For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

J. Matthew DeLesDernier,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89397; File No. 4–698]

Joint Industry Plan; Order Approving Amendment to the National Market System Plan Governing the Consolidated Audit Trail

July 24, 2020.

I. Introduction

On April 14, 2020, the Operating Committee for Consolidated Audit Trail, LLC, on behalf of the Participants [1] to the National Market System Plan Governing the Consolidated Audit Trail (the ''CAT NMS Plan'' or ''Plan'') [2] filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') pursuant to Section 11A(a)(3) of the Securities Exchange Act of 1934 (''Exchange Act''),[3] and Rule 608 thereunder,[4] a proposed amendment (''Amendment'') to the CAT NMS Plan to revise data reporting requirements for Firm Designated ID.[5] The Amendment was published for comment in the **Federal Register** on June 17, 2020.[6] No comment letters were received. This order approves the Amendment to the Plan.

II. Description of the Amendment

In the Amendment, the Participants propose to amend the definition of ''Firm Designated ID'' to: (1) To prohibit the use of account numbers as Firm Designated IDs for trading accounts that are not proprietary accounts; (2) to require that the Firm Designated ID for a trading account be persistent over time for each Industry Member so that a single account may be tracked across time within a single Industry Member; (3) to permit the use of relationship identifiers as Firm Designated IDs in certain circumstances; and (4) to permit the use of entity identifiers as Firm Designated IDs in certain circumstances.[7]

A. Prohibition on Use of Account Numbers

The Participants propose to amend the definition of Firm Designated ID to prohibit the use of account numbers as Firm Designated IDs for accounts that are not proprietary accounts. After discussions with the industry, the Participants have concluded that each Industry Member must make its own risk determination as to whether it believes it is necessary to mask the actual account number for any proprietary account of the Industry Member when reporting the Firm Designated ID to CAT.

B. Persistent Firm Designated IDs

The Participants propose to amend the definition of Firm Designated ID to specify that Firm Designated IDs must be unique and persistent over time, rather than unique for each account for each business date. Specifically, the Participants propose to amend the definition of ''Firm Designated ID'' in Section 1.1 of the CAT NMS Plan so that the definition of ''Firm Designated ID'' would read, in relevant part, as follows: ''a unique and persistent identifier for each trading account designated by Industry Members for purposes of providing data to the Central Repository . . . where each such identifier is unique among all identifiers from any given Industry Member.'' [8] The Participants state that with this change, a single account (or relationship or entity identifier as described below) can be tracked across time within a single Industry Member using the Firm Designated ID, without requiring a regulator to use Customer information.[9]

C. Relationship Identifiers

The Participants propose to amend the definition of Firm Designated ID so that Industry Members would be able to provide a ''relationship identifier'' as the Firm Designated ID when they do not have an account number available to their order handling and/or execution system at the time of order receipt, but can provide an identifier representing the client's trading relationship. Specifically, the Participants propose to amend the definition of a ''Firm Designated ID'' in Section 1.1 of the CAT NMS Plan to state that a Firm Designated ID means, in part, ''a unique and persistent relationship identifier when an Industry Member does not have an account number available to its order handling and/or execution system at the time of order receipt, provided, however, such identifier must be masked.''

The Participants state that relationship identifiers are used by a broker-dealer when it establishes the parent relationship for a client using a relationship identifier as opposed to an actual parent account. The Participants further state that a relationship identifier is established prior to any trading for a client and could be any of a variety of identifiers, such as a short name for a relevant individual or institution. The proposed amendment would allow Industry Members to use relationship identifiers in circumstances in which the account structure is not available to an Industry Member's trading system at the time of order placement. When a relationship identifier is used instead of a parent account, and an Industry Member places an order on behalf of the client, any executed trades will be kept in a firm

[27] 17 CFR 200.30–3(a)(12).

