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Page 1 of * 55

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No. * SR 2021 - * 071

Amendment No. (req. for Amendments *)

Filing by The Nasdaq Stock Market LLC

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
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Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	Rule		
			<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input checked="" type="checkbox"/> 19b-4(f)(6)	

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010
Section 806(e)(1) *

Section 806(e)(2) *

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 3C(b)(2) *

Exhibit 2 Sent As Paper Document

Exhibit 3 Sent As Paper Document

Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

A proposal to delete the Order Audit Trail System rules in the Equity 5 Series of the Exchanges rulebook that provides for the collection of information that is duplicative of the data collection requirements of the CAT.

Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name * Jonathan Last Name * Cayne

Title * Principal Associate General Counsel

E-mail * Jonathan.Cayne@nasdaq.com

Telephone * (301) 978-8493 Fax


Signature

Pursuant to the requirements of the Securities Exchange of 1934, The Nasdaq Stock Market LLC has duty caused this filing to be signed on its behalf by the undersigned thereunto duty authorized.

Date 09/03/2021 (Title *)

By John Zecca EVP and Chief Legal Counsel
(Name *)

NOTE: Clicking the signature block at right will initiate digitally signing the form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

 Date: 2021.09.03 12:40:17 -04'00'

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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EDFS website.

Form 19b-4 Information *

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SR-NASDAQ-2021-071 19b-4.doc

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change *

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SR-NASDAQ-2021-071 Exhibit 1.doc

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 1A - Notice of Proposed Rule Change, Security-Based Swap Submission, or Advanced Notice by Clearing Agencies *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2- Notices, Written Comments, Transcripts, Other Communications

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Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit Sent As Paper Document

Exhibit 3 - Form, Report, or Questionnaire

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Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit Sent As Paper Document

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

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SR-NASDAQ-2021-071 Exhibit 5.doc

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934, as amended (the “Act”)¹ and Rule 19b-4 thereunder,² and as required by the National Market System Plan Governing the Consolidated Audit Trail (the “CAT NMS Plan” or “Plan”),³ The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) proposes to delete the Order Audit Trail System (“OATS”) rules in the Equity 5 Series of the Exchange’s rulebook that provides 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 text of the proposed rule change is provided in Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of the Exchange pursuant to authority delegated by the Board of Directors (the “Board”) on November 5, 2020. Exchange staff will advise the Board of any action taken pursuant to delegated authority. No other action is necessary for the filing of the rule change.

Questions and comments on the proposed rule change may be directed to:

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Unless otherwise specified, capitalized terms used in this rule filing are defined as set forth in the CAT Compliance Rule Series or in the CAT NMS Plan that the Exchange, FINRA and the other national securities exchanges (collectively, the “Participants”) filed with the Commission, pursuant to Section 11A of the Exchange Act and Rule 608 of Regulation NMS thereunder.

Jonathan F. Cayne
Principal Associate General Counsel
Nasdaq, Inc.
(301) 978-8493

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

(a) 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, 2016,⁴ and approved by the Commission, as modified, on November 15, 2016.⁵

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").⁶ On October 29, 2020, FINRA filed Amendment No. 1 to the proposed rule change ("Amendment No. 1") and a response to the comments that

⁴ See Securities Exchange Act Release No. 77724 (April 27, 2016), 81 FR 30614 (May 17, 2016).

⁵ 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").

⁶ 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).

were submitted on the original filing (“Response to Comments”).⁷ On November 30, 2020, the Commission approved the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.⁸ 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 standards approved by the Commission in the OATS Retirement Filing for purposes of eliminating the OATS rules.⁹ 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 Equity 5 Series will no longer be necessary and proposes to delete such rules from the Exchange’s rulebook. 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 Equity 5 Series consists of Section 1 through Section 6 and sets forth the

⁷ See Letter from Lisa C. Horrigan, Associate General Counsel, FINRA, to Vanessa Countryman, Secretary, Commission, dated October 29, 2020.

⁸ 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).

⁹ 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).

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,¹⁰ traded on the Exchange, including Nasdaq-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 Equity 5 Series are duplicative of information available in the CAT and thus will no longer be necessary now that the CAT is operational.

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.¹¹ 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

¹⁰ 17 CFR 242.600(B)(47).

¹¹ Appendix C of CAT NMS Plan, Approval Order at 85010.

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).¹² 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

¹² 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.

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.¹³

Rejection Rates and Data Validations

As described in the OATS Retirement Filing, the Plan Processor must perform certain basic data validations,¹⁴ 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.

