

June 30, 2022

**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 Provisions of the National Market System Plan Governing the Consolidated Audit Trail Related to Industry Member Reporting of Customer and Account Information

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”) use its exemptive authority under Section 36 of the Securities Exchange Act of 1934 (“Exchange Act”)<sup>3</sup> and/or Rule 608(e) of Regulation NMS under the Exchange Act<sup>4</sup> to revise one of the conditions to the exemptive relief (“Phased Reporting Exemption”) provided to the Participants to allow for the implementation of phased Industry Member reporting (“Phased Reporting”) to the consolidated audit trail (“CAT”).<sup>5</sup> Specifically, the Participants request that the Commission extend to December 12, 2022 the deadline set forth in the Phased Reporting Exemption that requires each Participant to require,

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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., Cboe Exchange, Inc., Financial Industry Regulatory Authority, Inc. (“FINRA”), 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, 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 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> Securities Exchange Act Rel. No. 88702 (Apr. 20, 2020), 85 Fed. Reg. 23075 (Apr. 24, 2020) (“Phased Reporting Exemption”).

via its Compliance Rule,<sup>6</sup> its Large Industry Members<sup>7</sup> and Small Industry Members<sup>8</sup> to commence reporting to the Central Repository Phase 2e Industry Member Data by July 11, 2022.

The Participants believe that the requested change to the condition to the exemption is “necessary or appropriate in the public interest, and consistent with the protection of investors,”<sup>9</sup> 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>10</sup> In connection with the requested change to the condition to the exemption, the Participants plan to file revisions to their Compliance Rules consistent with the exemptive relief requested in this letter.

#### **A. Phased Reporting Exemption**

On April 20, 2020, the Commission granted the Participants’ request for exemptive relief from Sections 6.4, 6.7(a)(v) and 6.7(a)(vi) of the CAT NMS Plan related to Industry Member<sup>11</sup> reporting of Industry Member Data<sup>12</sup> to the Central Repository to allow for the implementation of Phased Reporting, subject to certain conditions. Specifically, the Commission exempted each Participant from the requirement in Section 6.7(a)(v) for each Participant, through its Compliance Rule, to require its Large Industry Members to report to the Central Repository Industry Member Data within two years of the Effective Date (that is, by November 15, 2018). In addition, the SEC exempted each Participant from the requirement in Section 6.7(a)(vi) for each Participant, through its Compliance Rule, to require its Small Industry Members to report to the Central Repository Industry Member Data within three years of the Effective Date (that is, by November 15, 2019). Furthermore, the SEC provided an exemption from the requirement in Section 6.4 that “[t]he requirements for Industry Members under this Section 6.4 shall become effective on the second anniversary of the Effective Date in the case of Industry Members other than Small Industry Members, or the third anniversary of the Effective Date in the case of Small Industry Members.”

Under the Phased Reporting Exemption, Phased Reporting replaced the November 15, 2018 and November 15, 2019 CAT reporting schedule for Industry Members set forth in the CAT NMS Plan. Phased Reporting has five phases, Phase 2a through Phase 2e. For each of the five phases, Industry Members are required to report certain categories of Industry Member Data. The fifth phase, the phase at issue here, involves the reporting of Phase 2e Industry

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<sup>6</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>7</sup> A “Large Industry Member” is an Industry Member other than a Small Industry Member. *See* Section 1.1 of the CAT NMS Plan.

<sup>8</sup> A “Small Industry Member” means an Industry Member that qualifies as a small broker-dealer as defined in SEC Rule 613. *See* Section 1.1 of the CAT NMS Plan.

<sup>9</sup> 15 U.S.C. § 78mm(a)(1).

<sup>10</sup> 17 C.F.R. § 242.608(e).

<sup>11</sup> The CAT NMS Plan defines an Industry Member as a member of a national securities exchange or a member of a national securities association. *See* Section 1.1 of the CAT NMS Plan.

<sup>12</sup> Industry Member Data is the data specified in Sections 6.4(d)(i)-(ii) of the CAT NMS Plan, which includes customer information.

Member Data. Phase 2e Industry Member Data includes Customer Account Information<sup>13</sup> and Customer Identifying Information,<sup>14</sup> other than large trader identifiers (“LTIDs”), date account opened/Account Effective Date and Firm Designated ID type flag previously reported to the CAT. The full scope of CAT Data would be available when all five phases of the Phased Reporting are complete, subject to any applicable exemptive relief or amendments to the CAT NMS Plan.

