

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-80793; File No. SR-NYSEMKT-2017-29)

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”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 15, 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 subsections (a)(1)-(13) of Rule 956NY (Record of Orders) of the Options Rules as these Rules collect information for the consolidated options audit trail system (“COATS”) that are duplicative of the data collection requirements of the CAT NMS Plan. The Exchange will announce the date for the retirement of COATS in a regulatory notice that will be published once the options exchanges determine that the thresholds for accuracy and reliability described below have been met and that the Plan Processor is sufficiently meeting all of its obligations under the CAT NMS Plan. The proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 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, CBOE, Chicago Stock Exchange, Inc., Financial Industry Regulatory Authority, 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,³ NASDAQ PHLX LLC, The NASDAQ Stock Market LLC, New York Stock Exchange LLC, the Exchange, NYSE Arca, Inc. and NYSE National, Inc.⁴ (collectively, the “Participants”) filed with the

³ 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).

⁴ 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).

Commission, pursuant to Section 11A of the Exchange Act⁵ and Rule 608 of Regulation NMS thereunder,⁶ the CAT NMS Plan.⁷ The Participants filed the Plan to comply with Rule 613 of Regulation NMS under the Exchange Act.⁸ The Plan was published for comment in the Federal Register on May 17, 2016,⁹ and approved by the Commission, as modified, on November 15, 2016.¹⁰

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.¹¹ 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

⁵ 15 U.S.C. 78k-1.

⁶ 17 CFR 242.608.

⁷ 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.

⁸ 17 CFR 242.613.

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

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

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

approval of the CAT NMS Plan.”¹² 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.”¹³

After conducting its analysis of its rules in accordance with the CAT NMS Plan, the Exchange determined that the information collected for COATS is intended to be collected by the CAT. Therefore, the Exchange believes that COATS will no longer be necessary once the CAT is operational and certain accuracy and reliability standards are met. Accordingly, the Exchange submits this proposed rule change to delete subsections (a)(1)-(13) of Rule 956NY of the Options Rules, which set forth certain requirements related to COATS. Discussed below is a description of the duplicative rule requirements as well as the timeline for eliminating the duplicative rule.

If the Commission approves the proposed rule change, the rule text will be effective; however, the amendments will not be implemented until the Exchange, in conjunction with the other options exchanges, publishes a notice announcing the date for the retirement of COATS. As noted below, such a notice would be published once the options exchanges determine that the thresholds for accuracy and reliability described below have been met and that the Plan Processor is sufficiently meeting all of its obligations under the CAT NMS Plan.

Duplicative COATS Requirements

COATS was developed to comply with an order of the Commission requiring the Exchange, in coordination with other exchanges, to “design and implement” COATS to “enable the options exchanges to reconstruct markets promptly, effectively surveil them and enforce

¹² Id.

¹³ Id.

order handling, firm quote, trade reporting and other rules.”¹⁴ The options exchanges utilize COATS to collect and review data regarding options orders, quotes and transactions.

The Exchange has determined that the requirements of subsections (a)(1)-(13) of Rule 956NY, which implement certain requirements related to COATS, are duplicative of information available in the CAT and thus will no longer be necessary once the CAT is operational.¹⁵

The Participants have provided COATS 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 COATS data elements in the CAT Technical Specifications. Accordingly, although the Technical Specifications for the CAT have not yet been finalized, the Exchange and the other options exchanges propose to eliminate COATS in accordance with the proposed timeline discussed below.

¹⁴ See Section IV.B.e.(v) of the Commission’s Order Instituting Public Administrative Proceedings Pursuant to Sections 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions (the “Order”). See Securities Exchange Act Release No. 43268 (September 11, 2000) and Administrative Proceeding File No. 3-10282. As noted, 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. The Exchange has already adopted rules to enforce compliance by its Industry Members, as applicable, with the provisions of the Plan. 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). Once the CAT is fully operational, it will be appropriate to delete Exchange rules implemented to comply with the Order as duplicative of the CAT. Accordingly, the Exchange believes that the Exchange would continue to be in compliance with the requirements of the Order once the CAT is fully operational and the COATS rules are deleted.

¹⁵ Rule 956NY requires ATP Holders to maintain and preserve a record of every order and of any other instructions given or received for the purchase or sale of options contracts, including the terms and conditions of the orders (such as whether the order is a market or limit order), the order entry date and time, and the date and time of any modification of the terms of the order or cancellation of the order, or other specific data elements. The Exchange proposes to replace the current data elements in subsections (a)(1)-(13) with the phrase “the elements required by the Rule 6800 Series.”