¹³ See FINRA’s Response to Comments, supra note 7.

¹⁴ 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.

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 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.¹⁵ 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.¹⁶

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

¹⁵ See FINRA's Response to Comments, *supra* note 7.

¹⁶ 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.

aggregate match rate across all equity exchanges¹⁷ 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

¹⁷ See Amendment No. 1.

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/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.¹⁸ 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, 2021.¹⁹ 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.²⁰ FINRA anticipates completing additional activities before the proposed OATS retirement date, including, e.g., planned

¹⁸ 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.

¹⁹ 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 <http://www.catnmsplan.com/sites/default/files/2021-04/04.20.2021-CAT-ReportingTechnical-Specifications-for-Participants-4.0.0-r4.pdf>.

²⁰ 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.

user acceptance testing.²¹

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, 2021.²² 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

²¹ 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.

²² 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.

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.²³ 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. 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

²³ 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.

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 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)²⁴ 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+5.²⁵ 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+5.²⁶ Additionally, after ingestion by the Central Repository, the raw unprocessed data must be transformed into a format appropriate for data querying and regulatory output.²⁷ 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.²⁸ FINRA's use of the

²⁴ FINRA notes that FINRA CAT tracks known issues relating to Industry Member and Plan Participant reporting. See, e.g., catnmsplan.com/CAT-Transaction-Known-Issues-List. FINRA regularly reviews and analyzes FINRA CAT's list of current and resolved issues and does not believe that any of these issues would impact its ability to incorporate and use CAT Data in its surveillance program.

²⁵ See CAT NMS Plan, Appendix D, Section 6.2.

²⁶ See CAT NMS Plan, Appendix C, Section A.2(a).

²⁷ See CAT NMS Plan, Appendix C, Section A.1(b).

²⁸ See CAT NMS Plan, Section 6.10(c).

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.²⁹ As noted above, Phase 2a Data includes all events and scenarios covered by OATS and is the most relevant for OATS retirement purposes. FINRA Rule 7440 describes the OATS requirements for recording information, which includes information related to the receipt or origination of orders, order transmittal, and order modifications, cancellations and executions. Large Industry Members and Small Industry Members that currently are reporting to OATS were required to submit data to the CAT for these same events and scenarios commencing in Phase 2a. FINRA's testing, analysis and use of the CAT Data (including integration into POD), as described above, has confirmed that the CAT includes all data necessary for FINRA to meet its surveillance obligations and that CAT

²⁹ As discussed in the OATS Retirement Filing, OATS was originally proposed to fulfill one of the undertakings contained in an order issued by the Commission relating to the settlement of an enforcement action against FINRA (f/k/a National Association of Securities Dealers, Inc. ("NASD")) for failure to adequately enforce its rules. See Securities Exchange Act Release No. 39729 (March 6, 1998), 63 FR 12559 (March 13, 1998) (Order Approving File No SR-NASD-97-56) ("OATS Approval Order"); see also Securities Exchange Act Release No. 37538 (August 8, 1996); Administrative Proceeding File No. 3-9056 ("SEC Order"). In the OATS Approval Order, the Commission concluded that OATS satisfied the conditions of the SEC Order and was consistent with the Exchange Act. See 63 FR 12559, 12566-67. FINRA believes that it will continue to be in compliance with the requirements of the SEC Order once the OATS Rules are deleted.

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, 2020.³⁰

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 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

³⁰ The Implementation Plan and Quarterly Progress Reports are available at www.catnmsplan.com/implementation-plan.

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.

b. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act³¹ in general and Section 6(b)(5) of the Act³² in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

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.”³³ The Plan notes that

³¹ 15 U.S.C. 78f.

³² 15 U.S.C. 78f(b)(5).

³³ Appendix C of CAT NMS Plan, Approval Order at 85010.

“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.”³⁴

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 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.”³⁵ 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.

4. 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 purpose 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.

³⁴ Id.

³⁵ Approval Order at 84697.

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

The Exchange has neither solicited nor received written comments on the proposed rule change.

