

Portfolio and/or the Proxy Portfolio or changes thereto;

- In the event (a) the Adviser or Sub-Adviser becomes registered as a broker-dealer or becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer, or becomes affiliated with a broker-dealer, it will implement and maintain a fire wall with respect to its relevant personnel or its broker-dealer affiliate regarding access to information concerning the composition of and/or changes to a Fund's Actual Portfolio and/or Proxy Portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding a Fund's Actual Portfolio and/or Proxy Portfolio or changes thereto; and

- Any person or entity, including any service provider for a Fund, who has access to non-public information regarding a Fund's Actual Portfolio or the Proxy Portfolio or changes thereto will be subject to procedures reasonably designed to prevent the use and dissemination of material non-public information regarding a Fund's Actual Portfolio and/or the Proxy Portfolio or changes thereto, and if any such person or entity is registered as a broker-dealer or affiliated with a broker-dealer, such person or entity has erected and will maintain a "fire wall" between the person or entity and the broker-dealer with respect to access to information concerning the composition of and/or changes to a Fund's Actual Portfolio and/or Proxy Portfolio.

Finally, trading in the Shares will be subject to the existing trading surveillances, administered by the Exchange, as well as cross-market surveillances administered by the Financial Industry Regulatory Authority ("FINRA") on behalf of the Exchange,<sup>19</sup> and the Exchange states that these surveillance procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities.

<sup>19</sup> See NYSE Arca Rule 8.601-E, Commentary .03, which requires, as part of the surveillance procedures for Active Proxy Portfolio Shares, a Fund's investment adviser to, upon request by the Exchange or FINRA, on behalf of the Exchange, make available to the Exchange or FINRA the daily Actual Portfolio holdings of the Fund.

The Commission finds that the following support the listing and trading of the Shares:

(1) The Shares will conform to the initial and continued listing criteria under NYSE Arca Rule 8.601-E.

(2) A minimum of 100,000 Shares for each Fund will be outstanding at the commencement of trading on the Exchange.

(3) The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed, and may obtain information, regarding trading in the Shares and underlying exchange-traded instruments with other markets and other entities that are members of the ISG. In addition, the Exchange may obtain information regarding trading in the Shares and underlying exchange-traded instruments from markets and other entities with which the Exchange has in place a comprehensive surveillance sharing agreement. Any foreign common stocks held by a Fund will be traded on an exchange that is a member of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

(4) The Exchange has appropriate rules to facilitate trading in the Shares during all trading sessions.

(5) For initial and continued listing, the Funds will be in compliance with Rule 10A-3 under the Act.<sup>20</sup>

(6) Each Fund's holdings will conform to the permissible investments as set forth in the Application and Exemptive Order and the holdings will be consistent with all requirements set forth in the Application and Exemptive Order. Each Fund's investments, including derivatives, will be consistent with its investment objective and will not be used to enhance leverage (although certain derivatives and other investments may result in leverage).

(7) With respect to Active Proxy Portfolio Shares, all of the Exchange member obligations relating to product description and prospectus delivery requirements will continue to apply in accordance with Exchange rules and federal securities laws, and the Exchange and FINRA will continue to monitor Exchange members for compliance with such requirements.

Pursuant to Commentary .01 to NYSE Arca Rule 8.601-E, all statements and representations made in the filing regarding: (1) The description of the portfolio; (2) limitations on portfolio holdings; or (3) the applicability of Exchange listing rules specified in the filing constitute continued listing requirements for listing the Shares on the Exchange. In addition, the issuer

<sup>20</sup> See 17 CFR 240.10A-3.

must notify the Exchange of any failure by a Fund to comply with the continued listing requirements and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor<sup>21</sup> for compliance with the continued listing requirements. If a Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5-E(m).

