

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-80794; File No. SR-NYSEMKT-2017-30)

May 26, 2017

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing of Proposed Rule Change to Eliminate Requirements That Will Be Duplicative of CAT

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 22, 2017, NYSE MKT LLC (“NYSE MKT” or the “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 Rule 7400 – Equities Series (Order Audit Trail System) and amend Rule 8211 of the Office Rules (Automated Submission of Trading Data Requested by the Exchange) governing submission of Electronic Blue Sheet trading data (“EBS”) as these Rules provide for the collection of information that is duplicative of the data collection requirements of the CAT once the Financial Industry Regulatory Authority (“FINRA”) publishes a notice announcing the date that it will retire its OATS and EBS rules. The proposed rule change is available on the Exchange’s website at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

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

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those 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 parts of such statements.

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

1. Purpose

Background

Bats BYX Exchange, Inc., Bats BZX Exchange, Inc., Bats EDGA Exchange, Inc., Bats EDGX Exchange, Inc., BOX Options Exchange LLC, C2 Options Exchange, Incorporated, Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., FINRA, Investors’ Exchange LLC, Miami International Securities Exchange, LLC, MIAX PEARL, LLC, NASDAQ BX, Inc., Nasdaq GEMX, LLC, Nasdaq ISE, LLC, Nasdaq MRX, LLC,<sup>3</sup> NASDAQ PHLX LLC, The NASDAQ Stock Market LLC, the New York Stock Exchange LLC, the Exchange, NYSE Arca, Inc. and NYSE National, Inc.<sup>4</sup> (collectively, the “Participants”) filed

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<sup>3</sup> ISE Gemini, LLC, ISE Mercury, LLC and International Securities Exchange, LLC have been renamed Nasdaq GEMX, LLC, Nasdaq MRX, LLC, and Nasdaq ISE, LLC, respectively. See Securities Exchange Act Release No. 80248 (March 15, 2017), 82 FR 14547 (March 21, 2017) (SR-ISEGemini-2017-13); Securities Exchange Act Release No. 80326 (March 29, 2017), 82 FR 16460 (April 4, 2017) (SR-ISEMercury-2017-05); and Securities Exchange Act Release No. 80325 (March 29, 2017), 82 FR 16445 (April 4, 2017) (SR-ISE-2017-25).

<sup>4</sup> National Stock Exchange, Inc. has been renamed NYSE National, Inc. See Securities Exchange Act Release No. 79902 (January 30, 2017), 82 FR 9258 (February 3, 2017) (SR-NSX-2016-16).

with the Commission, pursuant to Section 11A of the Exchange Act<sup>5</sup> and Rule 608 of Regulation NMS thereunder,<sup>6</sup> the CAT NMS Plan.<sup>7</sup> The Participants filed the Plan to comply with Rule 613 of Regulation NMS under the Exchange Act.<sup>8</sup> The Plan was published for comment in the Federal Register on May 17, 2016,<sup>9</sup> and approved by the Commission, as modified, on November 15, 2016.<sup>10</sup> On March 21, 2017, the Commission approved<sup>11</sup> the Exchange's new Rule 6800 Series to implement provisions of the CAT NMS Plan that are applicable to Exchange member organizations.<sup>12</sup>

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<sup>5</sup> 15 U.S.C. 78k-1.

<sup>6</sup> 17 CFR 242.608.

<sup>7</sup> See Letter from the Participants to Brent J. Fields, Secretary, Commission, dated September 30, 2014; and Letter from Participants to Brent J. Fields, Secretary, Commission, dated February 27, 2015. On December 24, 2015, the Participants submitted an amendment to the CAT NMS Plan. See Letter from Participants to Brent J. Fields, Secretary, Commission, dated December 23, 2015.

<sup>8</sup> 17 CFR 242.613.

<sup>9</sup> Securities Exchange Act Release No. 77724 (April 27, 2016), 81 FR 30614 (May 17, 2016) (File No. 4-698).

