

December 4, 2020

VIA EMAIL (tradingandmarkets@sec.gov)

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 Initial Data Validation, Lifecycle Linkages and Communication of Errors

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 certain requirements in the CAT NMS Plan related to initial data processing as set forth in Section 6.1 of Appendix D of the CAT NMS Plan. Specifically, the Participants request that the Commission grant a temporary exemption from the requirement to perform initial data validation, lifecycle linkages and communication of errors to CAT Reporters by T+1 at noon ET. During the period that the exemptive relief is in effect, the T+1 at noon ET requirement would be replaced by a T+1 at 4:00 pm ET requirement. The Participants believe that the requested relief is “necessary or appropriate in the public interest, and is consistent with the protection of investors,” and 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

¹ The twenty-five 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.; Investors Exchange LLC; Long-Term Stock Exchange, Inc.; MEMX 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., and NYSE National, Inc.

² The Limited Liability Company Agreement of Consolidated Audit Trail, LLC (“CATLLC”) 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 17 CFR § 242.608(e).

I. Background

The CAT NMS Plan sets forth certain timeframes for data processing and availability, including the requirement for the Plan Processor to complete initial data validation, lifecycle linkages and communication of errors to CAT Reporters by T+1 at noon ET.⁶ Specifically, Section 6.1 of Appendix D of the CAT NMS Plan provides the following timeframes:

- T+1 at 8 am ET: CAT Reporters must provide initial data submissions to the CAT
- T+1 at noon ET: initial data validation, lifecycle linkages and communication of errors to CAT Reporters by the Plan Processor⁷
- T+3 at 8 am ET: resubmission of corrected data by CAT Reporters
- T+5 at 8 am ET: corrected data available to Participant regulatory staff and the SEC

II. Request for Exemption

As CAT reporting has been phased in with additional reporting requirements and complexities, the ability of the Plan Processor to provide linkage feedback by T+1 at noon ET has, at times, been delayed. The processing delays are caused by various technical issues, Industry Member issues and factors beyond the Plan Processor's control, coupled with the inherent complexities of processing extremely large volumes of data that far exceed the volume estimates contemplated when the applicable Plan requirements were adopted (collectively, "Linker Delays"). However, the Linker Delays generally do not impact the availability to Participant regulatory staff and the SEC of validated data by T+1 at noon ET or final corrected data by T+5 at 8 am ET. The Plan Processor continues to analyze the Linker Delays and explore potential short and long term solutions. The Plan Processor provides the Participants and the SEC staff with periodic updates on such analysis and potential solutions in the Technology Working Group, SEC staff status update and Operating Committee meetings.

In light of the factors discussed above, the Participants request temporary exemptive relief from compliance with certain requirements set forth in Section 6.1 of Appendix D of the CAT NMS Plan related to the Plan Processor completing initial data validation, lifecycle linkages and communication of errors to CAT Reporters by T+1 at noon ET. The Participants request that the temporary exemptive relief extend until June 29, 2021. During the period that the exemptive relief is in effect, the T+1 at noon ET requirement would be replaced by a T+1 at 4:00 pm ET requirement.

Based on extensive discussions with the Plan Processor, the Participants believe that extending the current T+1 at noon ET deadline for four hours, to T+1 at 4 pm ET, would provide the Plan Processor with sufficient time to perform initial data validation, lifecycle linkages and communication of errors to CAT Reporters by T+1 at 4 pm ET. This extended period would

⁶ "T" is the transaction date and "T+1" is the transaction date plus one day.

⁷ With respect to data availability, Section 6.2 of Appendix D of the CAT NMS Plan requires: (1) raw unprocessed data that has been ingested by the Plan Processor must be available to Participant regulatory staff and the SEC prior to 12 pm ET on T+1; and (2) access to all iterations of processed data must be available to Participant regulatory staff and the SEC between 12 pm ET on T+1 and T+5.

Ms. Vanessa Countryman

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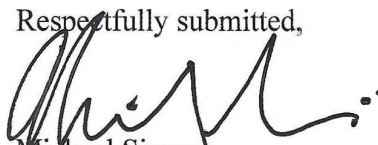
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allow the Plan Processor to address issues that have delayed its ability to meet the current T+1 at noon ET deadline without delaying the availability of corrected data to Participant regulatory staff and the SEC by T+5 at 8 am ET. The Participants understand that to the extent that they avail themselves of exemptive relief from a CAT NMS Plan requirement, any exempted requirement shall not be included in the requirements for a particular Financial Accountability Milestone provided that the conditions of the exemption are satisfied.⁸

* * * * *

Thank you for your attention to this matter. Please contact me at (212) 229-2455 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. Hester M. Peirce, Commissioner
The Hon. Elad L. Roisman, Commissioner
The Hon. Allison Herren Lee, Commissioner
The Hon. Caroline A. Crenshaw, Commissioner
Ms. Manisha Kimmel, Sr. Policy Adviser to Chairman
Mr. Brett Redfearn, Director, Division of Trading and Markets
Mr. David S. Shillman, Associate Director, Division of Trading and Markets
Mr. David Hsu, Assistant Director, Division of Trading and Markets
CAT NMS Plan Participants

⁸ See Exchange Act Release No. 88890 (May 5, 2020), 85 Fed. Reg 31322, 31335 (May 22, 2020) (“[T]he Commission has the authority to grant exemptive relief from any requirement associated with a particular Financial Accountability Milestone. The Commission believes that this ability, in particular, should alleviate the Participants’ concerns regarding the potential impact of unforeseeable or reasonable delays.”).