[1] The Participants are: BOX Options Exchange LLC, Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe C2 Options Exchange, Inc., Cboe Exchange, Inc., Financial Industry Regulatory Authority, Inc., Long-Term Stock Exchange LLC, Investors' Exchange, LLC, Miami International Securities Exchange, LLC, MEMX LLC, MIAX EMERALD, LLC, MIAX PEARL, LLC, Nasdaq GEMX, LLC, Nasdaq ISE, LLC, Nasdaq MRX, LLC, Nasdaq BX, Inc., Nasdaq PHLX LLC, The NASDAQ Stock Market LLC, New York Stock Exchange LLC, NYSE Arca, Inc., NYSE Chicago, Inc., NYSE American, LLC and NYSE National, Inc. (collectively, the ''Participants,'' ''self-regulatory organizations,'' or ''SROs'').

[2] The CAT NMS Plan was approved by the Commission, as modified, on November 15, 2016. *See* Securities Exchange Act Release No. 79318 (November 15, 2016), 81 FR 84696 (November 23, 2016) (''CAT NMS Plan Approval Order'').

[3] 15 U.S.C. 78k–1(a)(3).

[4] 17 CFR 242.608.

[5] *See* Letter from Michael Simon, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission, dated April 14, 2020.

[6] *See* Securities Exchange Act Release No. 89052 (June 11, 2020), 85 FR 36623 (''Notice'').

[7] *See* Notice, *supra* note 6, at 36626. Prior to this amendment, ''Firm Designated ID'' was defined as ''a unique identifier for each trading account designated by Industry Members for purposes of providing data to the Central Repository, where each such identifier is unique among all identifiers from any given Industry Member for each business date.''

[8] The Participants state that if an Industry Member assigns a new account number or entity identifier to a client or customer due to a merger, acquisition or some other corporate action, then the Industry Member should create a new Firm Designated ID to identify the new account identifier/relationship identifier/entity identifier in use at the Industry Member for the entity. In addition, if a previously assigned Firm Designated ID is no longer in use by an Industry Member (*e.g.,* if the trading account associated with the Firm Designated ID has been closed), then an Industry Member may reuse the Firm Designated ID for another trading account. The Participants represent that the Plan Processor will maintain a history of the use of each Firm Designated ID, including, for example, the effective dates of the Firm Designated ID with respect to each associated trading account. *See* Notice, *supra* note 6, at 36625 n.9.

[9] ''Customer information'' is Customer Account Information and Customer Identifying Information that will be captured by CAT and stored in a secure database physically separated from the transactional database. *See* CAT NMS Plan at Section 1.1, and Appendix D, Section 9.1.

account until they are allocated to the proper subaccount(s) associated with the relationship identifier.

The relationship identifier would be required to be persistent over time and unique among all identifiers from any given Industry Member, similar to all Firm Designated IDs as proposed by the amendment. In addition, the relationship identifier would have to be masked, so that the relationship identifier could not be a name or otherwise indicate the identity of the relationship, and the relationship identifier could not be used alone to reveal the identity of the relationship.[10]

D. Entity Identifiers

The Participants propose to amend the definition of Firm Designated ID so that Industry Members could submit an ''entity identifier'' as a Firm Designated ID when an employee of an Industry Member with discretion over multiple client accounts creates an aggregated order for which a trading account number of the Industry Member is not available at the time of order origination.[11] Specifically, the Participants propose to amend the definition of Firm Designated ID by stating that a Firm Designated ID means, in part, ''a unique and persistent entity identifier when an employee of an Industry Member is exercising discretion over multiple client accounts and creates an aggregated order for which a trading account number of the Industry Member is not available at the time of order origination.''

The proposed amendment would allow Industry Members to use entity identifiers in circumstances in which an account number is not available to an Industry Member's trading system at the time of order placement. Entity identifiers are comparable to relationship identifiers described above, except the entity identifier represents a firm's discretionary relationship with the client rather than a firm trading account or the client. The entity identifier would be required to be persistent over time and unique among all identifiers from any given Industry Member, similar to all Firm Designated IDs as proposed by the amendment. Unlike the relationship identifier, the entity identifier would not have to be masked.

