

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-100181)

May 20, 2024

Order Granting a Temporary Conditional Exemption Pursuant to Section 36(a)(1) of the Securities Exchange Act of 1934 (“Exchange Act”) and Rule 608(e) of Regulation NMS Under the Exchange Act, Relating to the Reporting of Responses to Requests for Quotes and Other Solicitation Responses Provided in a Standard Electronic Format, as Required by Section 6.4(d) of the National Market System Plan Governing the Consolidated Audit Trail

I. Introduction

By letter dated February 13, 2024,<sup>1</sup> 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, and MIAX PEARL, LLC; NASDAQ BX, Inc., Nasdaq GEMX, LLC, Nasdaq ISE, LLC, Nasdaq MRX, LLC, NASDAQ PHLX LLC, and The NASDAQ Stock Market LLC; and New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc. (collectively, the “Participants” or “SROs”) requested that the Securities and Exchange Commission (“Commission”) grant temporary exemptive relief to the Participants from the National Market System Plan Governing the Consolidated Audit Trail (“CAT NMS Plan”),<sup>2</sup> pursuant to its authority under Section 36(a)(1) of the Exchange Act<sup>3</sup> and Rule 608(e) of Regulation NMS

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<sup>1</sup> See letter from the Participants to Vanessa Countryman, Secretary, Commission, dated Feb. 13, 2024 (the “Exemption Request”). Unless otherwise noted, capitalized terms are used as defined in the CAT NMS Plan.

<sup>2</sup> The CAT NMS Plan was approved by the Commission, as modified, on Nov. 15, 2016. See Securities Exchange Act Release No. 79318 (Nov. 15, 2016), 81 FR 84696 (Nov. 23, 2016) (“CAT NMS Plan Approval Order”).

<sup>3</sup> 15 U.S.C. 78mm(a)(1).

under the Exchange Act, from certain reporting requirements in Section 6.4(d) of the CAT NMS Plan relating to the reporting of bids and/or offers made 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”).<sup>4</sup>

Section 36(a)(1) of the Exchange Act grants the Commission the authority, with certain limitations, to “conditionally or unconditionally exempt any person, security, or transaction . . . from any provision or provisions of [the Exchange Act] 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>5</sup> Under Rule 608(e) of Regulation NMS, the Commission may “exempt from [Rule 608], 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 mechanism of, a national market system.”<sup>6</sup>

For the reasons set forth below, the Commission is granting temporary conditional exemptive relief relating to the reporting of NIA Electronic RFQ Responses until July 31, 2026, subject to certain conditions, as discussed further below.

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<sup>4</sup> For example, a trading system could offer functionality allowing a broker-dealer to send a firm bid and/or offer in response to an RFQ, but require the sender of the RFQ to subsequently send a follow-up message to the responder in order to consummate the trade.

<sup>5</sup> 15 U.S.C. 78mm(a)(1).

<sup>6</sup> 17 CFR 242.608(e).

## II. Background and Request for Relief

In the Exemption Request, the Participants request 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, 2026. In support of their request, the Participants state that the deadline would align the expiration of exemptive relief with the expiration date of exemptive relief previously granted for certain floor and unstructured electronic upstairs activity (the “Verbal and Manual Quotes Exemptive Relief”).<sup>7</sup> In addition, the Participants state that this date would provide the Participants and the Plan Processor the time to develop and implement any necessary reporting guidance, specifications, and technical changes to the CAT and also provide CAT Reporters the time to fully consider and implement the necessary technological and process changes required to report and capture NIA Electronic RFQ Responses.<sup>8</sup>

The Participants represent that the NIA Electronic RFQ Responses that are subject to the Exemption 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

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<sup>7</sup> Exemption Request, at 3-4. In Nov. 2020, the Commission granted the Verbal and Manual Quotes Exemptive Relief, until July 31, 2023. See Securities Exchange Release No. 90405 (Nov. 12, 2020), 85 FR 73544 (Nov. 18, 2020). This conditional exemptive relief was later extended until July 31, 2026. See Securities Exchange Release No. 98023 (July 28, 2023), 88 FR 51369 (Aug. 3, 2023).