6. Extension of Time Period for Commission Action

The Exchange does not consent to an extension of the time period specified in Section 19(b)(2)³⁶ of the Act.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2) or Section 19(b)(7)(D)

The Exchange believes that the proposal qualifies for immediate effectiveness upon filing as a “non-controversial” rule change in accordance with Section 19(b)(3)(A) of the Act³⁷ and Rule 19b-4(f)(6) thereunder.³⁸

The Exchange asserts that the proposed rule change (i) will not significantly affect the protection of investors or the public interest, (ii) will not impose any significant burden on competition, and (iii) by its terms, will not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest. In addition, the Exchange provided the Commission with written notice of its 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, or such shorter time as the Commission may designate.

³⁶ 15 U.S.C. 78s(b)(2).

³⁷ 15 U.S.C. 78s(b)(3)(A).

³⁸ 15 U.S.C. 78s(b)(3)(A).

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 implements provisions of the CAT NMS Plan, and is designed to assist the Exchange in meeting its regulatory obligations pursuant to the Plan. Accordingly, the Exchange has submitted this rule filing for immediate effectiveness under Section 19(b)(3)(A) of the Act³⁹ and paragraph (f)(6) of Rule 19b-4 thereunder.⁴⁰ A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(ii), 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 immediately upon filing.

At any time within sixty (60) days of the filing of such proposed rule change, the Commission may summarily 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.

³⁹ 15 U.S.C. 78s(b)(3)(A).

⁴⁰ 17 CFR 240.19b-4.

8. Proposed Rule Change Based on Rule of Another Self-Regulatory Organization or of the Commission

As discussed in detail above, the proposed rule change is consistent with FINRA's filing to retire OATS and delete the OATS rules from its rulebook.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

1. Notice of proposed rule change for publication in the Federal Register.
5. Text of the proposed rule change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. _____ ; File No. SR-NASDAQ-2021-071)

September __, 2021

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Delete the Order Audit Trail System Rules in the Equity 5 Series of the Exchange's Rulebook

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 3, 2021, The Nasdaq Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to delete the Order Audit Trail System ("OATS") rules in the Equity 5 Series of the Exchange's rulebook that provides 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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

The text of the proposed rule change is available on the Exchange's Website at <https://listingcenter.nasdaq.com/rulebook/nasdaq/rules>, 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 Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

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, 2016,³ and approved by the Commission, as modified, on November 15, 2016.⁴

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

⁴ 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").

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”).⁵ 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”).⁶ On November 30, 2020, the Commission approved the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.⁷ 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 standards approved by the Commission in the OATS Retirement Filing for purposes of eliminating the OATS rules.⁸ 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 Equity 5 Series will no longer be necessary and proposes to delete such rules from the Exchange’s

⁵ 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).

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

⁷ 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).

⁸ 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).

rulebook. 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 Equity 5 Series consists of Section 1 through Section 6 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,⁹ traded on the Exchange, including Nasdaq-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 Equity 5 Series are duplicative of information available in the CAT and thus will no longer be necessary now that the CAT is operational.

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

⁹ 17 CFR 242.600(B)(47).

such time as CAT Data meets minimum standards of accuracy and reliability.¹⁰ 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

¹⁰ Appendix C of CAT NMS Plan, Approval Order at 85010.

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).¹¹ 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

¹¹ 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.

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.¹²

Rejection Rates and Data Validations

As described in the OATS Retirement Filing, the Plan Processor must perform certain basic data validations,¹³ 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

¹² See FINRA’s Response to Comments, supra note 7.

¹³ 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.

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 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.¹⁴ 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.¹⁵

¹⁴ See FINRA's Response to Comments, *supra* note 7.

¹⁵ 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.

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 exchanges¹⁶ 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

¹⁶ See Amendment No. 1.

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/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.¹⁷ 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, 2021.¹⁸ 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

¹⁷ 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.

¹⁸ 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 <http://www.catnmsplan.com/sites/default/files/2021-04/04.20.2021-CAT-ReportingTechnical-Specifications-for-Participants-4.0.0-r4.pdf>.

CAT Data for the month of May through POD.¹⁹ FINRA anticipates completing additional activities before the proposed OATS retirement date, including, e.g., planned user acceptance testing.²⁰

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, 2021.²¹ Plan Participant equity reporting in

¹⁹ 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.

²⁰ 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.

²¹ 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.

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.²² 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. 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

²² 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.

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 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)²³ 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+5.²⁴ 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+5.²⁵ Additionally, after ingestion by the Central Repository, the raw unprocessed data must be transformed into a format appropriate for data querying and regulatory output.²⁶ The user-defined direct queries and bulk extracts must provide

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

²⁴ See CAT NMS Plan, Appendix D, Section 6.2.