<sup>10</sup> Securities Exchange Act Release No. 79318 (Nov. 15, 2016), 81 FR 84696 (November 23, 2016) (File No. 4-698) (“Approval Order”).

<sup>11</sup> See Securities Exchange Act Release No. 80256 (March 15, 2017), 82 FR 14526 (March 21, 2017) (SR-NYSEMKT-2017-02) (Order Approving Proposed Rule Changes to Adopt Consolidated Audit Trail Compliance Rules).

<sup>12</sup> The Rule 6800 Series applies to Exchange member organizations. The term “member organization” means a “registered broker or dealer (unless exempt pursuant to the Securities Exchange Act of 1934) (the “Act”) that is a member of FINRA or another registered securities exchange. Member organizations that transact business with public customers or conduct business on the Floor of the Exchange shall at all times be members of FINRA. A registered broker or dealer must also be approved by the Exchange and authorized to designate an associated natural person to effect transactions on the floor of the Exchange or any facility thereof. This term shall include a natural person so registered, approved and licensed who directly effects transactions on the floor of the Exchange or any facility thereof.” See Rule 2(b)(i) – Equities. The term “member organization” also includes any registered broker or dealer that is a member of FINRA or a registered securities exchange which does not own a trading license and agrees to be regulated by the Exchange as a member organization and which the Exchange has agreed

The Plan is designed to create, implement and maintain a CAT that would 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. Pursuant to Appendix C of the CAT NMS Plan, each Participant is required to conduct analyses of which of its existing trade and order data rules and systems require the collection of information that is duplicative of information collected for the CAT.<sup>13</sup> In addition, among other things, Section C.9 of Appendix C to the Plan, as modified by the Commission, requires each Participant to “file with the SEC the relevant rule change filing to eliminate or modify its duplicative rules within six (6) months of the SEC’s approval of the CAT NMS Plan.”<sup>14</sup> The Plan notes that “the elimination of such rules and the retirement of such systems [will] be effective at such time as CAT Data meets minimum standards of accuracy and reliability.”<sup>15</sup>

After conducting its analysis of its rules in accordance with the CAT NMS Plan, the Exchange has determined that the information collected pursuant to the OATS and EBS rules is intended to be collected by CAT. Therefore, the Exchange believes that the Rule 7400 – Equities Series will no longer be necessary once FINRA publishes notice announcing the date it will retire its OATS rules. Similarly, the Exchange believes that it will be necessary to clarify how the Exchange will request EBS data under Rule 8211 after members are reporting to the CAT. Accordingly, the Exchange proposes to amend Rule 8211 to add new Supplementary Material clarifying how the Exchange will request data under these rules after member

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to regulate. See Rule 2(b)(ii) – Equities. See also Rule 0 – Equities (making clear that the proposed rule applies to transactions conducted on the Equities Trading Systems).

<sup>13</sup> Appendix C of CAT NMS Plan, Approval Order at 85010.

<sup>14</sup> Id.

<sup>15</sup> Id.

organizations are reporting to the CAT once FINRA publishes notice announcing the date it will retire its OATS rules. Discussed below is a description of the duplicative rule requirements as well as the timeline for eliminating the duplicative rules.

If the Commission approves the proposed rule change, the rule text will be effective; however, the amendments will not be implemented until FINRA publishes a notice announcing the date that it will retire its OATS rules, at which time the Exchange will publish a regulatory notice announcing implementation date of the proposed rule change. As discussed below, FINRA will publish its notice once the CAT achieves certain specific accuracy and reliability standards and FINRA has determined that its usage of the CAT Data has not revealed material issues that have not been corrected, confirmed that the CAT includes all data necessary to allow FINRA to continue to meet its surveillance obligations,<sup>16</sup> and confirmed that the Plan Processor is sufficiently meeting all of its obligations under the CAT NMS Plan.

