

October 27, 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 Certain Provisions of the National Market System Plan Governing the Consolidated Audit Trail Related to Industry Member CAT Reporting Requirements

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 temporary 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 the requirement to create a unique CAT Customer-ID (“CCID”) in three edge case scenarios: (1) for certain non-U.S. Customers who do not have a social security number (“SSN”), individual taxpayer identification number (“ITIN”) or employer identification number (“EIN”), and for which the Plan Processor instead uses a combination of values, including a country code and Foreign Identifier⁵ to create the CCID (collectively, “Foreign Customers”); (2) for certain foreign trusts and foreign estates for which no Foreign Identifier exists because the foreign jurisdiction does not require or issue any kind of identifier for such entity (“Foreign Trusts and Foreign Estates”); and (3) for certain so-called disregarded

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 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 See CAT Reporting Customer and Account Technical Specifications for Industry Members § 2.2.5 (“Examples of identifiers reported as the Foreign Identifier type include: Legal Entity Identifier (LEI); EU Member State National Client Identifier (NCI) in accordance with MIFID II; Country of Domicile and Passport Number; National Identity Card; Permanent Resident Card Number; Driver’s License; Other Government-Issued Identifier.”).

entities⁶ where such entity uses the same EIN as its owner (“Disregarded Entities”). This request for exemptive relief amends and replaces in its entirety the request previously submitted to the Commission on November 23, 2021, and which was limited to Foreign Customers.⁷

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.”⁸ In 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.⁹

I. Background

A. Unique CAT Customer-IDs

The CAT NMS Plan requires Industry Members to submit certain Customer information to the Central Repository. The Plan Processor then correlates such Customer information across all Industry Members, uses it to assign a CCID for each Customer, and uses the CCID to link all Reportable Events associated with an order for a Customer.¹⁰ The CAT NMS Plan requires that CCIDs be unique for each Customer. Section 1.1 of the CAT NMS Plan defines a “Customer-ID” as having the “same meaning provided in SEC Rule 613(j)(5).” SEC Rule 613(j)(5), in turn, defines a “Customer-ID” as “with respect to a customer, a code that uniquely and consistently identifies such customer for purposes of providing data to the central repository.”¹¹

Appendices C and D of the Plan further address the requirement to have a unique CCID for each Customer. Section 9.1 of Appendix D states that “[t]he Plan Processor will use the Customer information submitted by all broker-dealer CAT Reporters to assign a unique Customer-ID for each Customer.” Additionally, Section 9.3 of Appendix D states that “[t]he Plan Processor will determine a unique Customer using information such as SSN and DOB for natural persons or entity identifiers for Customers that are not natural persons and will resolve discrepancies. Once a CAT-Customer-ID is assigned, it will be added to each linked (or unlinked) order record for that Customer.” Section 9.3 of Appendix D further states that “Participants and the SEC must be able to use the unique CAT-Customer-ID to track orders from any Customer or group of Customers, regardless of what brokerage account was used to enter the order.”

⁶ A disregarded entity is an entity that is disregarded as separate from its owner for federal income tax purposes.

⁷ See Letter from Michael Simon, Chair, CAT NMS Plan Operating Committee to Vanessa Countryman, Secretary, SEC (Nov. 23, 2021).

⁸ 17 CFR § 242.608(e).

⁹ 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].”

¹⁰ See Section 6.4(d)(iv) of the CAT NMS Plan.

¹¹ Sections 8.1.1 and 8.2 of the Appendix D of the CAT NMS Plan also refer to the Customer-ID as “unique.”

B. Timing of Creation of CAT Customer-IDs

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, 2019.¹² On February 19, 2020, the Participants requested that the Commission provide exemptive relief to allow for the implementation of phased reporting for the CAT.¹³ On April 20, 2020, the Commission 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 Commission’s order and the Industry Member Technical Specifications.¹⁴

Pursuant to the Phased Reporting Exemption, 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 CAT.”

On June 30, 2022, the Participants filed with the Commission a request for exemptive relief to extend the July 11, 2022 deadline for reporting Phase 2e Industry Member Data set forth in the Phased Reporting Exemption to December 12, 2022.¹⁵ As a result, as of December 12, 2022, all CAT Data will be reported to the CAT, including transaction data, Customer Account Information and Customer Identifying Information, subject to any exemptions or other changes to the CAT requirements. At that time, the Plan Processor will use the Customer information to create the CCIDs.