III. Discussion and Commission Findings

After careful review, and for the reasons discussed below, the Commission finds that the Amendment is appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, and to remove impediments to, and perfect the mechanisms of, a national market system or otherwise in furtherance of the purposes of the Act.[12]

A. Prohibition on Use of Account Numbers

The Commission believes that amending the definition of Firm Designated ID to prohibit the use of account numbers as the Firm Designated IDs for accounts that are not proprietary accounts could reduce security risks related to CAT Data by limiting the capture of sensitive data that could be used to effect an unauthorized transaction in an account. With respect to proprietary accounts, however, the Commission believes it is appropriate to allow Industry Members to continue to have the option of using account numbers for such accounts. The Commission understands that the Participants have previously published guidance stating that acceptable Firm Designated IDs for non-proprietary accounts may include, ''without limitation, a newly created unique identifier or an internal only identifier used by a broker-dealer that cannot be used to effect a transaction.'' [13] The Commission believes it is appropriate to continue to allow Industry Members to determine whether or not to use account numbers of proprietary accounts as Firm Designated IDs because the risks associated with using proprietary account numbers do not affect customers, and the Industry Member can determine for itself whether the benefits of masking such account numbers outweigh potential drawbacks.

B. Requirement for Persistent Firm Designated IDs

The Commission believes that the proposed requirement that Firm Designated IDs be unique and persistent over time for each Industry Member is appropriate because without such persistence, the ability to analyze trading activity for specific accounts (or relationship or entity identifiers) across time using only CAT transaction data could be difficult or impossible, reducing the utility of such data to regulators. The Participants represent and the Commission agrees that requiring Firm Designated IDs would allow a single account (or relationship or entity identifier) to be tracked across time within a single Industry Member without accessing Customer information, which is stored and maintained separately from order and transaction data in the CAT.

C. Relationship Identifiers and Entity Identifiers

The Commission believes that the proposed amendment to the definition of Firm Designated ID that would permit the use of relationship and entity identifiers is appropriate because it allows Industry Members to report relationship and entity identifiers in a manner consistent with existing business practices and workflows, rather than requiring Industry Members to build new systems and business processes necessary to report Firm Designated IDs based on individual accounts.[14] The Participants represent that relevant clients that will receive an allocation of the execution have established accounts prior to the trade that satisfy relevant regulatory obligations for opening accounts, such as Know Your Customer and other customer obligations.[15] The Commission believes that the use of relationship and entity identifiers, because they must persistent over time and be unique, is designed to allow regulatory users to track clients and entities across time within a single Industry Member.

For the reasons noted above, the Commission finds that the Amendment to the CAT NMS Plan is appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, and to remove impediments to, and perfect the mechanisms of, a national market system or otherwise in furtherance of the purposes of the Act.[16]

IV. Impact on Efficiency, Competition, and Capital Formation

In determining whether to approve a CAT NMS Plan amendment, and whether such amendment is in the public interest, Rule 613 requires the Commission to consider the impact of the amendment on efficiency, competition, and capital formation.[17]

[10] The Participants have issued guidance stating that an acceptable Firm Designated ID can be, without limitation, a newly created unique identifier or an internal only identifier used by a broker-dealer that cannot be used to effect a transaction. In addition, Industry Members could employ a masking methodology to mask the actual account number prior to the submission to CAT. *See* CAT NMS Plan FAQ M2, *available at: https://www.catnmsplan.com/faq.*

[11] The Participants provided an example of the use of an entity identifier as a Firm Designated ID in the Notice. *See* Notice, *supra* note 6, at 36625.

[12] 17 CFR 242.608.

[13] *See supra* note 10.

[14] *See also* Notice, *supra* note 6, at 35525.

[15] *See id.* at 35524–25.

[16] 17 CFR 242.608.

[17] *See* 17 CFR 242.613(a)(5); *see also* 15 U.S.C. 78c(f).

The Commission received no comment letters addressing the impact of the Amendment on efficiency, competition, and capital formation.

The Commission believes that the Amendment would improve the efficiency of regulatory activities by providing regulators with an identifier that is time-persistent for each account (or relationship or entity identifier) within a broker-dealer. Under the Plan prior to the Amendment, broker-dealers are required to provide a Firm Designated ID that is unique for each account for each business date, but this identifier could change over time. The Amendment would allow regulators to track an account's (or relationship or entity identifier's) activity over time using only transaction data.