The SEC conditioned the exemptive relief on a variety of conditions, including two conditions related to Phase 2e Industry Member Data. One of these two conditions related to Phase 2e requires each Participant to require, via its Compliance Rule, its Large Industry Members and Small Industry Members to commence reporting to the Central Repository Phase 2e Industry Member Data by July 11, 2022 (“CAIS Reporting Deadline”). The other condition related to Phase 2e requires each Participant to require, via its Compliance Rule, that the Industry Member test environment for customer and account information will be open to Industry Members in January 2022 (“Customer Testing Deadline”).

## **B. CAIS Reporting Progress**

The Participants have made substantial progress toward satisfying the Phase 2e conditions set forth in the Phased Reporting Exemption. In 2020, each Participant revised its Compliance Rule to incorporate the CAIS Reporting Deadline and the Customer Testing Deadline, and to indicate that the full scope of CAT Data will be required to be reported when all five phases of the Phased Reporting have been implemented, subject to any applicable exemptive relief or amendments to the CAT NMS Plan.<sup>15</sup> In addition, in accordance with the condition in the Phased Reporting Exemption, the Industry Member testing environment for customer and account information, referred to as CAIS, opened for Industry Members in January 2022. Some Industry Members have been submitting customer and account information to the test environment since the environment opened for testing in January 2022. As of June 28, 2022, 472 of the total of 1347 Industry Members have reported to the CAIS testing environment.

Furthermore, the CAIS production environment for customer and account information opened on April 25, 2022. Some Industry Members have been engaged in the process to obtain certification to access the production environment. As of June 28, 2022, 618 of 1347 Industry Members have been certified for production, and 13 of those Industry Members have been submitting customer and account information to the CAIS production environment.

With the current July 11, 2022 reporting deadline approaching, the number of Industry Members reporting to the CAIS environment has increased significantly, as noted above. As Industry Members have increased reporting data to the testing and production environment for CAIS, the current CAIS system functionality, although collecting data and providing feedback, has experienced processing delays, including delays related to concurrent file processing and

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<sup>13</sup> “Customer Account Information” is defined in Section 1.1 of the CAT NMS Plan.

<sup>14</sup> “Customer Identifying Information” is defined in Section 1.1 of the CAT NMS Plan.

<sup>15</sup> *See, e.g.*, BOX Rule 16095; Cboe Rule 7.31; FINRA Rule 6895.

error feedback. For example, certain reporting scenarios may adversely affect the data throughput, causing delays in processing the CAIS data and the resulting feedback to Industry Members reporting to the CAIS testing and production environments. Furthermore, the majority of Industry Members that have been utilizing the CAIS testing and production environments have experienced initial high error rates, suggesting that they are still working on basic file structure, validation and quality issues for reporting their CAIS data in accordance with the CAIS technical specifications, including changes implemented since January 2022.<sup>16</sup>

The Plan Processor has identified a set of optimizations designed to reduce file processing time and provide faster feedback to CAT Reporters. Certain optimizations and improvements are targeted for completion around July 1, 2022. An additional set of improvements designed to address concurrent processing of files regardless of the size and complexity of the file is targeted for completion early in the fourth quarter of 2022.

As a result of these developments and the time needed to address them, the Participants determined that the CAIS Reporting Deadline of July 11, 2022 – the remaining condition related to Phase 2e Industry Member Data set forth in the Phased Reporting Exemption – would need to be extended to December 12, 2022.<sup>17</sup>

### **C. Benefits of Extension of CAIS Reporting Deadline**

The extended CAIS Reporting Deadline would provide a variety of benefits for the CAT and Industry Members while only delaying the implementation of customer and account information in the CAT by five months. The small delay will be outweighed by the benefits of more efficient and accurate CAT processing.

The additional time will allow the Plan Processor to address reporting challenges, and delays in error feedback and processing. The Plan Processor's efforts to optimize the efficient reporting and processing of customer and account information, including addressing errors in reported data, are intended to enhance accuracy of data in the CAT.

In addition, the extended deadline would provide Industry Members with additional time to address customer and account reporting issues, including file structures, and data validation and quality. Correspondingly, the additional time will allow the Plan Processor to work closely with Industry Members to help them optimize their reporting of customer and account data to the CAT. Indeed, the Participants understand that the proposed extension of the deadline is

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<sup>16</sup> For changes to the CAIS technical specifications, including those changes made since January 2022 (which include changes requested by Industry Members), see CAT Reporting Customer & Account Technical Specifications for Industry Members (version 2.0, r9.1) (May 5, 2022) at x-xiii (available at [www.catnmsplan.com](http://www.catnmsplan.com)).

