

June 10, 2021

**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 Industry Member CAT Reporting Requirements

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 temporary 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 related to the reporting of unique Order IDs on internal route events until July 31, 2023. The Participants request that the Commission grant this relief by amending and clarifying certain aspects of the Commission’s April 20, 2020 exemption order (the “Phased Reporting Exemption”), as described further herein.<sup>5</sup>

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.”<sup>6</sup> In

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<sup>1</sup> 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.

<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. § 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.”

<sup>4</sup> 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.”

<sup>5</sup> Exchange Act Release No. 88702 (Apr. 20, 2020), 85 Fed. Reg. 23075 (Apr.24, 2020).

<sup>6</sup> 17 CFR § 242.608(e).

connection with the requested exemptions, the Participants plan to file amendments to their Compliance Rules consistent with the exemptive relief requested in this letter, as necessary.<sup>7</sup>

## I. Background

The CAT NMS Plan describes a “daisy chain approach” to completing lifecycles where, in relevant part, “a series of unique order identifiers assigned by CAT Reporters to individual order events are linked together by the CAT and assigned a single CAT-generated CAT-Order-ID that is associated with each individual order event and used to create the complete lifecycle of an order.”<sup>8</sup> Pursuant to this approach, “each CAT Reporter generates its own unique order ID but can pass a different identifier as the order is routed to another CAT Reporter, and the CAT will link related order events from all CAT Reporters involved in the life of the order.”<sup>9</sup> Additional details are included in the Industry Member Technical Specifications.<sup>10</sup>

The CAT NMS Plan also requires the Participants, unless otherwise ordered by the Commission, through their Compliance Rules, to require their Industry Members (other than Small Industry Members) (“Large Industry Members”) to commence reporting Industry Member Data to the Central Repository by November 15, 2018, and to require their Small Industry Members to commence reporting Industry Member Data to the Central Repository by November 15, 2019.<sup>11</sup> On February 19, 2020, the Participants requested that the Commission provide exemptive relief to allow for the implementation of phased reporting for the CAT.<sup>12</sup> On April 20, 2020, the Commission issued the Phased Reporting Exemption, which granted conditional exemptive relief that permitted the requested implementation of reporting for the CAT across five phases, Phases 2a through 2e, as described further in the Phased Reporting Exemption and the Industry Member Technical Specifications.<sup>13</sup>

Pursuant to the Phased Reporting Exemption, all CAT Data except for Phase 2e Industry Member Data must be reported to the Central Repository in Phase 2d by December 13, 2021. As of Phase 2d, all transaction data, including unique Order IDs, must be reported to the Central Repository. Phase 2e Industry Member Data must be reported to the Central Repository in Phase 2e by July 11, 2022. Phase 2e Industry Member Data includes Customer Account Information and Customer Identifying Information, other than LTIDs, date account opened/Account Effective Date and Firm Designated ID type flag previously reported to the Central Repository. As of July 11, 2022, all CAT Data will be reported to the CAT, including transaction data, Customer Account Information and Customer Identifying Information.

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<sup>7</sup> Section 3.11 of the CAT NMS Plan requires Participants to “endeavor to promulgate consistent rules . . . requiring compliance by their respective Industry Members with the provisions of SEC Rule 613 and [the Plan].”

<sup>8</sup> CAT NMS Plan, Appendix C, Section A(1) at C-14.

<sup>9</sup> *Id.*

<sup>10</sup> See CAT Reporting Technical Specifications for Industry Members at Sections 4.5, 5.1.5, 5.2.4 and 5.2.4.1 (Apr. 5, 2021), available at [https://catnmsplan.com/sites/default/files/2021-04/4.12.21\\_CAT\\_Reporting\\_Technical\\_Specifications\\_for\\_Industry\\_Members\\_v4.0.0r8\\_CLEAN.pdf](https://catnmsplan.com/sites/default/files/2021-04/4.12.21_CAT_Reporting_Technical_Specifications_for_Industry_Members_v4.0.0r8_CLEAN.pdf).

<sup>11</sup> CAT NMS Plan, Sections 6.7(a)(v) and (vi).

<sup>12</sup> Letter from Michael Simon, Chair, CAT NMS Plan Operating Committee, to Vanessa Countryman, Secretary, SEC (Feb. 19, 2020).

<sup>13</sup> See generally Phased Reporting Exemption.

## II. Request for Exemption

The Participants request that the Commission amend or clarify the Phased Reporting Exemption to allow Industry Members to report unique Order IDs on internal route events after July 31, 2023, which occurs after Phase 2e. In particular, although the CAT System is ready to accept this data today, Industry Members have indicated to the Participants that they have encountered challenges developing and implementing the technical changes necessary to report unique Order IDs on each internal route event when an order is separated into multiple orders and routed to the same desk. In the absence of unique Order IDs in such instances, while the Plan Processor is able to link all related events in the lifecycle of the order and, accordingly, assign a single CAT Order ID, it is not able to precisely identify which particular internal route was later modified or cancelled.

Industry Members have indicated that they require additional time to develop and implement the technical changes necessary to begin reporting unique Order IDs on internal route events. Based on these discussions, the Participants request that the Commission amend or clarify the Phased Reporting Exemption to allow Industry Members to report unique Order IDs on internal route events after July 31, 2023, which occurs after Phase 2e and the phased implementation schedule set forth in the Phased Reporting Exemption. Pursuant to the requested relief, Industry Members will be required to begin reporting this information on August 1, 2023.

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.<sup>14</sup>

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<sup>14</sup> 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.”).

Ms. Vanessa Countryman

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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,



Michael Simon  
CAT NMS Plan Operating Committee Chair

cc: The Hon. Gary Gensler, Chair  
The Hon. Hester M. Peirce, Commissioner  
The Hon. Elad L. Roisman, Commissioner  
The Hon. Allison Herren Lee, Commissioner  
The Hon. Caroline A. Crenshaw, Commissioner  
Hugh Beck, Senior Advisor for Regulatory Reporting  
David Saltiel, Acting Director, Division of Trading and Markets  
David S. Shillman, Associate Director, Division of Trading and Markets  
David Hsu, Assistant Director, Division of Trading and Markets  
Mark Donohue, Senior Policy Advisor, Division of Trading and Markets  
Erika Berg, Special Counsel, Division of Trading and Markets  
CAT NMS Plan Participants