

SECURITIES AND EXCHANGE COMMISSION

17 CFR 242

Release No. 34-79237

RIN 3235-AL99

Interim Final Temporary Rule Regarding the Consolidated Audit Trail

ACTION: Interim final temporary rule.

SUMMARY: The Securities and Exchange Commission is adopting a temporary rule, new Rule 608T, under the Securities Exchange Act of 1934 that extends to November 15, 2016, the date by which the Commission is required to act on the proposed National Market System (“NMS”) Plan Governing the Consolidated Audit Trail (the “CAT NMS Plan” or “Plan”). New Rule 608T solely governs the timeframe for action on the proposed CAT NMS Plan. The Commission is adopting the rule as an interim final temporary rule in light of the impending November 10, 2016 date designated by the Commission under Rule 608 as the date by which the Commission would take action on the proposed CAT NMS Plan. Rule 608T will expire at 12:01 am on November 16, 2016, because after that time the rule will no longer be necessary.

DATES: The Rule is effective on [insert date of publication in the Federal Register]. The Rule will expire at 12:01 am on November 16, 2016.

FOR FURTHER INFORMATION CONTACT: Rebekah Liu, Special Counsel, at (202) 551-5665; Jennifer Colihan, Special Counsel, at (202) 551-5642; Leigh Duffy, Special Counsel, at (202) 551-5928; John Lee, Special Counsel, at (202) 551-5689; or Ted Uliassi, Special Counsel, at (202)551-6905, or Division of Trading and Markets, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-7010.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission

(“Commission”) is adopting temporary rule 608T under the Securities Exchange Act of 1934 (“Exchange Act”) as an interim final rule.

I. Background

On July 11, 2012, the Commission adopted Rule 613 of Regulation NMS under the Exchange Act,¹ which requires the self-regulatory organizations to submit an NMS plan to create, implement, and maintain a consolidated audit trail that would capture customer and order event information for orders in NMS securities, across all markets, from the time of order inception through routing, cancellation, modification, or execution in a single, consolidated data source.² Specifically, Rule 613 requires the Participants to “jointly file ... a national market system plan to govern the creation, implementation, and maintenance of a consolidated audit trail and Central Repository.”³ The purpose of the CAT NMS Plan, and the creation, implementation and maintenance of the comprehensive audit trail for the U.S. securities market described therein, is to “substantially enhance the ability of the SROs and the Commission to oversee today’s securities markets and fulfill their responsibilities under the federal securities laws.”⁴ As contemplated by Rule 613, the consolidated audit trail “will allow for the prompt and accurate recording of material information about all orders in NMS securities, including the identity of customers, as these orders are generated and then routed throughout the U.S. markets until

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

² See 17 CFR 242.613(a)(1), (c)(1), (c)(7).

³ 17 CFR 242.613(a)(1).

⁴ See Adopting Release, *supra* note 1, at 45726.

execution, cancellation, or modification. This information will be consolidated and made readily available to regulators in a uniform electronic format.”⁵

On February 27, 2015, pursuant to Section 11A of the Securities Exchange Act of 1934 (“Exchange Act”)⁶ and Rules 608 and 613 of Regulation NMS thereunder,⁷ Bats BZX Exchange, Inc., Bats-BYX Exchange, Inc., BOX Options Exchange LLC, C2 Options Exchange, Incorporated, Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., Bats EDGA Exchange, Inc., Bats EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., International Securities Exchange, LLC, ISE Gemini, LLC, Miami International Securities Exchange LLC, NASDAQ BX, Inc., NASDAQ PHLX LLC, The NASDAQ Stock Market LLC, National Stock Exchange, Inc., New York Stock Exchange LLC, NYSE MKT LLC, and NYSE Arca, Inc. (collectively, “Participants”), filed with the Commission the CAT NMS Plan. The Participants filed amendments to the CAT NMS Plan on December 24, 2015, and on February 8, 2016.⁸ The CAT NMS Plan, as amended, was published for comment in the Federal Register on May 17, 2016.⁹

⁵ Id.

⁶ 15 U.S.C. 78k-1.

⁷ 17 CFR 242.608.

⁸ On December 24, 2015, the Participants submitted an Amendment to the CAT NMS Plan. See Letter from Participants to Brent J. Fields, Secretary, Commission, dated December 23, 2015. On February 9, 2016, the Participants filed with the Commission an identical, but unmarked, version of the February 27, 2015 CAT NMS Plan, as modified by the December 24, 2015 Amendment. See Letter from Participants to Brent J. Fields, Secretary, Commission, dated February 8, 2016.

⁹ The Commission voted to publish the February 9, 2016 version of the CAT NMS Plan for public comment on April 27, 2016, and this version of the Plan was published in the Federal Register on May 17, 2016. See Securities Exchange Act Release No. 77724, 81 FR 30614 (the “Notice”). Names of certain Participants were recently changed and the new names are used here.

Since publishing the Notice, the Commission received 24 comment letters.¹⁰ The comments detailed a wide variety of issues related to the CAT NMS Plan, including comments that outline and suggest specific, technical changes to the CAT NMS Plan. On July 29, 2016, the Commission extended the deadline for Commission action on the CAT NMS Plan to November 10, 2016, as permitted under Rule 608(b)(2).¹¹

On September 2, September 23, October 7, 2016, and most recently on November 2, 2016, the Participants submitted letters to the Commission (“Supplemental Letters”).¹² The Supplemental Letters not only responded to comment letters that the Commission received in response to the CAT NMS Plan, but also discussed and recommended several amendments to the CAT NMS Plan.

