capacity issues from operating two systems (particularly in the event of extraordinary market volume); (2) cybersecurity risks from having data flow through two separate systems for a longer time period; (3) systems issues from reporting

infrastructure that is near end-of-life; and (4) the expense and burden on CAT Reporters of dual reporting, particularly in the event of systems issues requiring correction and/or resubmission of data and competing resource priorities between OATS and CAT reporting and repair activities.

IEX has filed the proposed rule change for immediate effectiveness and is seeking a waiver of the 30 day operative delay to allow its OATS rules to be retired concurrent with the September 1, 2021 retirement of FINRA's OATS Rules. IEX will also announce the retirement of OATS via a trader alert to its Members.

## 2. Statutory Basis

IEX believes that the proposed rule change is consistent with the provisions of Section 6(b)(5) of the Act,<sup>41</sup> which require, among other things, that IEX's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. IEX believes that the proposed retirement of IEX Rule 11.420 fulfills the obligation in the CAT NMS Plan for IEX to submit a proposed rule change to eliminate or modify duplicative rules, and that the CAT NMS Plan has achieved the accuracy and reliability standards required by the Commission in the OATS Retirement Order.

Additionally, as discussed in the Purpose section, IEX believes that the use of CAT Data, whether by IEX directly, or by FINRA pursuant to the RSA, will continue to allow for accurate and effective surveillance of market activity on IEX. Therefore, IEX will continue to be able to fulfill its statutory obligation to protect investors and the public interest after the retirement of OATS.

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

IEX does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. IEX notes that the proposed rule change implements provisions of the CAT NMS Plan, facilitates the retirement of certain existing regulatory systems, and is designed to assist the Exchange in meeting its regulatory obligations pursuant to the Plan. IEX also notes that the proposed rule change will apply equally to all firms that trade NMS Securities. In addition, all national securities exchanges and FINRA are

<sup>33</sup> See CAT NMS Plan, Appendix D, Section 6.2.

<sup>34</sup> See CAT NMS Plan, Appendix C, Section A.2(a).

<sup>35</sup> See CAT NMS Plan, Appendix C, Section A.1(b).

<sup>36</sup> See CAT NMS Plan, Section 6.10(c).

<sup>37</sup> See *supra* note 20.

<sup>38</sup> The Implementation Plan and Quarterly Progress Reports are available at [www.catnmsplan.com/implementation-plan](http://www.catnmsplan.com/implementation-plan).

<sup>39</sup> See FINRA Regulatory Notice 21-21 (June 2021).

<sup>40</sup> In the unlikely event that FINRA determines it is unable to retire OATS effective September 1, 2021, IEX will delay the retirement of IEX Rule 11.420 pending the actual retirement of FINRA OATS.

<sup>41</sup> 15 U.S.C. 78f(b)(5).

proposing substantially similar rule filings. Therefore, this is not a competitive rule filing, and, therefore, it does not impose a burden on competition.

Furthermore, IEX notes that FINRA undertook an economic impact assessment of the potential costs and benefits associated with OATS retirement and determined that CAT meets or exceeds the OATS standards.

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

Written comments were neither solicited nor received.

**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>42</sup> and Rule 19b-4(f)(6) thereunder.<sup>43</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>44</sup> and Rule 19b-4(f)(6)(iii) thereunder.<sup>45</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>46</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>47</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 first day on which FINRA will no longer accept OATS data (unless FINRA delays the OATS retirement past that

date.)<sup>48</sup> As discussed above, IEX believes that it is appropriate for FINRA to retire OATS as of September 1, 2021. IEX states that the use of CAT Data, whether by IEX directly, or by FINRA pursuant to IEX's RSA with FINRA, will continue to allow for accurate and effective surveillance of market activity on IEX. In addition, August 31, 2021, will be the last "OATS Business Day," as defined under FINRA Rule 7450(b)(3), 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 IEX 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>49</sup>

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-IEX-2021-10 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-IEX-2021-10. This file number should be included on the subject line if email is used. To help the

<sup>48</sup> See *supra* note 40.

<sup>49</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).

Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the IEX's principal office and on its internet website at [www.iextrading.com](http://www.iextrading.com). All comments received will be posted without change. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-IEX-2021-10, and should be submitted on or before September 30, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>50</sup>

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

[FR Doc. 2021-19422 Filed 9-8-21; 8:45 am]

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-92867; File No. SR-NYSEArca-2021-65]

**Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To List and Trade Shares of the Sprott ESG Gold ETF Under NYSE Arca Rule 8.201-E (Commodity-Based Trust Shares)**

September 2, 2021.

On July 19, 2021, NYSE Arca, Inc. ("NYSE Arca") filed with the Securities and Exchange Commission

<sup>50</sup> 17 CFR 200.30-3(a)(12).

<sup>42</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>43</sup> 17 CFR 240.19b-4(f)(6).

<sup>44</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>45</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 of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>46</sup> 17 CFR 240.19b-4(f)(6).

<sup>47</sup> 17 CFR 240.19b-4(f)(6)(iii).