

February 3, 2020

**VIA HAND DELIVERY**

Ms. Vanessa Countryman  
Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

Re: Request for Exemption from Certain Provisions of the National Market System Plan Governing the Consolidated Audit Trail related to Granularity of Timestamps and Relationship Identifiers

Dear Ms. Countryman:

The Participants<sup>1</sup> in the National Market System Plan Governing the Consolidated Audit Trail (“CAT NMS Plan” or “Plan”)<sup>2</sup> respectfully request that the Securities and Exchange Commission (“Commission” or “SEC”) provide exemptive relief pursuant to the Commission’s authority under Section 36 of the Securities Exchange Act of 1934 (“Exchange Act”)<sup>3</sup> and Rule 608(e) of Regulation NMS under the Exchange Act<sup>4</sup> from certain requirements in the CAT NMS Plan related to: (1) granularity of timestamps and (2) relationship identifiers. This letter amends and replaces in its entirety the original exemptive request letter submitted to the SEC on September 26, 2019 with regard to the sections on granularity of timestamps and relationship identifiers.<sup>5</sup>

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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; 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., NYSE National, Inc., and Long Term Stock Exchange, Inc.

<sup>2</sup> 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>3</sup> See 15 U.S.C. § 78m(a)(1), which provides, in relevant part, that the “Commission, by rule, regulation, or order, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of this title or of any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.”

<sup>4</sup> 17 C.F.R. § 242.608(e), which provides that “[t]he Commission may exempt from the provisions of this section, either unconditionally or on specified terms and conditions, any self-regulatory organization, member thereof, or specified security, if the Commission determines that such exemption is consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets and the removal of impediments to, and perfection of the mechanisms of, a national market system.”

<sup>5</sup> Letter from Mike Simon, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, SEC re: Request for Exemption from Certain Provisions of the National Market System Plan Governing the Consolidated Audit Trail (September 26, 2019).

The Participants believe that the requested exemptions are “necessary or appropriate in the public interest, and consistent with the protection of investors,”<sup>6</sup> and are “consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets and the removal of impediments to, and perfection of the mechanisms of, a national market system.”<sup>7</sup> The Participants further believe that the requested relief would further the goal of creating a consolidated audit trail (“CAT”) that captures 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 addition, the Participants believe that the requested relief would serve to maintain and enhance the reliability and accuracy of the data reported to the Central Repository, the security and confidentiality of such data, the use of the data by regulators, and competition, efficiency, and capital formation, and do so in a way that takes into consideration a cost-benefit analysis of the requested relief. In connection with the requested exemptions, the Participants plan to file revisions to their Compliance Rules<sup>8</sup> consistent with the exemptive relief requested in this letter as necessary.

## **1. Granularity of Timestamps**

### **a. Background**

The CAT NMS Plan sets forth certain requirements regarding the granularity of timestamps for the CAT. Section 6.8(b) states that “[t]o the extent that any Participant’s order handling or execution systems utilize timestamps in increments finer than the minimum required in this Agreement, such Participant shall utilize such finer increment when reporting CAT Data to the Central Repository so that all Reportable Events reported to the Central Repository can be adequately sequenced.” Section 6.8(b) further states that “each Participant shall, through its Compliance Rule: (i) require that, to the extent that its Industry Members utilize timestamps in increments finer than the minimum required in this Agreement in their order handling or execution systems, such Industry Members shall utilize such finer increment when reporting CAT Data to the Central Repository.” In addition, Section 3 of Appendix D of the CAT NMS Plan states that the Central Repository must be able to “[a]ccept time stamps on order events handled electronically to the finest level of granularity captured by CAT Reporters.”

The Participants, in concert with the Plan Processor, have determined that the cost of providing the ability to utilize timestamps in the CAT in a finer granularity than nanoseconds outweighs the benefits. Based on discussions with the Plan Processor, the Participants understand that expanding the capture of timestamp granularity to picoseconds by the Plan Processor would take at least six months at an estimated cost of approximately \$700,000. This effort would include, in addition to Technical Specification and database modifications, modifying query tools to support querying and sequencing at a picosecond granularity. Prior to applying sequencing at the picosecond granularity, an analysis would be needed to determine the value and impact of doing such beyond nanoseconds given existing clock synchronization

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<sup>6</sup> 15 U.S.C. § 78mm(a)(1).

<sup>7</sup> 17 C.F.R. § 242.608(e).