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act<sup>22</sup> that the proposed rule change (SR-NYSEArca-2020-51), as modified by Amendment No. 2, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>23</sup>

**J. Matthew DeLesDernier,**  
*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-89441; File No. SR-FINRA-2020-023]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the FINRA Rule 6800 Series (Consolidated Audit Trail Compliance Rule)

July 31, 2020.

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 July 30, 2020, 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 and II below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit

<sup>21</sup> The Commission notes that certain proposals for the listing and trading of exchange-traded products include a representation that the exchange will "surveil" for compliance with the continued listing requirements. See, e.g., Securities Exchange Act Release No. 77499 (April 1, 2016), 81 FR 20428, 20432 (April 7, 2016) (SR-BATS-2016-04). In the context of this representation, it is the Commission's view that "monitor" and "surveil" both mean ongoing oversight of compliance with the continued listing requirements. Therefore, the Commission does not view "monitor" as a more or less stringent obligation than "surveil" with respect to the continued listing requirements.

<sup>22</sup> 15 U.S.C. 78s(b)(2).

<sup>23</sup> 17 CFR 200.30-3(a)(12).

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

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

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 amend the FINRA Rule 6800 Series, FINRA's compliance rule ("Compliance Rule") regarding the National Market System Plan Governing the Consolidated Audit Trail (the "CAT NMS Plan" or "Plan")<sup>3</sup> to be consistent with an amendment to the CAT NMS Plan recently approved by the Commission.

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**

The purpose of this proposed rule change is to amend the Rule 6800 Series, the Compliance Rule regarding the CAT NMS Plan, to be consistent with an amendment to the CAT NMS Plan recently approved by the Commission.<sup>4</sup> The Commission approved an amendment to the CAT NMS Plan to amend the requirements for Firm Designated IDs in four ways: (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;

<sup>3</sup> Unless otherwise specified, capitalized terms used in this rule filing are defined as set forth in the Compliance Rule.

<sup>4</sup> See Securities Exchange Act Release No. 89397 (July 24, 2020), 85 FR 45941 (July 30, 2020).

and (4) to permit the use of entity identifiers as Firm Designated IDs in certain circumstances (the "FDID Amendment"). As a result, FINRA proposes to amend the definition of "Firm Designated ID" in Rule 6810 to reflect the changes to the CAT NMS Plan regarding the requirements for Firm Designated IDs.

Rule 6810(r) defines the term "Firm Designated ID" to mean "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."

##### **(1) Prohibit Use of Account Numbers**

FINRA proposes to amend the definition of "Firm Designated ID" in Rule 6810(r) to provide that Industry Members may not use account numbers as the Firm Designated ID for trading accounts that are not proprietary accounts. Specifically, FINRA proposes to add the following to the definition of a Firm Designated ID: "provided, however, such identifier may not be the account number for such trading account if the trading account is not a proprietary account."

##### **(2) Persistent Firm Designated ID**

FINRA also proposes to amend the definition of "Firm Designated ID" in Rule 6810(r) to require a Firm Designated ID assigned by an Industry Member to a trading account to be persistent over time, not for each business day.<sup>5</sup> To effect this change, FINRA proposes to amend the definition of "Firm Designated ID" in Rule 6810(r) to add "and persistent" after "unique" and delete "for each business date" 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.

<sup>5</sup> 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 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.

##### **(3) Relationship Identifiers**

The FDID Amendment also permits an Industry Member to provide a relationship identifier as the Firm Designated ID, rather than an identifier that represents a trading account, in certain scenarios in which an Industry Member does not have an account number available to its order handling and/or execution system at the time of order receipt (e.g., certain institutional accounts, managed accounts, accounts for individuals). In such scenarios, the trading account structure may not be available when a new order is first received from a client and, instead, only an identifier representing the client's trading relationship is available. In these limited instances, the Industry Member may provide an identifier used by the Industry Member to represent the client's trading relationship with the Industry Member instead of an account number.