<sup>17</sup> Section 1.1 of the CAT NMS Plan defines "Active Accounts" as "an account that has had activity in Eligible Securities within the last six months." As a result, with the CAIS Reporting Deadline of July 11, 2022, Industry Members would be required to report to CAIS all accounts with any CAT-reportable activity in Eligible Securities on or after January 11, 2022. In keeping with the proposed extension of the CAIS Reporting Deadline from July 11, 2022 to December 12, 2022, Industry Members would be required to report to CAIS all accounts with any CAT-reportable activity on or after June 12, 2022 by the extended CAIS Reporting Deadline of December 12, 2022.

welcomed by the industry. For example, the Advisory Committee for the CAT NMS Plan has stated that they are strongly in favor of the extension of the CAIS Reporting Deadline. Furthermore, industry groups, such as SIFMA and the Financial Information Forum, also are supportive of additional time to commence reporting of customer and account information.<sup>18</sup>

The extension of the CAIS Reporting Deadline would recognize the new and unique challenges for both Industry Members and the CAT presented by the customer and account information reporting required by the CAT NMS Plan. Unlike with transaction reporting, CAIS reporting does not build upon existing audit trail infrastructure and practices. CAIS involves large complex datasets of customer and account information that may be recorded and stored differently across firms. Additional time would assist both Industry Members and the Plan Processor in addressing these challenges presented by the CAIS reporting requirements.

Furthermore, the short delay in the implementation of CAIS until December 12, 2022 would still satisfy the December 30, 2022 date for the “Full Implementation of CAT NMS Requirements”<sup>19</sup> set forth in Section 11.6(a)(i)(D) of the CAT NMS Plan. The SEC amended the CAT NMS Plan to establish target deadlines for four critical implementation milestones defined in the proposal, including the final milestone, the Full Implementation of CAT NMS Requirements. This milestone includes Plan requirements related to Customer information. In proposing the December 30, 2022 deadline, the SEC noted that the target deadline of December 30, 2022 for the final milestones is reasonable and feasible as it gives the Participants an additional five months after the projections established in 2019 to achieve Full Implementation of CAT NMS Plan Requirements.<sup>20</sup>

#### **D. Request for Extension of CAIS Reporting Deadline**

For the reasons discussed above, the Participants request that the Commission extend the deadline set forth in the Phased Reporting Exemption that requires each Participant to require, via its Compliance Rule, its Large Industry Members and Small Industry Members to commence reporting to the Central Repository Phase 2e Industry Member Data from July 11, 2022 to December 12, 2022. The full scope of CAT Data would be required to be reported by December 12, 2022, subject to any applicable exemptive relief or amendments to the CAT NMS Plan. As a condition of the proposed relief, each Participant would be required to revise its Compliance Rule to incorporate the new CAIS Reporting Deadline of December 12, 2022.

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<sup>18</sup> See, e.g., Letter from Howard Meyerson, Managing Director, Financial Information Forum, to CAT NMS Plan Operating Committee (May 13, 2022) (requesting extension of July 11<sup>th</sup> compliance date for CAIS reporting); SIFMA Statement on the Delay of the CAT Customer and Account Information System (May 27, 2022) (noting that delaying CAIS implementation will assist firms in addressing reporting challenges and allow time for other issues to be remediated).

<sup>19</sup> See Section 1.1 of the CAT NMS Plan.

<sup>20</sup> Securities Exchange Act Rel. No. 86901 (Sept. 9, 2019), 84 Fed. Reg. 48458 (Sept. 13, 2019).

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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,

A handwritten signature in black ink, appearing to read "Mike Simon". The signature is fluid and cursive, with a prominent initial "M" and "S".

Mike Simon  
CAT NMS Plan Operating Committee Chair

cc: The Hon. Gary Gensler, Chair  
The Hon. Allison Herren Lee, Commissioner  
The Hon. Hester M. Peirce, Commissioner  
The Hon. Caroline A. Crenshaw, Commissioner  
Mr. Hugh Beck, Senior Advisor for Regulatory Reporting  
Mr. Haoxiang Zhu, 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  
Mr. Mark Donohue, Senior Policy Advisor, Division of Trading and Markets  
Ms. Erika Berg, Special Counsel, Division of Trading and Markets  
CAT NMS Plan Participants