

March 27, 2020

**VIA EMAIL**

Brett Redfearn  
Director, Division of Trading and Markets  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

Re: Consolidated Audit Trail: COVID-19 Pandemic Relief

Dear Mr. Redfearn:

Further to our recent discussions regarding Industry Member reporting deadlines, the Division of Trading and Markets' (the "Staff") March 16, 2020 no-action relief letter, and the Participants' filed request for exemptive relief, I write on behalf of the Consolidated Audit Trail ("CAT") Participants in order to further discussion regarding the timeline for Industry Member reporting.<sup>1</sup> With its no-action letter, the Staff has agreed not to refer Participants to the SEC's Division of Enforcement for failure to enforce their CAT compliance rules against any CAT Reporter that does not report to the CAT before May 20, 2020.<sup>2</sup> Since last fall, FINRA CAT (the Plan Processor) and the Participants have been communicating to the industry that the CAT System will be ready to receive Industry Member Data (for Large Industry Members) on April 20, 2020. That date remains operative from the FINRA CAT and the Participants' perspective and the Participants look forward to seeing Industry Member reporting by those firms that have worked in recent months to complete required testing and certification.

The Participants currently have an exemption request pending before the Commission that has been extensively vetted among the Participants, with Industry Members of the CAT Advisory Committee, and with the Staff, and the Participants continue to believe that the Commission should approve that request for an exemption from Plan requirements.<sup>3</sup> The reporting dates included in that request remain operable from the Participants' and Plan Processor's perspective and provide a clear path for Industry Members that have completed

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<sup>1</sup> The twenty-four Participants of the CAT NMS Plan are: BOX Exchange LLC; Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe C2 Exchange, Inc. and Cboe Exchange, Inc.; Financial Industry Regulatory Authority, Inc. ("FINRA"); Investors Exchange LLC; Long-Term Stock Exchange, Inc., Miami International Securities Exchange LLC, MIAX Emerald, LLC, MIAX PEARL, LLC; NASDAQ BX, Inc., Nasdaq GEMX, LLC, Nasdaq ISE, LLC, Nasdaq MRX, LLC, NASDAQ PHLX LLC, The NASDAQ Stock Market LLC; and New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc. and NYSE National, Inc. The Limited Liability Company Agreement of Consolidated Audit Trail, LLC is the CAT NMS Plan. Unless otherwise noted, capitalized terms are used as defined in Rule 613, in the CAT NMS Plan, or in this letter.

<sup>2</sup> See Letter from Brett Redfearn, Director, Division of Trading and Markets, SEC, to Michael Simon, CAT NMS Plan Operating Committee Chair (Mar. 16, 2020), *available at* <https://www.sec.gov/divisions/marketreg/mr-noaction/2020/consolidated-audit-trail-reporting-031620.pdf>.

<sup>3</sup> See Letter from Michael Simon, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, SEC (Feb. 19, 2020) *available at* <https://catnmsplan.com/sites/default/files/2020-03/CAT-Industry-Reporting-Exemptive-Request%28Final%29.pdf>.

certification and testing and are prepared to meet those deadlines. As you know, to approve the exemption request, the Commission would issue an Order, with dates it deems appropriate regardless of those requested by the Participants in their exemption request. As further described below, the Participants acknowledge that some firms have represented that because of the COVID-19 pandemic they need additional time to be prepared to report, and believe that the Staff has tools at its disposal to provide the flexibility and relief some Industry Members request without Participants' withdrawal and resubmission of the exemption request.

In our letter dated March 19, 2020, the Participants explained that certain Industry Members have requested that the Staff extend its no-action relief to June 22, 2020 so that Industry Members that are not prepared to report by April 20 may be able to dedicate sufficient resources in order to complete their systems build-out and the testing and certification required for reporting.<sup>4</sup> Industry Members have communicated to the Participants that because of the current public health crisis resulting from the COVID-19 pandemic and Industry Member CAT Reporters' move to remote work arrangements, the resulting strain on resources has caused certain firms to require additional time to be ready for live CAT reporting. The Participants are sympathetic to those requests and seek to work with the Commission and the Staff to support all Industry Members in their efforts to begin reporting to the CAT. At the same time the Participants seek to encourage those Industry Members who are ready to report to the CAT beginning April 20 to do so.

On a number of occasions, we have discussed what the Participants and FINRA CAT, considering input from the industry, believe to be an appropriate timeline for Industry Member reporting. FINRA CAT has been very clear that it will be prepared to accept data from any Industry Member that has completed onboarding and certification testing by April 20 for reporting for equities Phase 2a and will similarly be ready by May 18 for options Phase 2b as described on [catnmsplan.com](https://catnmsplan.com). FINRA CAT reports that hundreds of firms have been testing to prepare for the April 20 reporting date and many have completed certification in order to report on that date.

In parallel with approval of the Participants' exemption request from the requirements in the Plan, the most efficient way to address immediate industry concerns and to provide flexibility for Industry Members who need some extra time is for the Staff to extend its no-action relief to June 22, 2020 for Phase 2a reporting and to July 20, 2020 for Phase 2b reporting. Proceeding in this manner will provide consistency and clarity among the Commission, the Participants and the industry, and will enable the Staff to efficiently react to the unpredictable impact that the COVID-19 virus may have in weeks to come. The Participants and the Plan Processor would be happy to have further discussions about the proposed timeline. However, the Participants believe approving the proposed exemption that is currently before the Commission would provide for the efficient implementation of Industry Member reporting and will allow for the availability of Industry Member Data to regulatory personnel for more efficient surveillance of the U.S. securities markets.

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<sup>4</sup> See Letter from Michael Simon, CAT NMS Plan Operating Committee Chair, to Brett Redfearn, Director, Division of Trading and Markets, SEC, to (Mar. 19, 2020), *available at* <https://catnmsplan.com/sites/default/files/2020-03/Plan%20Participant%27s%20Request%20for%20No%20Action%20Relief.pdf>.

Mr. Brett Redfearn

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Thank you for your attention to this matter. Please contact me at (917) 593-8052 if you have any questions or comments.

Respectfully submitted,



Michael Simon

CAT NMS Plan Operating Committee Chair

cc: The Hon. Jay Clayton, Chairman  
The Hon. Allison Herren Lee, Commissioner  
The Hon. Hester M. Peirce, Commissioner  
The Hon. Elad L. Roisman, Commissioner  
Mr. David S. Shillman, Associate Director, Division of Trading and Markets  
Mr. David Hsu, Assistant Director, Division of Trading and Markets  
Mr. Mark Donohue, Senior Policy Advisor, Division of Trading and Markets  
Ms. Manisha Kimmel, Senior Policy Advisor, Regulatory Reporting to Chairman Clayton  
CAT NMS Plan Participants