

May 23, 2023

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 Electronic RFQ Responses

Dear Ms. Countryman:

Consolidated Audit Trail, LLC (“CAT LLC”), on behalf of the Participants¹ in the National Market System Plan Governing the Consolidated Audit Trail (“CAT NMS Plan” or “Plan”),² respectfully requests 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 the requirement in Section 6.4(d) of the CAT NMS Plan for each Participant, through its Compliance Rule, to require its Industry Members to record and electronically report to the Central Repository a bid/offer in response to a request for quote (“RFQ”) or other form of solicitation response provided in standard electronic format (*e.g.*, FIX) that is not “immediately actionable” (*i.e.*, further action is required by the responder providing the quote in order to execute or cause a trade to be executed) (“NIA Electronic RFQ Responses”), to the extent such responses are considered “orders” reportable pursuant to Rule 613(j)(8) of Regulation NMS under the Exchange Act, the CAT NMS Plan and the Compliance

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 See 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.”

Rules, until July 31, 2024. To the extent such responses are not considered “orders” as defined in Rule 613(j)(8) and the CAT NMS Plan, such responses would not be reportable to CAT.

The Plan Processor is working to finalize technical specifications that will be used by Industry Members to implement the necessary changes to firm systems in order to comply with these requirements. CAT LLC understands that Industry Members require additional time to implement the reporting requirements related to the NIA Electronic RFQ Responses. The Participants believe that the requested relief is “necessary or appropriate in the public interest, and is consistent with the protection of investors,”⁵ 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.”⁶

I. NIA Electronic RFQ Responses; Scope of Requested Relief

As described in further detail below, the NIA Electronic RFQ Responses that are subject to this exemptive request (1) are those that satisfy the definition of an “order” as defined in Rule 613(j)(8) and the CAT NMS Plan; (2) do not include RFQ responses that were required to be reported commencing in Phase 2c and Phase 2d pursuant to the SEC’s exemptive relief regarding the phased reporting of CAT Data; and (3) do not include activity that is subject to the SEC’s exemptive relief regarding certain floor and unstructured electronic upstairs activity.

A. Definition of an “Order”

The NIA Electronic RFQ Responses that are subject to this exemptive request must satisfy the definition of an “order” as defined in Rule 613(j)(8) and the CAT NMS Plan.⁷

As described in CAT FAQ B40, Industry Members must determine whether trading interest falls within the definition of an “order” for CAT purposes. To the extent an NIA Electronic RFQ Response is not considered an “order” as defined in Rule 613(j)(8) and the CAT NMS Plan, it would not be reportable to CAT.

Under Rule 613(c)(7) of Regulation NMS and Sections 6.3(d) and 6.4(d) of the CAT NMS Plan, reportable events are based on, among other things, the receipt, routing and execution of orders.⁸ Rule 613(j)(8) and the CAT NMS Plan provide that “orders” include: “(i) Any order received by a member of a national securities exchange or national securities association from any person; (ii) Any order originated by a member of a national securities exchange or national

⁵ 15 U.S.C. § 78mm(a)(1).

⁶ 17 CFR § 242.608(e).

⁷ The CAT NMS Plan defines the term “order” by reference to Rule 613(j)(8).

⁸ Rule 613(j)(9) provides that “[t]he term *reportable event* shall include, but not be limited to, the original receipt or origination, modification, cancellation, routing, and execution (in whole or in part) of an order, or receipt of a routed order.” 17 CFR 242.613(j)(9).

securities association; or (iii) Any bid or offer.”⁹ Under Rule 600(b)(11), a “bid” or “offer” means “the bid price or the offer price communicated by a member of a national securities exchange or member of a national securities association to any broker or dealer, or to any customer, at which it is willing to buy or sell one or more round lots of an NMS security, as either principal or agent, but shall not include indications of interest.”¹⁰

Because indications of interest and non-firm indications of a willingness to buy or sell a security are not “orders,” “bids” or “offers” under SEC rules, they have no reportable events under the CAT NMS Plan.¹¹ Conversely, firm indications of a willingness to buy or sell a security are “orders,” “bids” or “offers” and have reportable events associated with them pursuant to the CAT NMS Plan.

B. Phased Reporting Exemption; RFQ Responses Reportable in Phase 2c and Phase 2d

The NIA Electronic RFQ Responses subject to this exemptive request are not included within the group of RFQ responses that were required to be reported commencing in Phase 2c and Phase 2d pursuant to the SEC’s exemptive relief regarding the phased reporting of CAT Data (the “Phased Reporting Exemption”).¹²

In April 2020, the Commission granted conditional exemptive relief to allow for the implementation of phased Industry Member reporting to the CAT across five phases, Phases 2a through 2e.¹³ Pursuant to the Phased Reporting Exemption, any bid or offer in response to a request for quote or other form of solicitation response provided in standard electronic format (*e.g.*, FIX) that is “immediately actionable” (*i.e.*, no further action is required by the responder providing the quote in order to execute or cause a trade to be executed) is reportable in Phase 2c for equities and in Phase 2d for options.¹⁴ However, the Phased Reporting Exemption does not address NIA Electronic RFQ Responses—*i.e.*, responses to RFQs in standard electronic format that are *not* “immediately actionable.”

⁹ 17 CFR 242.613(j)(8). In adopting Rule 613, the Commission noted that it “is not including indications of interest in the definition of ‘order’ for purposes of the consolidated audit trail,” and explained that “[i]ndications of interest are different than orders because they are not firm offers to trade, but are essentially invitations to negotiate.” See Exchange Act Release No. 67547 (July 18, 2012), 77 Fed. Reg. 45722, 45747 (Aug. 1, 2012). See also 17 CFR § 242.300(e) (defining an “order” for purposes of Reg ATS as “any firm indication of a willingness to buy or sell a security, as either principal or agent, including any bid or offer quotation, market order, limit order, or other priced order).

