

April 27, 2020

VIA E-MAIL AND 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 Allocations

Dear Ms. Countryman:

The Participants¹ in the National Market System Plan Governing the Consolidated Audit Trail (“CAT NMS Plan” or “Plan”)² 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”)³ and Rule 608(e) of Regulation NMS under the Exchange Act⁴ from Section 6.4(d)(ii)(A)(1) and (2) of the CAT NMS Plan with regard to Allocation Reports. The Participants believe that the requested exemptions are “necessary or appropriate in the public interest, and [are] consistent with the protection of investors,”⁵ 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.”⁶ In addition, if the requested exemptions are

¹ 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.

² 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.

³ See 15 U.S.C. § 78mm(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.”

⁴ 17 CFR § 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.”

⁵ 15 U.S.C. § 78mm(a)(1).

⁶ 17 CFR § 242.608(e).

granted, the Participants would revise their Compliance Rules⁷ required by the CAT NMS Plan to reflect the exemptive relief requested in this letter as necessary.

1. Background

Pursuant to Section 6.4(d)(ii)(A) of the CAT NMS Plan, each Participant must, through its Compliance Rule, require its Industry Members to record and report to the Central Repository, if the order is executed, in whole or in part: (1) an Allocation Report; (2) the SRO-Assigned Market Participant Identifier of the clearing broker or prime broker, if applicable; and (3) CAT-Order-ID of any contra-side order(s). Section 1.1 of the Plan defines an “Allocation Report” as

a report made to the Central Repository by an Industry Member that identifies the Firm Designated ID for any account(s), including subaccount(s), to which executed shares are allocated and provides the security that has been allocated, the identifier of the firm reporting the allocation, the price per share of shares allocated, the side of shares allocated, the number of shares allocated to each account, and the time of the allocation; provided for the avoidance of doubt, any such Allocation Report shall not be required to be linked to particular orders or executions.

Accordingly, under the CAT NMS Plan, the Participants must require their Industry Members that are executing brokers to submit to the Central Repository, among other things, Allocation Reports and the SRO-Assigned Market Participant Identifier of the prime broker, if applicable.

The Participants propose to implement an alternative approach to reporting allocations to the Central Repository. Under this proposal, any Industry Member that performs allocations to a client account would submit Allocation Reports to the Central Repository any time shares/contracts are allocated to a client account regardless of whether the Industry Member was involved in executing the underlying order(s) (the “Allocation Alternative”). Under the Allocation Alternative, an “Allocation” would be defined as: (1) the placement of shares/contracts into the same account for which an order was originally placed; or (2) the placement of shares/contracts into an account based on allocation instructions (*e.g.*, subaccount allocations, DVP allocations). The Industry Member that performs Allocations must report to the Central Repository all Allocations to a client account for all Eligible Securities. The Industry Member that performs Allocations to accounts other than a client account (*e.g.*, proprietary accounts, step outs, correspondent flips) is not required to report such Allocations to the Central Repository. Industry Members may report Allocations to accounts other than client accounts, but if reported, such Allocations must be marked as Allocations to accounts other than client accounts. Allocations Reports are not required to be linked to particular orders or executions.

To implement the Allocation Alternative, the Participants propose to require the reporting of the data elements that are currently required in the CAT NMS Plan, as set forth in the

⁷ 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.”

definition of Allocation Report in Section 1.1. of the CAT NMS Plan. Although the definition of “Allocation Report” in Section 1.1 of the CAT NMS Plan only refers to shares with regard to these elements, the Allocation Alternative would require each of these elements to be reported with regard to both shares and contracts, as applicable, for all Eligible Securities. Specifically, the Participants would require the reporting of the following: (1) the FDID for the account receiving the allocation, including subaccounts; (2) the security that has been allocated; (3) the identifier of the firm reporting the allocation; (3) the price per share/contracts of shares/contracts allocated; (4) the side of shares/contracts allocated; (4) the number of shares/contracts allocated; and (5) the time of the allocation. In addition, the Participants propose to require the following new information on all Allocation Reports: (1) Allocation ID; (2) trade date; (3) settlement date; (4) IB/correspondent CRD# (if applicable); (5) FDID of new order(s) (if available in the booking system);⁸ (6) allocation instruction time (optional); (7) if account meets the definition of institution under FINRA Rule 4512(c)⁹; (8) type of allocation (custody, DVP, step out, correspondent flip, etc.); (9) for DVP allocations, custody broker-dealer clearing number if the custodian is a U.S. broker-dealer, DTCC# if the custodian is a U.S. bank, or a foreign indicator, if the custodian is a foreign entity; and (10) cancel flag and cancel timestamp, if applicable.