<sup>8</sup> Section 1.1 of the CAT NMS Plan defines “Compliance Rule” to mean, with respect to a Participant, the rule(s) promulgated by such Participant as contemplated by Section 3.11.”

technology. Moreover, the Participants understand that the exchanges currently utilize timestamps only to the nanosecond; they do not utilize timestamps to picoseconds or to finer increments. In addition, the Participants believe that the Reportable Events can be adequately sequenced in the CAT without requiring timestamps in a finer granularity than nanoseconds. Accordingly, the Participants request exemptive relief to permit CAT Reporters to report, and the Central Repository to accept, timestamps only up to nanoseconds.<sup>9</sup>

In addition, the Participants note that, as trading systems evolve, the Participants would be required to analyze the cost-benefit of the CAT Reporters reporting, and Central Repository providing the ability to accept, timestamps in a finer granularity than nanoseconds. The analysis regarding the nanosecond granularity would be required as a part of the evaluation required to be performed by the Chief Compliance Officer pursuant to Section 6.8(c) of the CAT NMS Plan. Section 6.8(c) states that “[i]n conjunction with Participants’ and other appropriate Industry Member advisory groups, the Chief Compliance Officer shall annually evaluate and make a recommendation to the Operating Committee as to whether industry standards have evolved such that: . . . (ii) the required time stamp in Section 6.8(b) should be in finer increments.” If the Participants determine that the benefit of the CAT Reporters reporting, and the Central Repository providing the ability to accept, timestamps in finer granularity than nanoseconds outweighs the burdens as a result of this evaluation, then the proposed exemption may no longer be necessary.

**b. Request for Exemption**

To limit the CAT’s timestamp granularity to nanoseconds, the Participants request the following exemptive relief. First, the Participants request that the SEC exempt the Participants from the requirement in Section 6.8(b) for Participants to report CAT Data to the Central Repository utilizing timestamps finer than nanoseconds to the extent that any Participant’s order handling or execution systems utilize timestamps in increments finer than nanoseconds. As a condition to this exemption, if a Participant captures timestamps in increments more granular than nanoseconds, such Participant would truncate the timestamp after the nanosecond level for submission to CAT, not round up or down in such circumstances. The Participants believe that truncating timestamps, rather than rounding, would be more accurate. Rounding up (down) puts an event later (earlier) than it actually occurred, whereas truncating treats all the timestamps as if they were provided with the same level of granularity.<sup>10</sup>

Second, the Participants request that the SEC exempt the Participants from the requirement in Section 6.8(b) for each Participant, through its Compliance Rule, to require that, to the extent that its Industry Members utilize timestamps in increments finer than nanoseconds in their order handling or execution systems, such Industry Members utilize such finer increment when reporting CAT Data to the Central Repository. As a condition to this exemption, the

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<sup>9</sup> See, e.g., Section 2.3.1 of the CAT Reporting Technical Specifications for Industry Members (version 2.2.3 r1) (Jan. 31, 2020).

<sup>10</sup> For example, suppose Reporter 1 uses picoseconds and has a timestamp of 10:00:00.123456789551, and Reporter 2 uses nanoseconds and has a timestamp of 10:00:00.123456789. If Reporter 2 had used picoseconds, the timestamp could have been higher, lower or the same as the timestamp from Reporter 1.

Participants, through their Compliance Rules, will require Industry Members that capture timestamps in increments more granular than nanoseconds to truncate the timestamps, after the nanosecond level for submission to CAT, not round up or down in such circumstances.

Third, the Participants request that the SEC exempt the Participants from the requirement in Section 3 of Appendix D of the CAT NMS Plan for the Central Repository to be able to accept timestamps on order events handled electronically to the finest level of granularity captured by CAT Reporters. As a condition to this exemption, the Central Repository will be required to accept timestamps on order events handled electronically to a nanosecond granularity.

The Participants request that the requested exemptions in this Section regarding timestamp granularity remain in effect for five years from the date the SEC grants the exemptions. After five years, the requested exemptions in this Section would no longer be in effect unless the period the exemptions are in effect is extended by the SEC.

As noted above, an analysis of the timestamp granularity would be required as a part of the annual evaluation required to be performed by the Chief Compliance Officer pursuant to Section 6.8(c) of the CAT NMS Plan. Such analyses would be required during each of the five years of the requested exemption and thereafter. If the Operating Committee determines that this analysis concludes that the benefit of the CAT Reporters reporting, and the Central Repository providing the ability to accept, timestamps in finer granularity than nanoseconds outweighs the burdens, then the timestamp exemption could be terminated or be revised to reflect more granular timestamps than nanoseconds in accordance with the analysis.

## **2. Relationship ID**

### **a. Background**

Pursuant to the CAT NMS Plan, each Participant must, through its Compliance Rule require its Industry Members to record and report to the Central Repository the account number, the account opening date, and account type for the relevant Customer for the original receipt or origination of an order. Specifically, Section 6.4(d)(ii)(C) of the CAT NMS Plan requires, in relevant part, that each Participant, through its Compliance Rule, require its Industry Members to record and report to the Central Repository for original receipt or origination of an order, the Firm Designated ID for the relevant Customer, and in accordance with Section 6.4(d)(iv), Customer Account Information and Customer Identifying Information for the relevant Customer. Section 1.1 of the CAT NMS Plan defines the term "Customer Account Information" to include account number, account type and date account opened. In certain circumstances as described below, however, the account number, account type and date account opened will not be available for reporting to the Central Repository.

