

VIA EMAIL (NMSPlans@sec.gov)

August 2, 2024

Ms. Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: File Number 4-698
Notice of Filing of Amendment to the National Market System Plan Governing the Consolidated Audit Trail Regarding Reporting of Certain Verbal Activity, Floor and Upstairs Activity

Dear Ms. Countryman:

The Consolidated Audit Trail, LLC (“CAT LLC”), on behalf of the Participants¹ in the National Market System Plan Governing the Consolidated Audit Trail² (the “CAT NMS Plan” or “Plan”), is filing with the Securities and Exchange Commission (the “SEC” or “Commission”) this proposed amendment to the CAT NMS Plan (the “Verbal Quotes Amendment”) pursuant to Rule 608 of Regulation NMS under the Securities Exchange Act of 1934 (the “Exchange Act”).³

Specifically, CAT LLC proposes to amend the CAT NMS Plan to clearly and permanently exclude the following activities from reporting to the Central Repository:

- i. floor broker verbal announcements of firm orders on an exchange that are otherwise reported as systematized orders;
- ii. market maker verbal announcements of firm quotes on an exchange trading floor;
- iii. telephone discussions between an Industry Member and a client that may involve firm bid and offer communications; and

¹ The twenty-five Participants of the CAT NMS Plan are: BOX Exchange LLC, Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX 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.

² The CAT NMS Plan is a national market system plan approved by the Commission pursuant to Section 11A of the Exchange Act and the rules and regulations thereunder. See Exchange Act Release No. 79318 (Nov. 15, 2016), 81 Fed. Reg. 84696 (Nov. 23, 2016) (“CAT NMS Plan Approval Order”). The full text of the CAT NMS Plan is available at www.catnmsplan.com. Unless otherwise defined herein, capitalized terms are defined as set forth in the CAT NMS Plan.

³ 17 C.F.R. § 242.608.

- iv. 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 foregoing (i)-(iv), collectively, the “Exempt Activities”).

CAT LLC has consistently reiterated its longstanding view that the Exempt Activities were never contemplated by Rule 613 or the CAT NMS Plan, and has noted that there is no discussion in the CAT NMS Plan or the CAT NMS Plan Adopting Release regarding these activities.⁴ Likewise, the Financial Information Forum (“FIF”) has also made clear that unstructured verbal and electronic upstairs activities are not reportable to CAT under Rule 613 because they represent indications of interest—not orders.⁵ The Participants believe that the analysis in the December 2022 FIF Letter explaining why unstructured verbal and electronic upstairs activities are not reportable to CAT under Rule 613 (including the challenges that would be associated with reporting those activities) applies equally to communications on exchange trading floors. Nevertheless, because the Commission has expressed a different interpretation of Rule 613 and the CAT NMS Plan,⁶ CAT LLC previously requested, and the Commission granted, temporary exemptive relief related to reporting of the Exempt Activities through July 31, 2026 (the “July 2023 Exemptive Order”).⁷

To provide certainty to market participants moving forward given the conflicting interpretations of Rule 613 and the CAT NMS Plan, and to avoid the significant cost burdens that would be imposed by requiring the reporting of the Exempt Activities, the Verbal Quotes Amendment would explicitly and permanently exclude the Exempt Activities from CAT reporting. At a time when the Participants are seeking to reduce CAT-related costs, any potential marginal regulatory benefit of such reporting is substantially outweighed by the significant costs

⁴ Letter from Brandon Becker, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission (Mar. 31, 2023), <https://www.catnmsplan.com/sites/default/files/2023-03/03.31.23-CAT-Exemption-Request-Verbal-Floor-and-Upstairs-Activity.pdf> (the “March 2023 Exemption Request”); Letter from Michael Simon, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission (July 1, 2020) (the “July 2020 Exemption Request”), <https://www.catnmsplan.com/sites/default/files/2020-07/07.01.2020-Exemptive-Request-Re-Verbal-Activity.pdf>. While seeking to clarify the Plan in this regard, the Participants continue to believe that the Exempt Activities are not required to be reported by Rule 613 or the CAT NMS Plan. Nothing herein should be construed to the contrary with respect to this position. To the extent the SEC disagrees with the proposed amendments to the CAT NMS Plan outlined herein, the Participants reserve all of their rights with respect to the Participants’ position that reporting of the Exempt Activities to CAT was never contemplated by Rule 613 or the CAT NMS Plan.

⁵ Letter from Howard Meyerson, Managing Director, Financial Information Forum, to Commission at 11-12 (Dec. 16, 2022) (“December 2022 FIF Letter”).