C. Current Process for Creation of CAT Customer-IDs

Foreign Customers. In general, the Plan Processor creates unique CCIDs for Customers using the unique SSN, ITIN or EIN for the Customer. For Foreign Customers who do not have SSNs, ITINs or EINs, the Plan Processor uses a combination of values, including a country code and Foreign Identifier¹⁶ to create the CCID.¹⁷ In general, the combination of these inputs will create a unique CCID for Foreign Customers. However, in some cases, this process may create more than one CCID for a Foreign Customer. For example, if the same Foreign Customer provides two valid but different forms of identification from which the CCID is created (*e.g.*,

¹² CAT NMS Plan, Sections 6.7(a)(v) and (vi).

¹³ Letter from Michael Simon, Chair, CAT NMS Plan Operating Committee, to Vanessa Countryman, Secretary, SEC (Feb. 19, 2020).

¹⁴ See Exchange Act Release No. 88702 (Apr. 20, 2020), 85 Fed. Reg. 23075 (Apr. 24, 2020) (the “Phased Reporting Exemption”).

¹⁵ Letter from Michael Simon, Chair, CAT NMS Plan Operating Committee, to Vanessa Countryman, Secretary, SEC (June 30, 2022).

¹⁶ See *supra* n.5 (describing examples of Foreign Identifiers).

¹⁷ Industry Members have indicated that under current know your customer and other obligations, Industry Members are subject to a consistent approach for identifying US Customers. However, Industry Members are not subject to similar consistent requirements for identifying information for Foreign Customers. Accordingly, Industry Members may select different foreign identifiers for their Foreign Customers.

different passports from different countries) to different Industry Members, two different CCIDs will be created by the Plan Processor for the same Foreign Customer.¹⁸ In an effort to limit this potential result, the CAT CAIS CCID Technical Specifications require Industry Members to follow a specified hierarchy of identifiers if more than one identifier type is available for a Foreign Customer.¹⁹ Nevertheless, because Industry Members are not subject to consistent requirements for identifying information for Foreign Customers, the Plan Processor currently cannot guarantee the creation of a *unique* CDID for every Foreign Customer, as required by the CAT NMS Plan. Accordingly, under certain scenarios, the process for creating CCIDs for Foreign Customers may result in the creation of *more than one* CCID for a Foreign Customer.

Foreign Trusts and Foreign Estates. As described above, for Foreign Customers that do not have SSNs, ITINs or EINs, the Plan Processor relies on a combination of inputs including a Foreign Identifier to create a unique CCID. However, in certain scenarios involving certain foreign trust and foreign estate account holders, no governmental-issued identifier exists because the foreign country or municipality does not require or issue any kind of identifier for such entities. In these circumstances, because the Industry Member is unable to report something that does not exist,²⁰ the Plan Processor is currently unable to generate any CCID for Foreign Trusts and Estates.

Disregarded Entities. As described above, in general, the Plan Processor creates unique CCIDs for Customers using the unique SSN, ITIN or EIN for the Customer. However, this is not possible where two separate Customers share the same unique identifier. For example, a Disregarded Entity may be an Authorized Trader for its owner, the account holder, and may use the same EIN as its owner for U.S. federal income tax purposes. Accordingly, the Plan Processor is currently unable to assign unique CCIDs where two different Customers (the Disregarded Entity and its owner) share the same EIN. The Participants understand that this is an issue that has been identified by multiple Industry Members, albeit one affecting a relatively small number of accounts.²¹

II. Request for Exemption

Foreign Customers. The Participants request that the Commission exempt the Participants from the requirement set forth in Sections 9.1 and 9.3 of the CAT NMS Plan to create a unique CCID for each Foreign Customer in those instances in which the above-described

¹⁸ Relatedly, clearing firms rely on correspondent firms to provide input identifiers for Foreign Customers. If a clearing broker carries accounts for two correspondent firms (IB1 and IB2), and the same Foreign Customer provides a foreign driver's license number to IB1 and a foreign passport number to IB2, the clearing broker will be unable to report a single *tidValue* (i.e., the hashed version of the Customer's input identifier) for the Foreign Customer, contrary to the requirements of the CAT CAIS CCID Technical Specifications.