#### Duplicative OATS Requirements

The Exchange's Rule 7400 Series consists of Rules 7410 – Equities through 7470 – Equities 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

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<sup>16</sup> As noted in the Participants' September 23, 2016 response to comment letters on the Plan, the Participants "worked to keep [the CAT] gap analyses up-to-date by including newly-added data fields in these duplicative systems, such as the new OATS data fields related to the tick size pilot and ATS order book changes, in the gap analyses." Letter from Participants to Brent J. Fields, Secretary, Commission, dated September 23, 2016, at 21. The Participants noted that they "will work with the Plan Processor and the industry to develop detailed Technical Specifications to ensure that by the time Industry Members are required to report to the CAT, the CAT will include all data elements necessary to facilitate the rapid retirement of duplicative systems." Id.

term is defined in Rule 600(b)(47) of Regulation NMS,<sup>17</sup> traded on the Exchange, including NYSE-listed securities. This information is used by FINRA staff to conduct surveillance and investigations of member firms for violations of FINRA rules and federal securities laws. The Exchange has determined that the requirements of the Rule 7400 – Equities Series are duplicative of information available in the CAT and thus will no longer be necessary once the CAT is operational.

The Participants have provided OATS technical specifications to the Plan Processor for the CAT for use in developing the Technical Specifications for the CAT, and the Participants are working with the Plan Processor to include the necessary OATS data elements in the CAT Technical Specifications. Accordingly, the Exchange proposes to eliminate its OATS Rules in accordance with the proposed timeline discussed below.

#### Timeline for Elimination of Duplicative Rules

The CAT NMS Plan states that the elimination of rules that are duplicative of the requirements of the CAT and the retirement of the related systems should be effective at such time as CAT Data meets minimum standards of accuracy and reliability.<sup>18</sup> As discussed in more detail in its rule filing, FINRA believes that OATS may be retired at a date after all Industry Members are reporting to the CAT when the proposed 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, confirmed that the CAT includes all data necessary to allow FINRA to continue to meet its surveillance obligations, and confirmed that the Plan Processor is sufficiently meeting all of its obligations under the CAT NMS Plan.<sup>19</sup>

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

<sup>18</sup> Appendix C of CAT NMS Plan, Approval Order at 85010.

<sup>19</sup> See SR-FINRA-2017-013.

The CAT NMS Plan requires that a rule filing to eliminate a duplicative rule address whether “the availability of certain data from Small Industry Members two years after the Effective Date would facilitate a more expeditious retirement of duplicative systems.”<sup>20</sup> FINRA believes that there is no effective way to retire OATS until all current OATS reporters are reporting to the CAT. As discussed in FINRA’s filing, FINRA believes that having data from those Small Industry Members currently reporting to OATS available two years after the Effective Date would substantially facilitate a more expeditious retirement of OATS and therefore supports an amendment to the Plan that would require current OATS Reporters that are “Small Industry Members” to report two years after the Effective Date (instead of three).<sup>21</sup>

The CAT NMS Plan also requires that this rule filing address “whether individual Industry Members can be exempted from reporting to duplicative systems once their CAT reporting meets specified accuracy and reliability standards, including, but not limited to, ways in which establishing cross-system regulatory functionality or integrating data from existing systems and the CAT would facilitate such Individual Industry Member exemptions.”<sup>22</sup>

FINRA believes that a single cut-over from OATS to CAT is highly preferable to a firm-by-firm approach and is not proposing to exempt members from the OATS requirements on a firm-by-firm basis. FINRA believes that that the overall accuracy and reliability thresholds for the CAT described above [sic] would need to be met under any conditions before firms could stop reporting to OATS. Moreover, as discussed above [sic], FINRA supports amending the Plan to accelerate the reporting requirements for Small Industry Members that are OATS

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<sup>20</sup> Id. [sic]

<sup>21</sup> See SR-FINRA-2017-013. FINRA has represented that it intends to work with the other Participants to submit a proposed amendment to the Plan to require Small Industry Members that are OATS Reporters to report two years after the Effective Date.