When a trading relationship is established at a broker-dealer for clients, the broker-dealer typically creates a parent account, under which additional subaccounts are created. However, in some cases, the broker-dealer establishes the parent relationship for a client using a relationship identifier as opposed to an actual parent account. The relationship identifier could be any of a variety of identifiers, such as a short name for a relevant individual or institution. This relationship identifier is established prior to any trading for the client. If a relationship identifier has been established rather than a parent account, and an order is placed on behalf of the client, any executed trades will be kept in a firm account (e.g., a facilitation or average price account) until they are allocated to the proper subaccount(s), i.e., the accounts associated with the parent relationship identifier connecting them to the client.

Relationship identifiers are used in circumstances in which the account structure is not available to the trading system at the time of order placement. The clients have established accounts prior to the trade that satisfy relevant regulatory obligations for opening accounts, such as Know Your Customer and other customer obligations. However, the order receipt workflows operate using relationship identifiers, not accounts.

For Firm Designated ID purposes, as with an identifier for a trading account, the relationship identifier must be persistent over time. The relationship identifier also must be unique among all identifiers from any given Industry Member. With these requirements, a single relationship could be tracked

across time within a single Industry Member using the Firm Designated ID. In addition, the relationship identifier must be masked as the relationship identifier could be a name or otherwise provide an indication as to the identity of the relationship. The masking requirement would avoid potentially revealing the identity of the relationship.

An example of the use of a relationship identifier as a Firm Designated ID would be as follows: Suppose that Big Fund Manager is known in Industry Member A's systems as "BFM1." When an order is placed by Big Fund Manager, the order is tagged to BFM1. Industry Member A could use a masked version of BFM1 in place of the Firm Designated ID representing a trading account when reporting a new order from Big Fund Manager instead of the account numbers to which executed shares/contracts will be allocated at a later time via a booking or other system. Similarly, another example of the use of a relationship identifier as a Firm Designated ID would involve an individual in place of the Big Fund Manager in the above example.

In accordance with the FDID Amendment, FINRA proposes to amend the definition of a "Firm Designated ID" in Rule 6810(r) to permit Industry Members to provide a relationship identifier as the Firm Designated ID as described above. Specifically, FINRA proposes to amend the definition of "Firm Designated ID" in Rule 6810(r) to state that a Firm Designated ID means, in relevant 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."

#### (4) Entity Identifiers

The FDID Amendment also permits Industry Members to provide an entity identifier, rather than an identifier that represents a trading account, when an employee of the 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. An entity identifier is an identifier of the Industry Member that represents the firm discretionary relationship with the client rather than a firm trading account.

The scenarios in which a firm uses an entity identifier are comparable to when a firm uses a relationship identifier (as described above) except the entity

identifier represents the Industry Member rather than a client. As with relationship identifiers, entity identifiers are used in circumstances in which the account structure is not available to the trading system at the time of order placement. In this workflow, the Industry Member's order handling and/or execution system does not have an account number at the time of order origination. The 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. However, the order origination workflows operate using entity identifiers, not accounts.

For Firm Designated ID purposes, as with the identifier for a trading account or a relationship, the entity identifier must be persistent over time. The entity identifier also must be unique among all identifiers from any given Industry Member. Each Industry Member must make its own risk determination as to whether it believes it is necessary to mask the entity identifier when using an entity identifier to report the Firm Designated ID to CAT.

An example of the use of an entity identifier as a Firm Designated ID would be when Industry Member 1 has an employee that is a registered representative that has discretion over several client accounts held at Industry Member 1. The registered representative places an order that he will later allocate to individual client accounts. At the time the order is placed, the trading system only knows it involves a representative of Industry Member 1 and it does not have a specific trading account that could be used for Firm Designated ID reporting. Therefore, Industry Member 1 could report IM1, its entity identifier, as the FDID with the new order.