The Commission believes that the Amendment would not impact competition in the market for broker-dealer services.[18] Because the proposed Amendment does not require Industry Members to alter their existing workflows, the Commission believes individual broker-dealers will not incur additional costs or realize cost savings that would affect the availability or prices of services in this market.

Because the Amendment concerns the security of data used by regulators to monitor market behavior and investigate misconduct, and the processes by which broker-dealers report such data, the Commission does not anticipate that the Amendment would encourage or discourage assets being invested in the capital markets and thus does not expect the Amendment will significantly affect capital formation.

V. Conclusion

It is therefore ordered, pursuant to Section 11A of the Act,[19] and Rule 608 thereunder,[20] that the Amendment to the Plan (File No. 4–698) be, and it hereby is, approved.

By the Commission.

Vanessa A. Countryman,

Secretary.

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[18] *See also* Securities Exchange Act Release No. 77724 (April 27, 2016), 81 FR 30614, 30742 (May 17, 2016) (discussing the baseline of competition in the market for broker-dealer services).

[19] 15 U.S.C. 78k–1.

[20] 17 CFR 242.608.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89393; File No. SR–OCC–2020–008]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change To Enhance OCC's Stock Loan Close-Out Process

July 24, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 14, 2020, the Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would amend OCC Rules 2211 and 2211A, which concern the close-out of a defaulting Hedge Clearing Member's or Market Loan Clearing Member's (each a ''defaulting Clearing Member'') stock loan positions, respectively, to require Lending Clearing Members or Borrowing Clearing Members (each a ''non-defaulting Clearing Member'') whom OCC instructs to buy-in or sell-out securities to execute such transactions and provide OCC notice of such action by the settlement time for a Clearing Member's obligations to OCC on the business day after OCC gives the instruction.[3] In addition, OCC proposes to amend Rules 2211 and 2211A to provide that if a non-defaulting Clearing Member so instructed does not execute the trades and provide notice by that time, OCC will terminate the Stock Loan and effect settlement based upon the Marking Price at the close of business on the day that OCC provided the instruction. OCC submitted the proposed amendments to OCC's Rules in Exhibit 5. Material proposed to be added to OCC's Rules as currently in effect is marked by underlining and material proposed to be deleted is marked with strikethrough text. All terms with initial capitalization that are not otherwise defined herein have the same meaning as set forth in the By-Laws and Rules.[4]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] ''Buy-in'' refers to a non-defaulting lender purchasing replacement stock. ''Sell-out'' refers to a non-defaulting borrower selling the loaned securities in order to recoup its collateral.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

OCC proposes amendments to OCC Rules 2211 and 2211A designed to ensure that OCC has authority and operational capacity to take timely action to contain losses and liquidity demands and continue to meet its obligations in the event of a Clearing Member default by more closely aligning the close-out of stock loan positions through buy-in and sell-out transactions with the timing of an auction of a defaulting Clearing Member's other positions and to ensure that the close-out of a defaulting Clearing Member's stock loan positions by buy-in or sell-out transactions occurs within OCC's two-day liquidation assumption. The proposed amendments to the Rules are discussed in more detail below.

Background

OCC operates two programs in which it acts as a central counterparty for stock loan transactions: (1) The Stock Loan/Hedge Program and (2) Market Loan Program (collectively, the ''Stock Loan Programs''). Stock Loan/Hedge Program transactions are initiated directly between Clearing Members on a bilateral basis (*i.e.,* ''broker-to-broker'' model) and Market Loan Program transactions are initiated on either a broker-to-broker basis or anonymously through the matching of bids and offers (*i.e.,* ''market'' model). Both programs rely on The Depository Trust Company (''DTC'') to facilitate the settlement of equity securities and cash collateral between members.

Under the Stock Loan Programs, OCC novates the transaction and becomes the

[4] OCC's By-Laws and Rules can be found on OCC's public website: *http://optionsclearing.com/about/publications/bylaws.jsp.*