<sup>8</sup> Exemption Request, at 3-4. As noted by the Participants, 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. Id. at 3.

reported commencing in Phase 2c and Phase 2d;<sup>9</sup> and (3) do not include activity that is subject to the Commission's Verbal and Manual Quotes Exemptive Relief.<sup>10</sup>

### III. Discussion of Participants' Exemption Request

The Commission has carefully considered the Exemption Request. The Commission has determined that granting temporary conditional exemptive relief, pursuant to Section 36(a)(1) of the Exchange Act, is appropriate in the public interest and is consistent with the protection of investors, and that pursuant to Rule 608(e), this 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 the perfection of the mechanisms of a national market system.

The Commission is granting temporary exemptive relief to provide additional time to the Plan Processor, Participants, and Industry Members to update and implement applicable reporting frameworks, compliance guidance, FAQs, and any specifications for the reporting of NIA Electronic RFQ Responses. This additional time would also provide CAT Reporters time to fully consider and implement any technological and process changes required to capture and report NIA Electronic RFQ Responses, while minimizing potential business disruptions and impacts to existing workflows.

Based on the foregoing, pursuant to Section 36(a)(1) of the Exchange Act, it is appropriate in the public interest and is consistent with the protection of investors, and pursuant

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<sup>9</sup> Exemption Request, at 3-4. As explained by the Participants, 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, and this exemptive relief did not specifically address NIA Electronic RFQ Responses. Id.; Securities Exchange Release No. 88702 (Apr. 20, 2020), 85 FR 23075 (Apr. 24, 2020) ("Phased Reporting Exemption"). 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 required no further action by the responder providing the quote in order to execute or cause a trade to be executed was reportable in Phase 2c for equities and in Phase 2d for options. See Phased Reporting Exemption at 23079; see also Exemption Request, at 3-4.

<sup>10</sup> Exemption Request, at 4-5.

to Rule 608(e), it is consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets and the removal of impediments to, and the perfection of the mechanisms of a national market system to grant temporary conditional exemptive relief until July 31, 2026 from the requirement in Section 6.4(d) of the CAT NMS Plan for the recording and reporting of NIA Electronic RFQ Responses.<sup>11</sup>

#### IV. Conclusion

As discussed above, it is appropriate to grant temporary conditional exemptive relief that exempts each Participant 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.

As a condition to this relief, the Participants must provide the Commission a written implementation plan on the reporting of NIA Electronic RFQ Responses by July 31, 2025 in order to facilitate the timely completion of any necessary steps for the reporting of NIA Electronic RFQ Responses upon the expiration of the temporary exemptive relief on July 31, 2026. This implementation plan for the reporting of NIA Electronic RFQ Responses must: (1) identify workflows to facilitate the reporting of NIA Electronic RFQ Responses; and (2) provide or reference published technical specifications to allow for the reporting of NIA Electronic RFQ Responses by Industry Members. The purpose of these conditions is to help ensure that the Participants establish a framework necessary to permit the reporting of NIA Electronic RFQ Responses by Industry Members before the expiration of the temporary conditional exemptive

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<sup>11</sup> To the extent that the Participants are availing themselves of exemptive relief from a CAT NMS Plan requirement, such requirement shall not be included in the requirements for the Financial Accountability Milestones, provided that any conditions of the exemption are satisfied. See CAT NMS Plan, supra note 2, at Section 1.1 (“Financial Accountability Milestone” definition).

relief, while providing Industry Members at least one year to implement any necessary technological and systems changes to report NIA Electronic RFQ Responses.

Accordingly, IT IS HEREBY ORDERED, pursuant to Section 36(a)(1) of the Exchange Act,<sup>12</sup> and Rule 608(e) of the Exchange Act<sup>13</sup> that the Participants are granted an exemption, until July 31, 2026, from the requirement in Section 6.4(d) of the CAT NMS Plan that requires each Participant, through its Compliance Rule, to require its Industry Members to record and electronically report to the Central Repository bids and/or offers made in response to a request for quote 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), subject to the conditions described above.

By the Commission.

**Sherry R. Haywood,**

*Assistant Secretary.*

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<sup>12</sup> 15 U.S.C. 78mm(a)(1).

<sup>13</sup> 17 CFR 242.608(e).