In accordance with the FDID Amendment, FINRA proposes to amend the definition of "Firm Designated ID" in Rule 6810(r) to permit the use of an entity identifier as a Firm Designated ID as described above. Specifically, FINRA proposes to amend the definition of "Firm Designated ID" in Rule 6810(r) to state that a Firm Designated ID means, in relevant 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."

FINRA has filed the proposed rule change for immediate effectiveness and has requested that the Commission waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, so the proposed rule change can become operative on 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,<sup>6</sup> which requires, among other things, that FINRA rules must be designed 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, and Section 15A(b)(9) of the Act,<sup>7</sup> which requires that FINRA rules not impose any burden on competition that is not necessary or appropriate.

FINRA believes that the proposed rule change is consistent with the Act because it is consistent with and implements a recent amendment to the CAT NMS Plan and is designed to assist FINRA and its Industry Members in meeting regulatory obligations pursuant to the Plan. 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."<sup>8</sup> To the extent that this proposed rule change implements the Plan and applies specific requirements to Industry Members, FINRA believes that the proposed rule change furthers the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Act.

#### *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 notes that the proposed rule change is consistent with a recent amendment to the CAT NMS Plan and is designed to assist FINRA in meeting its regulatory obligations pursuant to the Plan. FINRA also notes that the FDID Amendment will apply equally to all Industry Members that trade NMS Securities and

<sup>6</sup> 15 U.S.C. 78o-3(b)(6).

<sup>7</sup> 15 U.S.C. 78o-3(b)(9).

<sup>8</sup> See Securities Exchange Act Release No. 79318 (November 15, 2016), 81 FR 84696, 84697 (November 23, 2016).

OTC Equity Securities. FINRA anticipates no new costs to member firms reporting to the CAT as a result of this proposal, because any related costs have already been built in the technical specifications previously determined and shared broadly in conformance with the CAT NMS Plan, as amended. In addition, FINRA and all national securities exchanges are proposing this amendment to their Compliance Rules. Therefore, this is not a competitive rule filing and does not impose a burden on competition.

*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**

FINRA has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>9</sup> and Rule 19b-4(f)(6) thereunder.<sup>10</sup> Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>11</sup> and Rule 19b-4(f)(6)(iii) thereunder.<sup>12</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>13</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>14</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. FINRA has asked the Commission to waive the 30-day operative delay so that the proposal may become operative by July 31, 2020. The Commission believes that waiver of the 30-day operative delay is consistent

with the protection of investors and the public interest because it implements an amendment to the CAT NMS Plan approved by the Commission.<sup>15</sup> Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative as of July 31, 2020.<sup>16</sup>

At any time within 60 days of the filing of this 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 will institute proceedings to determine whether the proposed rule change 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
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2020-023 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-2020-023. This file number should be included on the subject line if email 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 the 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-2020-023, and should be submitted on or before August 27, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

**J. Matthew DeLesDernier,**  
Assistant Secretary.

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-89436; File No. SR-ICC-2020-008]

**Self-Regulatory Organizations; ICE Clear Credit LLC; Order Approving Proposed Rule Change Relating to the ICC Exercise Procedures and ICC Clearing Rules**

July 31, 2020.

**I. Introduction**

On June 3, 2020, ICE Clear Credit LLC ("ICC") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to formalize and adopt the ICC Exercise Procedures (the "Procedures") and a related update to the ICC Clearing Rules (the "Rules") to accompany the clearing of options on index credit default swaps ("Index Swaptions").<sup>3</sup> The proposed rule change was published for comment in the

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires FINRA to give the Commission written notice of FINRA's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. FINRA has satisfied this requirement.

<sup>13</sup> 17 CFR 240.19b-4(f)(6).

<sup>14</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>15</sup> See Securities Exchange Act Release No. 89397 (July 24, 2020) (**Federal Register** publication pending).

<sup>16</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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

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

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

<sup>3</sup> Capitalized terms used but not defined herein have the meanings specified in the Procedures or the Rules, as applicable.