²⁵ See CAT NMS Plan, Appendix C, Section A.2(a).

²⁶ See CAT NMS Plan, Appendix C, Section A.1(b).

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.²⁷ 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.²⁸ As noted above, Phase 2a Data includes all events and scenarios covered by OATS and is the most relevant for OATS retirement purposes. FINRA Rule 7440 describes the OATS requirements for recording information, which includes information related to the receipt or origination of orders, order transmittal, and order modifications, cancellations and executions. Large Industry Members and Small Industry Members that currently are reporting to OATS were required to submit data to the CAT for these same events and

²⁷ See CAT NMS Plan, Section 6.10(c).

²⁸ As discussed in the OATS Retirement Filing, OATS was originally proposed to fulfill one of the undertakings contained in an order issued by the Commission relating to the settlement of an enforcement action against FINRA (f/k/a National Association of Securities Dealers, Inc. ("NASD")) for failure to adequately enforce its rules. See Securities Exchange Act Release No. 39729 (March 6, 1998), 63 FR 12559 (March 13, 1998) (Order Approving File No SR-NASD-97-56) ("OATS Approval Order"); see also Securities Exchange Act Release No. 37538 (August 8, 1996); Administrative Proceeding File No. 3-9056 ("SEC Order"). In the OATS Approval Order, the Commission concluded that OATS satisfied the conditions of the SEC Order and was consistent with the Exchange Act. See 63 FR 12559, 12566-67. FINRA believes that it will continue to be in compliance with the requirements of the SEC Order once the OATS Rules are deleted.

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, 2020.²⁹

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

²⁹ The Implementation Plan and Quarterly Progress Reports are available at www.catnmsplan.com/implementation-plan.

remove the OATS rules from its rulebook effective September 1, 2021. Firms must continue to report to OATS all order events that occur on or prior to August 31, 2021. Reports submitted to OATS for order events that occur after August 31, 2021 will be rejected. In other words, August 31, 2021 will be the last “OATS Business Day,” as defined under 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 proposal is consistent with Section 6(b) of the Act³⁰ in general and Section 6(b)(5) of the Act³¹ in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

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

³⁰ 15 U.S.C. 78f.

³¹ 15 U.S.C. 78f(b)(5).

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."³² 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."³³ 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 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."³⁴ 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 purpose 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.

³² Appendix C of CAT NMS Plan, Approval Order at 85010.

³³ Id.

³⁴ Approval Order at 84697.

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

No written comments were either solicited or received.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act³⁵ and subparagraph (f)(6) of Rule 19b-4 thereunder.³⁶

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

³⁵ 15 U.S.C. 78s(b)(3)(A)(iii).

³⁶ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file 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.

IV. Solicitation of Comments

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

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2021-071 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-NASDAQ-2021-071. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing

also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-NASDAQ-2021-071 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁷

J. Matthew DeLesDernier
Assistant Secretary

³⁷ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

Deleted text is [bracketed]. New text is underlined.

The Nasdaq Stock Market LLC Rules

* * * * *

Equity 5 Reserved. [Order Audit Trail System**Section 1. Definitions**

For purposes of the Equity 5 Series:

- (a) Terms shall have the same meaning as those defined in the Nasdaq By-Laws and rules, unless otherwise specified.
- (b) "Bunched Order" shall mean two or more orders that are aggregated prior to execution.
- (c) "Customer" shall mean a person other than a broker or dealer.
- (d) "Nasdaq Market Center" shall have the same meaning as the term "Nasdaq Market Center" in Equity 1, Section 1(a).
- (e) "Electronic Communication Network" shall mean any electronic system that widely disseminates to third parties orders entered therein by an exchange market maker or over-the-counter market maker, and permits such orders to be executed in whole or in part, and as further defined in Rule 600 of SEC Regulation NMS.
- (f) "Electronic Order" shall mean an order captured by a member in an electronic order-routing or execution system.
- (g) "Index Arbitrage Trade" shall have the same meaning as the term "Index Arbitrage" in New York Stock Exchange Rule 7410.
- (h) "Intermarket sweep order" shall have the same meaning as contained in Rule 600 of SEC Regulation NMS.
- (i) "Manual Order" shall mean an order that is captured by a member other than in an electronic order-routing or execution system.
- (j) "Order" shall mean any oral, written, or electronic instruction to effect a transaction in an equity security listed on The Nasdaq Stock Market that is received by a member from another person for handling or execution, or that is originated by a department of a member for execution by the same or another member, other than any such instruction to effect (1) a proprietary transaction originated by a trading desk in the ordinary course of a

member's market making activities in a Nasdaq-listed equity security or (2) effect a bona fide hedge transaction involving a Nasdaq-listed equity security originated by a trading desk in the ordinary course of the member's options market making activities.