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.¹⁶ As discussed below, the Exchange and the other options exchanges believe that COATS 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 the Exchange 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 the Exchange 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.

The Exchange believes COATS should not be retired until all Participants and Industry Members that report data to COATS are reporting comparable data to the CAT. In this way, the Exchange will continue to have access to the necessary data to perform its regulatory duties.

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.”¹⁷ The Exchange believes COATS should not be retired until all Participants and Industry Members that report data to COATS are reporting comparable data to the CAT. While the early submission of options data to the CAT by Small Industry Members could expedite the retirement of COATS, the Exchange believes that it premature to consider such a change and that additional analysis would be necessary to determine whether such early reporting by Small Industry Members would be feasible.

¹⁶ See Appendix C of CAT NMS Plan, Approval Order at 85010.

¹⁷ Id.

The CAT NMS Plan 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.”¹⁸

The Exchange believes that a single cut-over from COATS to CAT is highly preferable to a firm-by-firm approach and is not proposing to exempt members from the COATS requirements on a firm-by-firm basis. The Exchange and the other options exchanges believe that providing such individual exemptions to Industry Members would be inefficient, more costly, and less reliable than the single cut-over. Providing individual exemptions would require the options exchanges to create, for a brief temporary period, a cross-system regulatory function and to integrate data from COATS and the CAT to avoid creating any regulatory gaps as a result of such exemptions. Such a function would be costly to create and would give rise to a greater likelihood of data errors or other issues. Given the limited time in which such exemptions would be necessary, the Exchange and the other options exchanges do not believe that such exemptions would be an appropriate use of limited resources. 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.”¹⁹ The Exchange believes that it is critical that the CAT Data be sufficiently accurate and reliable for the Exchange to perform the regulatory functions that it now performs via COATS. Accordingly, the Exchange believes that the CAT Data should meet specific

¹⁸ Id.

¹⁹ Id.

quantitative error rates, as well as certain qualitative requirements.

The Exchange and the other options exchanges believe that, before COATS may be retired, the CAT would need to achieve a sustained error rate 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).²⁰ The Exchange proposes 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. The Exchange 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 while also ensuring that single-day measurements do not unduly affect the overall measurements. The Exchange proposes to measure the appropriate error rates in the aggregate, rather than firm-by-firm. In addition, the Exchange proposes to measure the error rates for options only, not equity securities, as only options are subject to COATS. The 2% and 5% error rates are in line with the proposed retirement threshold for FINRA's Order Audit Trail System ("OATS").

In addition to these minimum error rates before COATS can be retired, the Exchange believes that during the minimum 180-day period during which the thresholds are calculated, the Exchange'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

²⁰ 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, at C-15.

themselves 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.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,²¹ in general, and furthers the objectives of Section 6(b)(5) of the Act,²² 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 is consistent with the Exchange Act because it fulfills the obligation in the CAT NMS Plan for the Exchange to submit a proposed rule change to eliminate or modify duplicative rules. In approving the Plan, the SEC noted that the Plan “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.”²³ As this proposal implements the Plan, the Exchange believes that this proposal furthers the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Exchange Act.

Moreover, the purpose of the proposed rule change is to eliminate rules that require the submission of duplicative data to the Exchange. The elimination of such duplicative

²¹ 15 U.S.C. 78f(b).

²² 15 U.S.C. 78f(b)(5).

²³ Approval Order at 84697.

requirements will reduce unnecessary costs and other compliance burdens for the Exchange and its members, and therefore, will enhance the efficiency of the securities markets. Furthermore, the Exchange believes that the approach set forth in the proposed rule change strikes the appropriate balance between ensuring that the Exchange is able to continue to fulfill its statutory obligation to protect investors and the public interest by ensuring its surveillance of market activity remains accurate and effective while also establishing a reasonable timeframe for elimination or modification of its rules that will be rendered duplicative after implementation of the CAT.

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 approved by the Commission regarding the elimination of rules and systems that are duplicative the CAT, and is designed to assist the Exchange in meeting its regulatory obligations pursuant to the Plan. Similarly, all options exchanges are proposing the elimination of COATS and their rules related to COATS to implement the requirements of the CAT NMS Plan. Therefore, this is not a competitive rule filing and, therefore, it does not raise competition issues between and among the options exchanges and/or their members.

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. Please include File Number SR-NYSEMKT-2017-29 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-2017-29. 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-2017-29, 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.²⁴

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Assistant Secretary

²⁴ 17 CFR 200.30-3(a)(12).