<sup>22</sup> Id. [sic]

Reporters to report on the same timeframe as all other OATS Reporters. If such an amendment were approved by the Commission, there would be no need to exempt members from OATS requirements on a firm-by-firm basis.<sup>23</sup>

The CAT NMS Plan also requires that a rule filing to eliminate a duplicative rule to provide “specific accuracy and reliability standards that will determine when duplicative systems will be retired, including, but not limited to, whether the attainment of a certain Error Rate should determine when a system duplicative of the CAT can be retired.”<sup>24</sup> As discussed in Section A.3.(b) of Appendix C to the CAT NMS Plan, the Participants established an initial Error Rate, as defined in the Plan, of 5% on initially submitted data (i.e., data as submitted by a CAT Reporter before any required corrections are performed). The Participants noted in the Plan that their expectation was that “error rates after reprocessing of error corrections will be de minimis.”<sup>25</sup> The Participants based this Error Rate on their consideration of “current and historical OATS Error Rates, the magnitude of new reporting requirements on the CAT Reporters and the fact that many CAT Reporters may have never been obligated to report data to an audit trail.”<sup>26</sup>

As set forth in its filing, FINRA believes that, when assessing the accuracy and reliability of the data for the purposes of retiring OATS, the error thresholds should be measured in more granular ways and should also include minimum error rates of post-correction data, which represents the data most likely to be used by FINRA to conduct surveillance. To ensure the CAT’s accuracy and reliability, FINRA is thus proposing that, before OATS could be retired, the

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<sup>23</sup> Id.

<sup>24</sup> Id. [sic]

<sup>25</sup> See CAT NMS Plan, Appendix C, Section A.3(b), at n.102.

<sup>26</sup> Id.

CAT would generally need to achieve a sustained error rate for Industry Member reporting in each of the categories below for a period of at least 180 days of 5% or lower, measured on a pre-correction or as-submitted basis and 2% or lower on a post-correction basis (measured at T+5).<sup>27</sup> FINRA is proposing to measure the 5% pre-correction and 2% post-correction thresholds by averaging the error rate across the period, not require a 5% pre-correction and 2% post-correction maximum each day for 180 consecutive days. FINRA believes that measuring each of the thresholds over the course of 180 days will ensure that the CAT consistently meets minimum accuracy and reliability thresholds for Industry Member reporting while also ensuring that single-day measurements do not unduly affect the overall measurements.<sup>28</sup> Consequently, FINRA is proposing to use error rates in four categories, measured separately for options and for equities, to assess whether the threshold pre- and post-correction error rates are being met.<sup>29</sup>

In addition to these minimum error rates before OATS can be retired FINRA believes that during the minimum 180-day period during which the thresholds are calculated, FINRA's use of the data in the CAT must confirm that (i) usage over that time period has not revealed material issues that have not been corrected, (ii) the CAT includes all data necessary to allow the Exchange to continue to meet its surveillance obligations, and (iii) the Plan Processor is sufficiently meeting all of its obligations under the CAT NMS Plan. The Exchange believes this time period to use the CAT Data is necessary to reveal any errors that may manifest themselves

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<sup>27</sup> The Plan requires that the Plan Processor must ensure that regulators have access to corrected and linked order and Customer data by 8:00 a.m. Eastern Time on T+5. See CAT NMS Plan, Appendix C, Section A.2(a).

<sup>28</sup> See SR-FINRA-2017-013.

<sup>29</sup> The categories are (1) rejection rates and data validations; (2) intra-firm linkages; (3) order linkage rates; and (4) Exchange and TRF/ORF match rates.

only after surveillance patterns and other queries have been run and to confirm that the Plan Processor is meeting its obligations and performing its functions adequately.<sup>30</sup>

#### Rule 8211

In addition to the OATS rules, Rule 8211 will also be affected by the implementation of the CAT. Rule 8211 is the Exchange's rule regarding the automated submission of specific trading data to the Exchange upon request (commonly referred to as "blue sheet" data) using the EBS system.