(k) "Order Audit Trail System" shall mean the automated system owned and operated by FINRA that is designed to capture order information in equity securities listed on The Nasdaq Stock Market reported by members for integration with trade and quotation information to provide FINRA with an accurate time sequenced record of orders and transactions.

(l) "Program Trade" shall have the same meaning as the term "Program Trading" in New York Stock Exchange Rule 7410.

(m) "Reporting Agent" shall mean a third party that enters into any agreement with a member pursuant to which the Reporting Agent agrees to fulfill such member's obligations under Equity 5, Section 5.

(n) "Reporting Member" shall mean a member that receives or originates an order and has an obligation to record and report information under Equity 5, Sections 4 and 5. A member shall not be considered a Reporting Member in connection with an order, if the following conditions are met:

(1) the member engages in a non-discretionary order routing process, pursuant to which it immediately routes, by electronic or other means, all of its orders to:

(A) a single receiving Reporting Member; or

(B) two receiving Reporting Members, provided:

(i) orders are routed by the member to each receiving Reporting Member on a predetermined schedule approved by FINRA; and

(ii) orders are routed to two receiving Reporting Members pursuant to the schedule for a time period not to exceed one year; and

(2) the member does not direct and does not maintain control over subsequent routing or execution by the receiving Reporting Member;

(3) the receiving Reporting Member records and reports all information required under Equity 5, Sections 4 and 5 with respect to the order; and

(4) the member has a written agreement with the receiving Reporting Member specifying the respective functions and responsibilities of each party to effect full compliance with the requirements of Equity 5, Sections 4 and 5.

"Proprietary Trading Firm" shall mean a Nasdaq member that trades its own capital and that does not have "customers," as that term is defined in paragraph (c) of this Rule, and that is not a FINRA member. The funds used by a Proprietary Trading firm must be exclusively firm funds and all trading must be in the firm's accounts. Traders must be owners of, employees of, or contractors to the firm.

Adopted Jan. 13, 2006 (SEC Release 34-53128); amended July 28, 2006 (SR-NASDAQ-2006-022); amended July 18, 2007 (SR-NASDAQ-2007-037); amended June 13, 2008 (SR-NASDAQ-2008-054); amended Feb. 6, 2009 (SR-NASDAQ-2008-097); amended Apr. 1, 2011 (SR-NASDAQ-2011-047), operative May 1, 2011; amended and renumbered as rule 7410A Oct. 22, 2012 (SR-NASDAQ-2012-124), operative Nov. 21, 2012; amended Oct. 18, 2017 (SR-NASDAQ-2017-111); amended Apr. 17, 2018 (SR-NASDAQ-2018-030), operative May 17, 2018; amended Feb. 1, 2019 (SR-NASDAQ-2019-005); amended May 23, 2019 (SR-NASDAQ-2019-046); amended Nov. 23, 2020 (SR-NASDAQ-2020-079).

Section 2. Applicability

(a) Unless otherwise indicated, the requirements of the Equity 5 Series are in addition to the requirements contained elsewhere in the Nasdaq Rules.

(b) Unless otherwise indicated, the requirements of the Equity 5 Series shall apply to all Nasdaq Members and to their associated persons.

(c) Unless otherwise indicated, the requirements of the Equity 5 Series shall apply to all executed or unexecuted orders for equity securities listed on Nasdaq.

Adopted Jan. 13, 2006 (SEC Release 34-53128); amended and renumbered as rule 7420A Oct. 22, 2012 (SR-NASDAQ-2012-124), operative Nov. 21, 2012; amended Feb. 1, 2019 (SR-NASDAQ-2019-005); amended May 23, 2019 (SR-NASDAQ-2019-046).

Section 3. Synchronization of Member Business Clocks

(a) Nasdaq members shall comply with FINRA Rule 4590 as if such Rule were part of Nasdaq's rules.

(b) For purposes of this Rule, references to "the FINRA By-Laws or other FINRA rules" shall be construed as references to "the Nasdaq Rules".