¹⁹ See CAT Reporting Customer and Account Technical Specifications for Industry Members § 2.2.5 ("The following hierarchy must be followed if more than one identifier type is available for a foreign CAT Customer: 1. National Registration or Tax Identifier – usable for Natural Person and Legal Entity CAT Customers; 2. LEI – usable only for Legal Entity CAT Customers; 3. Country of Domicile and Passport Number – usable only for Natural Person CAT Customers; 4. Permanent Resident Identifier – usable only for Natural Person CAT Customers; 5. Driver's License – usable only for Natural Person CAT Customers; 6. Other Government-Issued Identifier – usable for Natural Person and Legal Entity CAT Customers.").

²⁰ For the avoidance of doubt, this exemptive request would not apply in the event an Input Identifier value exists but is not obtained or systematized by an Industry Member.

²¹ The Participants currently understand that this is an issue limited to U.S. entities.

process for creating CCIDs for Foreign Customers creates more than one CCID for a Foreign Customer until December 31, 2023 to allow the Plan Processor to conduct the study described below and implement any related technical changes to the CAT System. As a condition to this exemptive relief, the Plan Processor will continue to create CCIDs for Foreign Customers pursuant to the process described above. The Plan Processor plans to conduct a study, as described further below.²² By January 15, 2023, approximately one month after Industry Members will begin reporting Phase 2e Industry Member Data to the CAT, the Plan Processor will commence conducting a study to assess the number of instances in which multiple CCIDs may be associated with Foreign Customers. The study will conclude by March 15, 2023, and the Plan Processor will provide a report to the Operating Committee by April 15, 2023 describing the results of the study. The report will be provided to the Commission staff. Depending upon the prevalence of multiple CCIDs for the same Foreign Customer found in the study, the report also will discuss, to the extent practicable, potential alternatives for the Plan Processor to attempt to create a single unique CCID based on information available in the CAT. Such a study can only occur after Phase 2e reporting commences and the CAT has collected a sufficient sample set of Phase 2e Industry Member Data.

Foreign Trusts and Foreign Estates. The Participants request that the Commission exempt the Participants from the requirement set forth in Sections 9.1 and 9.3 of the CAT NMS Plan to create a unique CCID for Foreign Trusts and Foreign Estates until December 31, 2023 to allow the Plan Processor to develop and implement necessary changes to the CAT System in order to facilitate the creation of unique CCIDs for such Customers. During this period, the Plan Processor will explore how to obtain more granular information on Foreign Trusts and Foreign Estates. As a condition to this exemptive relief, all other Customers associated with such Foreign Trusts and Foreign Estates (*e.g.*, trustees that are Authorized Traders on the account) must continue to be reported to CAIS.

Disregarded Entities. The Participants request that the Commission exempt the Participants from the requirement set forth in Sections 9.1 and 9.3 of the CAT NMS Plan to create a unique CCID for each Customer in those instances where a Disregarded Entity and its parent company are both Customers and share the same EIN until December 31, 2023 to allow the Plan Processor to develop and implement necessary changes to the CAT System in order to facilitate the creation of unique CCIDs for such Customers. As a condition to this exemptive relief, Industry Members will be required to report only one version of the Customer (either the disregarded entity or the parent company), and the entity must be identified in a manner that combines the roles of the Disregarded Entity and the parent company.²³

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

²² While the following description includes a proposed timeframe, the exact dates may be subject to change given competing project and implementation milestones. For the avoidance of doubt, the Participants are proposing an interim study period only with respect to the Foreign Customers scenario; for the Foreign Trusts/Estates and Disregarded Entities scenarios, an interim study period will not be required.

²³ Specifically, the Customer must be identified in a role of 'TRDHOLDER', which indicates that the Customer is both a holder of the account that also has authorization to trade on the account.

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requirements for a particular Financial Accountability Milestone provided that the conditions of the exemption are satisfied.²⁴

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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. Caroline A. Crenshaw, Commissioner
The Hon. Mark T. Uyeda, Commissioner
The Hon. Jaime Lizárraga, Commissioner
Hugh Beck, Senior Advisor for Regulatory Reporting
Haoxiang Zhu, 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
Sakisha Jackson, Special Counsel, Division of Trading and Markets

²⁴ 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.”).