Once broker-dealer reporting to the CAT has begun, the CAT will contain much of the data the Participants would otherwise have requested via the EBS system for purposes of NMS Securities and OTC Equity Securities. Consequently, the Exchange will not need to use the EBS system or request information pursuant to Rule 8211 for NMS Securities or OTC Equity Securities for time periods after CAT reporting has begun if the appropriate accuracy and reliability thresholds are achieved, including an acceptable accuracy rate for customer and account information. However, Rule 8211 cannot be completely eliminated upon the CAT achieving the appropriate thresholds because Exchange staff may still need to request information pursuant to Rule 8211 for trading activity occurring before a member organization was reporting to the CAT.<sup>31</sup> In addition, the Rule 8211 applies to information regarding transactions involving securities that will not be reportable to the CAT, such as fixed-income securities; thus, the rule must remain in effect with respect to those transactions until those transactions are captured in the CAT.

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<sup>30</sup> See SR-FINRA-2017-013.

<sup>31</sup> Firms are required to maintain the trade information for pre-CAT transactions in equities and options pursuant to applicable rules, such as books and records retention requirements, for the relevant time period, which is generally three or six years depending upon the record. See 17 CFR 240.17a-3(a), 240.17a-4.

The proposed rule change proposes to add new Supplementary Material to the Rule 8211 to clarify how the Exchange will request data under these rules after member organizations are reporting to the CAT. Specifically, the proposed Supplementary Material to the Rule 8211 will note that the Exchange will request information under Rule 8211 only if the information is not available in the CAT because, for example, the transactions in question occurred before the firm was reporting information to the CAT or involved securities that are not reportable to the CAT. In essence, under the new Supplementary Material, the Exchange will make requests under these rules if and only if the information is not otherwise available through the CAT.

However, as noted above, FINRA believes that the CAT must meet certain minimum accuracy and reliability standards before FINRA could rely on the CAT Data to replace existing regulatory tools, including EBS. Consequently, the proposed Supplementary Material will be implemented only after FINRA publishes its notice after the CAT achieves the thresholds set forth above with respect to OATS and an accuracy rate for customer and account information of 95% for pre-corrected data and 98% for post-correction data. In addition, as discussed above, FINRA can rely on CAT Data to replace EBS requests only after FINRA has determined that its usage of the CAT Data over a 180-day period has not revealed material issues that have not been corrected, confirmed that the CAT includes all data necessary to allow FINRA to continue to meet its surveillance obligations, and confirmed that the CAT Plan Processor is fulfilling its obligations under the CAT NMS Plan.

As noted, if the Commission approves the proposed rule change, the Exchange will announce the implementation date of the proposed rule change in a regulatory notice that will be published once FINRA publishes a notice announcing the date that it will retire its EBS rules, which FINRA will do once it concludes the thresholds for accuracy and reliability described

above have been met and that the Plan Processor is sufficiently meeting all of its obligations under the CAT NMS Plan.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>32</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>33</sup> in particular, because it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

In particular, the Exchange believes that the proposed rule change implements, supports, interprets or clarifies the provisions of the Plan, and is designed to assist the Exchange and its Members 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.”<sup>34</sup> To the extent that this proposal implements, interprets or clarifies the Plan and applies specific requirements to Members, the Exchange believes that this proposal furthers the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Act.

The Exchange also believes that adding a preamble to each current Rule impacted by the

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<sup>32</sup> 15 U.S.C. 78f(b).

<sup>33</sup> 15 U.S.C. 78f(b)(5).

<sup>34</sup> Approval Order, 81 FR at 84697.

Plan would remove impediments to and perfect the mechanism of a free and open market and a national market system by adding clarity and transparency to the Exchange's rules, reducing potential confusion, and making the Exchange's rules easier to navigate and understand.

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

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

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

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

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

Within 45 days of the date of publication of this notice in the Federal Register or up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

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

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEMKT-2017-30 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NYSEMKT-2017-30. 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 10:00 a.m. and 3:00 p.m. Copies of such 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-NYSEMKT-2017-30, 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.<sup>35</sup>

Eduardo A. Aleman  
Assistant Secretary

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<sup>35</sup> 17 CFR 200.30-3(a)(12).