Adopted Jan. 13, 2006 (SEC Release 34-53128); amended and renumbered as rule 7430A Oct. 22, 2012 (SR-NASDAQ-2012-124), operative Nov. 21, 2012; amended Apr. 17, 2018 (SR-NASDAQ-2018-030), operative May 17, 2018; amended Feb. 1, 2019 (SR-NASDAQ-2019-005); amended May 23, 2019 (SR-NASDAQ-2019-046).

Section 4. Recording of Order Information

(a) Nasdaq members and persons associated with a member shall comply with FINRA Rule 7440 as if such Rule were part of Nasdaq's rules. Nasdaq and FINRA are parties to the FINRA Regulatory Contract pursuant to which FINRA has agreed to perform certain functions on behalf of Nasdaq. In addition, functions performed by FINRA, FINRA departments, and FINRA staff under Nasdaq Equity 5, Section 4 are being performed by FINRA on behalf of Nasdaq.

(b) For purposes of this Rule:

(1) references to FINRA Rules 7420 through 7460 shall be construed as references to Nasdaq Equity 5, Sections 2 through 6;

(2) references to FINRA Rules 5320, 7440, and 7450 shall be construed as references to Nasdaq Rule 5320A, Nasdaq Equity 5, Section 4, and Nasdaq Equity 5, Section 5, respectively.

(c) Nasdaq members shall assign and enter a unique order identifier, in the form prescribed by Nasdaq, to all orders that are electronically transmitted to the Nasdaq Market Center. An order identifier shall not be required for orders that are manually transmitted.

Adopted Jan. 13, 2006 (SEC Release 34-53128); amended July 28, 2006 (SR-NASDAQ-2006-022); amended June 13, 2008 (SR-NASDAQ-2008-054); amended and renumbered as rule 7440A Oct. 22, 2012 (SR-NASDAQ-2012-124), operative Nov. 21, 2012; amended Feb. 1, 2019 (SR-NASDAQ-2019-005); amended May 23, 2019 (SR-NASDAQ-2019-046).

Section 5. Order Data Transmission Requirements

(a) Except as provided in paragraph (b), Nasdaq members and persons associated with a member shall comply with FINRA Rule 7450 as if such Rule were part of Nasdaq's rules. Nasdaq and FINRA are parties to the FINRA Regulatory Contract pursuant to which FINRA has agreed to perform certain functions on behalf of Nasdaq. Therefore, Nasdaq members are complying with Nasdaq Equity 5, Section 5 by complying with FINRA Rule 7450 as written, including, for example, filing requirements and notifications. In addition, functions performed by FINRA, FINRA departments, and FINRA staff under Nasdaq Equity 5, Section 5 are being performed by FINRA on behalf of Nasdaq.

(b) Proprietary Trading Firms and their associated persons shall be required to comply with FINRA Rule 7450 as if such Rule were part of Nasdaq's rules, only when they receive a request from Nasdaq Regulation to submit order information with respect to specific time periods identified in such request. Nothing in this Rule shall be construed to limit the obligations of Proprietary Trading Firms and their associated persons under any other Rule of the Equity 5 Series, including but not limited to, Equity 5, Section 4.

(c) For purposes of this Rule, references to FINRA Rule 7440 shall be construed as references to Nasdaq Equity 5, Section 4.

Adopted Jan. 13, 2006 (SEC Release 34-53128); amended July 18, 2007 (SR-NASDAQ-2007-037); amended June 13, 2008 (SR-NASDAQ-2008-054)); amended and renumbered as rule 7450A Oct. 22, 2012 (SR-NASDAQ-2012-124), operative Nov. 21, 2012; amended Apr. 17, 2018 (SR-NASDAQ-2018-030), operative May 17, 2018; amended Feb. 1, 2019 (SR-NASDAQ-2019-005); amended May 23, 2019 (SR-NASDAQ-2019-046).

Section 6. Violation of Order Audit Trail System Rules

Failure of a member or person associated with a member to comply with any of the requirements of Equity 5, Sections 1 through 6 may be considered conduct that is inconsistent with high standards of commercial honor and just and equitable principles of trade, in violation of General 9, Section 1.

Adopted Jan. 13, 2006 (SEC Release 34-53128); amended and renumbered as rule 7460A Oct. 22, 2012 (SR-NASDAQ-2012-124), operative Nov. 21, 2012; amended Feb. 1, 2019 (SR-NASDAQ-2019-005); amended May 23, 2019 (SR-NASDAQ-2019-046); amended Nov. 23, 2020 (SR-NASDAQ-2020-079).]

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