

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-85764; File No. SR-FINRA-2019-015)

May 2, 2019

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Update the FINRA Manual to Reflect FINRA's New Subsidiary, FINRA CAT, LLC

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 April 24, 2019, Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as concerned solely with the administration of the self-regulatory organization under Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(3) thereunder,⁴ which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

FINRA is proposing to update the FINRA Manual to reflect FINRA's new subsidiary, FINRA CAT, LLC. Specifically, the proposed rule change would codify the delegation of specific responsibilities and functions to FINRA CAT, LLC under the Plan of Allocation and Delegation of Functions by FINRA ("Delegation Plan"); make conforming amendments to the Delegation Plan to reflect FINRA CAT, LLC; amend the By-Laws of FINRA Regulation, Inc.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(3).

(“FINRA Regulation By-Laws”) to make relevant conforming amendments; and make conforming amendments to FINRA rules.

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

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

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

Background

FINRA and the national securities exchanges (collectively, the “Participants”)⁵ filed with the Commission, pursuant to Section 11A of the Exchange Act⁶ and Rule 608 of Regulation NMS thereunder,⁷ the National Market System Plan Governing the Consolidated Audit Trail (the

⁵ Specifically, the Participants are BOX Exchange LLC, Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe Exchange, Inc., FINRA, Investors Exchange LLC, Miami International Securities Exchange, LLC, MIAX Emerald, LLC, MIAX PEARL, LLC, Nasdaq BX, Inc., Nasdaq GEMX, LLC, Nasdaq ISE, LLC, Nasdaq MRX, LLC, Nasdaq PHLX LLC, The Nasdaq Stock Market LLC, New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc. and NYSE National, Inc.

⁶ 15 U.S.C. 78k-1.

⁷ 17 CFR 242.608.

“CAT NMS Plan” or “Plan”).⁸ The Participants filed the Plan to comply with Rule 613 of Regulation NMS under the Exchange Act.⁹ The Plan was published for comment in the Federal Register on May 17, 2016,¹⁰ and approved by the Commission, as modified, on November 15, 2016.¹¹

The Participants jointly own and operate CAT NMS, LLC, a company formed by the Participants to arrange for and oversee the creation, implementation, and maintenance of the consolidated audit trail (“CAT”) as required under Rule 613, and the CAT is a facility of each Participant.¹² The CAT is intended to capture in a single consolidated data source customer and order event information for orders in NMS Securities and OTC Equity Securities, across all markets, from the time of order inception through routing, cancellation, modification, or execution.¹³

⁸ See Letter from the Participants to Brent J. Fields, Secretary, Commission, dated September 30, 2014; and Letter from Participants to Brent J. Fields, Secretary, Commission, dated February 27, 2015. On December 23, 2015, the Participants submitted an amendment to the CAT NMS Plan. See Letter from Participants to Brent J. Fields, Secretary, Commission, dated December 23, 2015.

Unless otherwise specified, capitalized terms used in this rule filing are defined as set forth herein or in the CAT NMS Plan.

⁹ 17 CFR 242.613.

¹⁰ See Securities Exchange Act Release No. 77724 (April 27, 2016), 81 FR 30614 (May 17, 2016).

¹¹ See Securities Exchange Act Release No. 79318 (November 15, 2016), 81 FR 84696 (November 23, 2016) (“Approval Order”).

¹² See Securities Exchange Act Release No. 67457 (July 18, 2012), 77 FR 45722, 45775 (August 1, 2012) (“Rule 613 Adopting Release”).

¹³ See e.g., id., at 45722.

The Plan requires the Participants to select a Plan Processor to perform the CAT processing functions required by SEC Rule 613 and as set forth in the Plan.¹⁴ On February 1, 2019, CAT NMS, LLC confirmed that it would be transitioning the CAT project to a new Plan Processor, and on February 27, 2019, announced that it had selected FINRA as the Plan Processor.¹⁵ In its capacity as Plan Processor, FINRA is responsible for the development and operation of the CAT in accordance with the terms of the Plan.