¹⁰ 17 CFR 242.600(b)(11).

¹¹ Broker-dealers must determine whether trading interest falls within the definition of “order” for CAT purposes. See FAQ B3, B38 and B40 regarding indications of interest (“IOI”), requests for quotes (“RFQ”) and other non-firm expressions of trading interest, available at <https://www.catnmsplan.com/faq/index.html>.

¹² Exchange Act Release No. 88702 (Apr. 20, 2020), 85 Fed. Reg. 23075 (Apr. 24, 2020) (the “Phased Reporting Exemption”). See also Letter from Michael Simon, Chair, CAT NMS Plan Operating Committee, to Vanessa Countryman, Secretary, Securities and Exchange Commission (Feb. 19, 2020).

¹³ *Id.*

¹⁴ Phased Reporting Exemption at 23079.

Pursuant to the Phased Reporting Exemption, Industry Member Data required to be reported commencing in Phase 2c includes electronic quotes that are provided by or received in a CAT Reporter's order/quote handling or execution systems in Eligible Securities that are equities and are provided by an Industry Member to other market participants off a national securities exchange under the following conditions: (1) an equity bid or offer is displayed publicly or has been communicated (a) for listed securities to the Alternative Display Facility ("ADF") operated by FINRA; or (b) for unlisted equity securities to an "interdealer quotation system" as defined in FINRA Rule 6420(c); or (2) an equity bid or offer which is accessible electronically by customers or other market participants and is immediately actionable for execution or routing (*i.e.*, no further manual or electronic action is required by the responder providing the quote in order to execute or cause a trade to be executed). As a result, any response to an RFQ or other form of solicitation response provided in a standard electronic format (*e.g.*, FIX) that meets this quote definition (*i.e.*, an equity bid or offer which is accessible electronically by customers or other market participants and is immediately actionable for execution or routing) was required to be reported commencing in Phase 2c.

In addition, pursuant to the Phased Reporting Exemption, Industry Member Data required to be reported commencing in Phase 2d includes electronic quotes that are provided by or received in a CAT Reporter's order/quote handling or execution systems in Eligible Securities that are options and are provided by an Industry Member to other market participants off a national securities exchange under the following conditions: a listed option bid or offer which is accessible electronically by customers or other market participants and is immediately actionable (*i.e.*, no further action is required by the responder providing the quote in order to execute or cause a trade to be executed). Accordingly, any response to an RFQ or other form of solicitation response provided in standard electronic format (*e.g.*, FIX) that meets this definition was required to be reported commencing in Phase 2d for options.

C. Verbal and Manual Quotes Exemption

The NIA Electronic RFQ Responses subject to this exemptive request also do not include activity that is subject to the Verbal and Manual Quotes Exemption.¹⁵

In November 2020, the Commission granted conditional exemptive relief relating to the reporting of certain floor and unstructured electronic upstairs activity.¹⁶ Specifically, the Verbal and Manual Quotes Exemption temporarily exempted each Participant from the requirement in Section 6.4(d) of the CAT NMS Plan that each Participant, through its Compliance Rule, require its Industry Members to record and electronically report to the Central Repository the following, until July 31, 2023: (1) floor broker verbal announcements of firm orders on an exchange that are otherwise reported as systematized orders; (2) market maker verbal announcements of firm

¹⁵ See Exchange Act Release No. 90405 (Nov. 12, 2020), 85 Fed. Reg. 73544 (Nov. 18, 2020) (the "Verbal and Manual Quotes Exemption"). See also Letter from Michael Simon, Chair, CAT NMS Plan Operating Committee, to Vanessa Countryman, Secretary, Securities and Exchange Commission (July 1, 2020).

¹⁶ *Id.* On March 31, 2023, the Participants submitted a request that the Commission extend the relief granted in the Verbal and Manual Quotes Exemption until July 31, 2026. See Letter from Brandon Becker, Chair, CAT NMS Plan Operating Committee, to Vanessa Countryman, Secretary, Securities and Exchange Commission (Mar. 31, 2023).

quotes on an exchange trading floor; (3) telephone discussions between an Industry Member and a client that may involve firm bid and offer communications; and (4) unstructured electronic and verbal communications that are not currently captured by Industry Member order management or execution systems (e.g., Bloomberg chats, text messages). The NIA Electronic RFQ Responses subject to this exemptive request involve structured communications (e.g., FIX communications) and are not otherwise subject to the Verbal and Manual Quotes Exemption.

II. Request for Exemption

To allow FINRA CAT and Industry Members adequate time to finalize technical specifications and to implement the necessary changes to firm systems in order to comply with these requirements, CAT LLC requests that the Commission temporarily exempt Participants from the requirement in Section 6.4(d) of the CAT NMS Plan for each Participant, through its Compliance Rule, to require its Industry Members to record and electronically report to the Central Repository NIA Electronic RFQ Responses until July 31, 2024.

The deadline of July 31, 2024 would allow the Plan Processor to finalize technical specifications that will be used by Industry Members to implement the necessary changes to firm systems in order to comply with these requirements, and the Industry Members to implement the reporting requirements related to the NIA Electronic RFQ Responses. Specifically, FINRA CAT expects to publish updated technical specifications to facilitate reporting of NIA Electronic RFQ Responses by July 2023, and Industry Members have indicated that they require approximately twelve (12) months from publication of final technical specifications in order to develop and implement necessary systems changes.

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Respectfully submitted,

/s/ Brandon Becker

Brandon Becker
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