2. Request for Exemption

To implement the Allocation Alternative, the Participants request exemptive relief from the requirements in Section 6.4(d)(ii)(A)(1) and (2) of the CAT NMS Plan. First, the Participants request exemptive relief from the requirement for executing brokers to provide Allocation Reports to the Central Repository for those executing brokers that do not perform Allocations (as defined above). Specifically, the Participants request exemptive relief for such executing brokers from the requirement in Section 6.4(d)(ii)(A)(1) of the CAT NMS Plan for each Participant, through its Compliance Rule, to require its Industry Members that are executing brokers to record and report to the Central Repository, if the order is executed, in whole or in part, an Allocation Report. In those circumstances in which the Allocation is performed by an Industry Member other than an executing broker (e.g., by a primer broker or a clearing broker), such Industry Member would be required to submit the Allocation Report to the Central Repository. For example, if an executing broker is not self-clearing, then the clearing broker may perform the Allocation. In such a case, the clearing broker that performs the Allocation would be required to submit the Allocation Report to the Central Repository, not the executing

⁸ For scenarios where the Industry Member responsible for reporting the Allocation has the FDID of the related new order(s) available, such FDID must be reported. This would include scenarios in which (1) the FDID structure of the top account and subaccounts is known to the Industry Member responsible for reporting the Allocation(s); and (2) the FDID structure used by the IB/Correspondent when reporting new orders is known to the clearing firm reporting the related Allocations.

⁹ FINRA Rule 4512(c) states the following:

For purposes of this Rule, the term “institutional account” shall mean the account of:

- (1) a bank, savings and loan association, insurance company or registered investment company;
- (2) an investment adviser registered either with the SEC under Section 203 of the Investment Advisers Act or with a state securities commission (or any agency or office performing like functions); or
- (3) any other person (whether a natural person, corporation, partnership, trust or otherwise) with total assets of at least \$50 million.

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broker. Similarly, if a prime broker performs an Allocation to a subaccount, then the prime broker would be required to submit an Allocation Report to the Central Repository.

Second, the Participants request exemptive relief from the requirement in Section 6.4(d)(ii)(A)(2) of the CAT NMS Plan for each Participant, through its Compliance Rule, to require its Industry Members to record and report to the Central Repository, if the order is executed, in whole or in part, the SRO-Assigned Market Participant Identifier of the prime broker, if applicable. With the implementation of the Allocation Alternative, this requirement would be duplicative given that a prime broker itself would be required to report the Allocation Report if the prime broker performed the Allocation. Therefore, it would be duplicative for the executing broker to separately identify the prime broker. In addition, under the Allocation Alternative, although an Industry Member that executes a trade would no longer be required to report the SRO-Assigned Market Participant Identifier of the prime broker when an order is executed, the Industry Member that performs an Allocation, however, would be required to report identifying information for custodians for DVP allocations, which includes prime brokers.

To implement the Allocation Alternative, the Participants would amend their Compliance Rules to require their Industry Members to provide Allocation Reports to the Central Repository any time they perform Allocations to a client account, whether or not the Industry Member was the executing broker for the trades. The Participants also would amend their Compliance Rules to require their Industry Members reporting the Allocation Reports to include the additional elements set forth above on all Allocation Reports, in addition to those elements required under the CAT NMS Plan.

* * * * *

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

CAT NMS Plan Operating Committee Chair

cc: The Hon. Jay Clayton, Chairman
The Hon. Hester M. Peirce, 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
Mr. David Hsu, Assistant Director, Division of Trading and Markets
CAT NMS Plan Participants