In light of the comment letters and the Supplemental Letters, and given the comprehensive scope and nature of the CAT NMS Plan, the Commission has determined that a brief extension of the date for action by the Commission on the CAT NMS Plan is necessary. This extension, which will be to November 15, 2016, will not unduly delay action on the CAT NMS Plan and will allow adequate time for the Commission to complete its careful consideration of the comment letters and the Supplemental Letters, including the recommended amendments to the CAT NMS Plan. Accordingly, the Commission is adopting Rule 608T, which extends until November 15, 2016, the date by which the Commission must act on the CAT NMS Plan. Rule

¹⁰ See List of Commenters on NMS Plan Notice of Filing of the National Market System Plan Governing the Consolidated Audit Trail, available at, <https://www.sec.gov/comments/4-698/4-698.shtml>.

¹¹ See Securities Exchange Act Release No. 78441 (July 29, 2016), 81 FR 51527 (August 4, 2016).

¹² See Letters from Participants to Brent J. Fields, Secretary, Commission, dated September 2, 2016, September 23, 2016, October 7, 2016 and November 2, 2016.

608T will expire at 12:01 am on November 16, 2016, because after that time the rule will no longer be necessary.

II. Procedural and Other Matters

The Administrative Procedure Act (“APA”) generally requires an agency to publish notice of a rulemaking in the Federal Register and provide an opportunity for public comment. This requirement does not apply, however, if the agency “for good cause finds . . . that notice and public procedure are impracticable, unnecessary, or contrary to the public interest.”¹³ Further, the APA also generally requires that an agency publish an adopted rule in the Federal Register 30 days before it becomes effective. This requirement does not apply, however, if the agency finds good cause for making the rule effective sooner.¹⁴ The Commission finds that good cause exists to dispense with notice and comment as impracticable and unnecessary, and to act immediately to adopt rule 608T.

As discussed above, since publishing the Notice in May, the Commission has received detailed comments and four Supplemental Letters, including very recently on November 2, 2016. The Commission had designated November 10, 2016, as the date by which the Commission would act on the NMS Plan. The Commission believes that it is impracticable to provide for comment on Rule 608T given the impending November 10, 2016 date. In addition, the limited time period of the extension, from November 10, 2016 to November 15, 2016, for the Commission to consider the CAT NMS Plan makes comment unnecessary. While certain events are triggered by the effective date of the CAT NMS Plan, those timeframes would not be shortened and would continue to be triggered by the effective date of the Plan, should it be

¹³ 5 U.S.C. 553(b)(3)(B). See also 5 U.S.C. 804(3)(C).

¹⁴ 5 U.S.C. 553(d)(3).

approved on November 15, 2016. The Commission therefore believes that the time extension provided by Rule 608T will have a de minimis impact on any party who must comply with or who will be affected by the CAT NMS Plan. For similar reasons, the Commission finds there is good cause for the rule to take effect on [insert date of publication in the Federal Register].¹⁵

Rule 608T contains a sunset provision. The temporary rule will expire at 12:01 am on November 16, 2016.

The interim final temporary rule does not impose recordkeeping or information collection requirements, or other collections of information that require approval of the Office of Management and Budget under 44 U.S. C. 3501, et seq. Accordingly, the Paperwork Reduction Act of 1995 does not apply.

III. Statutory Authority

The Commission is adopting Rule 608T pursuant to the Exchange Act and particularly, Sections 2, 6, 11A, 15A, and 23(a) thereof, 15 U.S.C. 78b, 78f, 78k-1, 78o-3, and 78w(a).

TEXT OF RULE

List of Subjects in 17 CFR 242

Brokers, Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

¹⁵ This finding also satisfies the requirements of 5 U.S.C. 808(2), allowing the amendment to become effective notwithstanding the requirement of 5 U.S.C. 801 (if a federal agency finds that notice and public comment are impractical, unnecessary or contrary to the public interest, a rule shall take effect at such time as the federal agency promulgating the rule determines). The rule also does not require analysis under the Regulatory Flexibility Act. See 5 U.S.C. 604(a) (requiring a final regulatory flexibility analysis only for rules required by the APA or other law to undergo notice and comment).

PART 242-- RULES AND REGULATIONS, REGULATIONS M, SHO, ATS, AC, NMS, AND SBSR AND CUSTOMER MARGIN REQUIREMENTS FOR SECURITY FUTURES

1. The general authority citation for Part 242 continues to read as follows:

Authority: 15 U.S.C. 77g, 77q(a), 77s(a), 78b, 78c, 78g(c)(2), 78i(a), 78j, 78k-1(c), 78l, 78m, 78n, 78o(b), 78o(c), 78o(g), 78q(a), 78q(b), 78q(h), 78w(a), 78dd-1, 78mm, 80a-23, 80a-29, and 80a-37.

2. Section 242.608T is added to read as follows:

§ 242.608T Temporary rule for date of Commission action on the proposed NMS Plan related to the Consolidated Audit Trail filed pursuant to Rule 613.

(a) Notwithstanding Rule 608(b)(2), the date by which the Commission must act on the proposed National Market System Plan Regarding the Consolidated Audit Trail filed under Rule 613, shall be November 15, 2016.

(b) This section will expire and no longer be effective at 12:01 am on November 16, 2016.

By the Commission

Brent J. Fields
Secretary

November 3, 2016