In addition to serving in its capacity as Plan Processor of the CAT, FINRA is required to fulfill its obligations as a Participant of the Plan. To that end, FINRA CAT, LLC will further FINRA's compliance with its regulatory obligations under SEC Rule 613 with respect to the creation, operation and maintenance of a central repository. FINRA will fulfill its obligations as a Participant of the Plan, including among others, enforcing FINRA rules requiring its members to comply with the CAT NMS Plan, through FINRA (and FINRA Regulation, Inc.) and not through FINRA CAT, LLC.

FINRA believes that significant resources are required in order to meet its obligations as Plan Processor of the CAT. For example, FINRA has dedicated staff and financial resources in connection with serving as the Plan Processor and believes that it will be required to continue to allot resources to the CAT in this capacity. In addition, certain functions of the Plan Processor require consultation with or are subject to approval by the CAT NMS Plan Operating Committee. FINRA created FINRA CAT, LLC as a subsidiary of FINRA in order to dedicate resources solely to carrying out its obligations as Plan Processor and to underscore that FINRA

¹⁴ However, while the Participants select a Plan Processor to perform these functions, each Participant also remains responsible for compliance with the terms of the Plan. See SEC Rule 608(c) and SEC Rule 613(h).

¹⁵ See announcements dated February 1, 2019 and February 27, 2019 on the News Page at www.catnmsplan.com/news-page/index.html.

CAT, LLC, while part of the self-regulatory organization (“SRO”), is separate and distinct from the other FINRA entities.

FINRA notes that as a subsidiary of FINRA, FINRA CAT, LLC is part of the registered securities association. As such, for purposes of SEC Regulation Systems Compliance and Integrity (“Regulation SCI”), FINRA CAT, LLC is an SCI SRO and therefore an SCI entity.¹⁶

Proposed Amendments

To account for the new subsidiary and codify the delegation by FINRA of certain regulatory responsibilities and functions to it, FINRA is proposing to make conforming amendments to the Delegation Plan to include FINRA CAT, LLC in the Delegation Plan; amend FINRA Regulation By-Laws to make relevant conforming amendments; and make conforming amendments to FINRA rules.

(1) Conforming Amendments to the Delegation Plan

FINRA is proposing to rename the Delegation Plan as the “Plan of Allocation and Delegation of Functions by FINRA to Subsidiaries.” FINRA also is proposing to make conforming amendments throughout the Delegation Plan to replace references to “FINRA Regulation” with references to “the Subsidiaries” or “Subsidiary” to indicate that both FINRA Regulation, Inc. and FINRA CAT, LLC are subsidiaries of FINRA. In addition, the proposed rule change would reference FINRA Regulation, Inc. and FINRA CAT, LLC individually and define them collectively as “the Subsidiaries.” Finally, FINRA is proposing to amend Section

¹⁶ 17 CFR 242.1000 through 242.1007. Under Regulation SCI, the term “SCI entity” means an SCI self-regulatory organization, SCI alternative trading system, plan processor, or exempt clearing agency subject to ARP. The term “SCI self-regulatory organization” or “SCI SRO” includes national securities exchanges registered under Section 6(b) of the Exchange Act, registered securities associations, registered clearing agencies, and the Municipal Securities Rulemaking Board. 17 CFR 242.1000.

I.B of the Delegation Plan to include a reference to new Section III pertaining to FINRA CAT, LLC.

Section I – FINRA, Inc.

Section I of the Delegation Plan provides that FINRA shall have responsibility for the rules and regulations of the Association (defined in the FINRA Manual as FINRA and its Subsidiaries) and its operation and administration. Under Section I.B, the proposed rule change would include subsection 10 to provide that FINRA expressly retains authority and functions to resolve any disputes among the Subsidiaries. This subsection was included in the Delegation Plan prior to the merger of FINRA Dispute Regulation, Inc. into and with FINRA Regulation, Inc.,¹⁷ but was removed as it refers to disputes among the subsidiaries, and only FINRA Regulation, Inc. remained as a result of the merger of the two subsidiaries. In addition, in subsection three, FINRA proposes to add reference to selection of a Board of Managers, because FINRA CAT, LLC is governed by a Board of Managers. In subsection five, FINRA proposes to add the word “common” as FINRA Regulation, Inc. may now share overhead (including, for example, such back-office services as payroll and human resources) and technology with FINRA CAT, LLC as separate subsidiaries. Finally, FINRA is proposing to amend subsection nine to provide for delegation to FINRA CAT, LLC, which, as discussed below, would be located in Section III of the Delegation Plan.