When a trading relationship is established at a broker-dealer for certain individual Customers, 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 an individual Customer 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 the relevant individual. This relationship identifier is established prior to any trading for the individual Customer. If a relationship identifier has been established rather than a parent account, and an order is placed on behalf of the individual Customer, 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 individual Customer.<sup>11</sup>

Relationship identifiers are used in circumstances that do not permit an account to be entered when an order is received. The customers 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. Relationship identifiers are used in two ways with respect to individual Customers: (1) an order is received from a financial advisor using the financial advisor's relationship identifier on the order report, and subaccount allocations to customer accounts are sent later; and (2) an order is received or originated for a group of related accounts (*e.g.*, multiple family accounts), which would be reported using a relationship identifier for the family group, and allocations are later received or booked to the underlying individual customer accounts.

In these circumstances, no account open date is available for the parent relationship because there is no parent account. For the same reason, no account number or account type is available. Further, historically, broker-dealers have not maintained the date such relationships began in a uniform manner; some broker-dealers have maintained the date the relationship was first established in the broker dealer's system, whereas others may have maintained the date trading began using the relationship identifier.

**b. Request for Exemption**

For circumstances in which an Industry Member uses an established trading relationship for an individual Customer (rather than an account) on the order reported to the CAT, the Participants request an exemption from the requirement in Section 6.4(d)(ii)(C) of the CAT NMS Plan for each Participant to require, through its Compliance Rules, its Industry Members to record and report to the Central Repository the account number, the date account opened and account type for the relevant individual Customer.

As conditions to this exemption, each Participant would require, through its Compliance Rules, its Industry Members to record and report to the Central Repository for the original receipt or origination of an order: (i) the relationship identifier in lieu of the "account number;" (ii) the "account type" as a "relationship;" and (iii) the Account Effective Date in lieu of the "date account opened."

With regard to the third condition, an Account Effective Date would depend upon when the trading relationship was established. When the trading relationship was established prior to

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<sup>11</sup> The Participants do not request exemptive relief concerning reporting of the account open date of the subaccount(s) associated with the parent relationship identifier, as account open dates would be available for such subaccounts.

the implementation date of the CAT NMS Plan applicable to the relevant Industry Member, the Account Effective Date would be either the date the relationship identifier was established within the Industry Member, or the date when trading began (*i.e.*, the date the first order was received) using the relevant relationship identifier. If both dates are available, the earlier date will be used to the extent that the dates differ. When the trading relationship was established on or after the implementation date of the CAT NMS Plan applicable to the relevant Industry Member, the Account Effective Date would be the date the Industry Member established the relationship identifier, which would be no later than the date the first order was received. This definition of the Account Effective Date is the same as the definition of the "Account Effective Date" in paragraph (a) of the definition of "Account Effective Date" in Section 1.1 of the CAT NMS Plan except it would apply with regard to those circumstances in which an Industry Member has established a trading relationship with an individual, instead of an institution.

Such exemptive relief would be the same as the SEC provided with regard to institutions in its 2016 Exemptive Order granting exemptions from certain provisions of Rule 613 under the Exchange Act.<sup>12</sup> The exemptive relief the SEC previously provided in the 2016 Exemptive Order was incorporated in the CAT NMS Plan via the definitions of Customer Account Information and Account Effective Date. This request would seek to extend this approach to include circumstances in which an Industry Member has established a similar trading relationship with individuals in addition to institutions. The Participants believe that such exemptive relief similarly would be appropriate for individual Customers that have the same trading arrangements with Industry Members as institutions. As described above, the proposed exemptive relief would permit Industry Members to report CAT Data that more accurately reflects the trading processes in place in the industry, thereby enhancing the accuracy and reliability of the CAT Data. In addition, creating an audit trail based on existing industry practices avoids unnecessary costs to revise such practices to match the existing reporting requirements of the CAT. Furthermore, as with the exemptive relief for institutional Customers, the proposed exemptive relief would not undermine or otherwise interfere with the intended use of the Customer Account Information by the regulatory Users.

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<sup>12</sup> Securities Exchange Act Rel. No. 77265 (Mar. 1, 2016), 81 Fed. Reg. 11856, 11861-11862.

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Thank you for your attention to this matter. Please contact me at (212) 229-2455 if you have any questions or comments.

Respectfully submitted,

Mike Simon / TCH

Mike Simon  
CAT NMS Plan Operating Committee Chair

cc: The Hon. Jay Clayton, Chairman  
The Hon. Hester M. Peirce, Commissioner  
The Hon. Robert J. Jackson Jr., Commissioner  
The Hon. Elad L. Roisman, Commissioner  
The Hon. Allison Herren Lee, Commissioner  
Mr. Brett Redfearn, Director, Division of Trading and Markets  
Mr. David S. Shillman, Associate Director, Division of Trading and Markets  
Mr. David Metzman, Counsel to the Director, Division of Trading and Markets  
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CAT NMS Plan Participants