FINRA is proposing to expressly provide in amended Section I.E of the Delegation Plan that, notwithstanding the delegation of authority to FINRA CAT, LLC, the staff, books, records, and premises of FINRA CAT, LLC are the staff, books, records, and premises of FINRA subject to oversight pursuant to the Act, and all officers, directors, employees, and agents of FINRA

¹⁷ See Securities Exchange Act Release No. 76670 (December 16, 2015) 80 FR 79632 (December 22, 2015) (Order Approving File No. SR-FINRA-2015-034).

CAT, LLC are officers, directors, employees, and agents of FINRA for purposes of the Act, subject to applicable provisions of the CAT NMS Plan.¹⁸ For example, the CAT NMS Plan expressly provides that the Plan Processor shall designate employees of the Plan Processor to serve, subject to the approval of the CAT NMS Plan Operating Committee, as the Chief Compliance Officer (“CCO”) and as the Chief Information Security Officer (“CISO”),¹⁹ and that the CCO and CISO shall be officers of CAT NMS, LLC.²⁰ The Plan further requires the Plan Processor to acknowledge that the officers of CAT NMS, LLC owe fiduciary duties to CAT NMS, LLC, and that, to the extent that the duties owed to CAT NMS, LLC conflict with any duties owed to the Plan Processor, the duties to CAT NMS, LLC will control.²¹ In addition, the Plan provides that all CAT Data and other books and records of CAT NMS, LLC shall be the property of CAT NMS, LLC, rather than the Plan Processor, and, to the extent in the possession or control of the Plan Processor, shall be made available by the Plan Processor to the Commission upon request.²² The proposed rule change would not modify such provisions of the CAT NMS Plan.²³

¹⁸ Thus, the books and records and management and staff of FINRA CAT, LLC are deemed to be the books and records and management and staff of FINRA for purposes of the jurisdiction and oversight by the SEC of FINRA CAT, LLC as part of the registered securities association. Notwithstanding this provision, FINRA and FINRA CAT, LLC are separate legal entities under Delaware corporate law.

¹⁹ See Section 6.2 of the CAT NMS Plan.

²⁰ See Section 4.6 of the CAT NMS Plan.

²¹ Id.

²² See Section 9.1 of the CAT NMS Plan.

²³ FINRA is proposing a conforming amendment to FINRA Rule 0170 (Delegation, Authority and Access).

Section III – FINRA CAT, LLC

FINRA is proposing to amend the Delegation Plan to include Section III of the Delegation Plan to delegate responsibilities and functions to FINRA CAT, LLC. Specifically, FINRA is proposing to delegate to FINRA CAT, LLC the following responsibilities and functions: (1) to act as a Plan Processor under the CAT NMS Plan in accordance with SEC Rule 613 and the provisions of the Plan; (2) to create, operate and maintain the CAT and central repository pursuant to Rule 613 and the provisions of the Plan; (3) to develop and implement policies, procedures, and control structures related to the CAT System; (4) to ensure the effective management and operation of the CAT; and (5) to ensure the accuracy of the consolidation of the CAT Data reported to the Central Repository.

FINRA also proposes to provide that the responsibilities and functions delegated by FINRA to FINRA CAT, LLC in Section III include, but are not limited to, those specified above. FINRA notes that the specific responsibilities and functions of the Plan Processor are set forth in Section 6.1 of the CAT NMS Plan, many of which require consultation with or approval by the CAT NMS Plan Operating Committee. As such, FINRA is proposing to expressly provide that all action taken by FINRA CAT, LLC pursuant to authority delegated pursuant to the Delegation Plan shall be taken in accordance with the terms of the Plan and SEC Rule 613, and in consultation with the CAT NMS Plan Operating Committee, as applicable.

Finally, FINRA is proposing to include language providing that capitalized terms that are not defined in Section III shall have the meanings ascribed to them in the Plan.

(2) Conforming Amendments to the FINRA Regulation By-Laws

FINRA is proposing to make conforming amendments to the FINRA Regulation By-Laws. Specifically, FINRA is proposing to amend the definition of “Delegation Plan” in section

(i) of Article I to replace “FINRA Regulation” with “Subsidiaries” to account for the fact that pursuant to the proposed rule change, the Delegation Plan also would pertain to FINRA CAT, LLC. In addition, FINRA is proposing to include reference to FINRA CAT, LLC in the last sentence of Section 4.14(b) (Conflicts of Interest; Contracts and Transactions Involving Directors) to indicate that the provisions in that subsection shall not apply to contracts or transactions between FINRA Regulation, Inc. and FINRA CAT, LLC.

(3) Conforming Amendments to FINRA Rules

FINRA also is proposing to amend several FINRA rules to reflect FINRA CAT, LLC as a FINRA subsidiary. The proposed rule change would amend Rule 0160 (Definitions) to include FINRA CAT, LLC in the definition of FINRA. In addition, FINRA is proposing a conforming amendment to Rule 0170 (Delegation, Authority and Access) to replace references to “FINRA Regulation” with the “Subsidiaries.”

FINRA notes that the proposed rule change would not amend the Rule 6800 Series (Consolidated Audit Trail Compliance Rule), pursuant to which FINRA requires its members to comply with the provisions of the CAT NMS Plan. FINRA is not delegating any of its responsibilities or functions pertaining to the Rule 6800 Series to FINRA CAT, LLC.

FINRA has filed the proposed rule change for immediate effectiveness. The effective date will be the date of filing.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,²⁴ which requires, among other things, that FINRA rules must be designed

²⁴ 15 U.S.C. 78o-3(b)(6).

to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

FINRA believes that the proposed amendments to include its subsidiary, FINRA CAT, LLC, in the FINRA Manual would reflect and bring transparency to FINRA's corporate organizational structure, and, in the process, would make the organization more efficient. In addition, FINRA believes that delegating regulatory responsibilities and functions to FINRA CAT, LLC to meet its CAT-related obligations enables FINRA to efficiently direct resources to ensure that it properly carries out its contractual obligations in its capacity as Plan Processor and its regulatory obligations under SEC Rule 613.

FINRA notes that the proposed rule change would not affect public investors, the goals of the Plan or fees associated with the CAT. FINRA believes that the proposed rule change reflects its commitment to serve as Plan Processor of the CAT and to comply with the provisions of the Plan. Thus, FINRA believes that the creation of FINRA CAT, LLC and inclusion of FINRA CAT, LLC in the FINRA Manual would ensure that FINRA continues to protect investors and the public interest in an efficient manner.

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

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. FINRA believes that the proposed amendments account for FINRA's subsidiary, FINRA CAT, LLC, and would align FINRA's corporate organizational structure with its organizational practice. The proposed rule change would allow FINRA to update its Manual to include FINRA CAT, LLC and make changes to its Manual to reflect the current corporate structure. Further, FINRA intends to allocate staff and financial resources directly to FINRA CAT, LLC to meet its

obligations as Plan Processor. FINRA notes that the proposed rule change would not alter member and industry obligations related to the Plan, including regarding fees. FINRA believes that the proposed rule change demonstrates its commitment to fulfilling its contractual obligations in its capacity as Plan Processor and its regulatory obligations under SEC Rule 613.

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

Written comments were neither solicited nor received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act²⁵ and paragraph (f)(3) of Rule 19b-4 thereunder.²⁶ 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.

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

²⁵ 15 U.S.C. 78s(b)(3)(A).

²⁶ 17 CFR 240.19b-4(f)(3).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-FINRA-2019-015 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2019-015. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available

publicly. All submissions should refer to File Number SR-FINRA-2019-015 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.²⁷

Eduardo A. Aleman
Deputy Secretary

²⁷ 17 CFR 200.30-3(a)(12).