⁶ Exchange Act Release No. 90405 (Nov. 12, 2020), 85 Fed. Reg. 73544 (Nov. 18, 2020) (“November 2020 Exemptive Order”), <https://www.sec.gov/rules/exorders/2020/34-90405.pdf>.

⁷ Exchange Act Release No. 98023 (July 28, 2023), 88 Fed. Reg. 51369 (Aug. 3, 2023) (“July 2023 Exemptive Order”), <https://www.sec.gov/files/rules/exorders/2023/34-98023.pdf>. In June 2022, CAT LLC submitted a request for permanent exemptive relief; however, the Commission did not respond to this request. Accordingly, CAT LLC is now submitting this Plan amendment. See Letter from Michael Simon, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission (June 3, 2022) (the “June 2022 Exemption Request”), <https://catnmsplan.com/sites/default/files/2022-06/06.03.2022-CAT-Exemption-Request-Verbal-Floor-and-UpstairsActivity-Final.pdf>.

and burdens required to do so, including the billions of dollars in additional associated costs required to implement and maintain the reporting requirements.

As discussed further below, the Verbal Quotes Amendment should be approved because:

- In addition to the substantial direct costs of building and maintaining the CAT itself, CAT Reporters would incur significant implementation and maintenance costs in order to report the Exempt Activities. CAT LLC is focused on identifying changes to the CAT NMS Plan that would reduce overall CAT costs, and requiring the Exempt Activities to be reported directly conflicts with those cost-saving efforts.
- When it originally granted exemptive relief, the Commission recognized that capturing data concerning the Exempt Activities would require significant manual human intervention, but theorized that future technological and business developments, including artificial intelligence, might make reporting the Exempt Activities cost-effective in the future. While recent advancements in artificial intelligence have garnered considerable attention, current technology is not sophisticated enough to reliably, accurately, and consistently capture, parse, analyze, and report these interactions in the current trading environments and workflows given stringent CAT reporting requirements.
- Therefore, the Exempt Activities could only be reported using manual means. Consequently, the costs to Participants and Industry Members of reporting the Exempt Activities to the Central Repository are estimated to be in the billions of dollars per year and would impose additional ongoing operational, technological, and support burdens on Participants and Industry Members.
- In addition to imposing substantial costs, manually reviewing verbal and unstructured electronic activities would be inconsistent and prone to error because human reviewers would be required to determine whether verbal and unstructured electronic activities involve a firm bid or offer, which is a necessarily subjective determination.
- Thus, any investment by Participants and Industry Members to develop the necessary operational capacity, procedures, and technological infrastructure to report the Exempt Activities to the CAT would not be cost-justified because that reporting would be costly, resource-intensive, inconsistent, and prone to error. That is, the costs associated with any such investment would significantly outweigh any potential marginal regulatory benefit that might be achieved if the Exempt Activities were reported to the CAT.
- Requiring reporting of the Exempt Activities to the CAT also would impose added ongoing operational burdens, disrupt trading, and give firms and market makers an incentive to use indications of interest that are not reportable to CAT rather than firm

orders or bids or offers. Such a shift in market practice would ultimately be to the detriment of investors.

Each of these issues is discussed further below.

The proposed changes to the CAT NMS Plan to implement the Verbal Quotes Amendment are set forth in Exhibit A to this filing.

Requirements Pursuant to Rule 608(a)

A. Description of the Proposed Amendments to the CAT NMS Plan

1. Permanently Exclude the Exempt Activities from CAT Reporting

a. CAT Reporting Requirements

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 securities association; or (iii) Any bid or offer.” A “bid” or “offer” is defined in Regulation NMS as the bid price or offer price communicated by a member of an exchange or association to any broker-dealer or to any customer, at which it is willing to buy or sell one or more round lots of an NMS security, as principal or agent, *but excluding indications of interest*.⁹ In the Rule 613 Adopting Release, the SEC indicates that for purposes of Rule 613 “[i]ndications of interest are different than orders *because they are not firm offers to trade*, but are essentially invitations to negotiate.”¹⁰ Because indications of interest and other non-firm indications of a willingness to buy or sell a security are not “orders” or “bids” or “offers” under SEC rules, actions involving them do not constitute reportable events under the CAT NMS Plan.¹¹ Firm indications of a willingness to buy or sell a security are orders, bids, or offers and have certain reportable events associated with them pursuant to the CAT NMS Plan.

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.”

⁹ 17 C.F.R. § 242.600(b)(8) (emphasis added).

¹⁰ Exchange Act Release No. 67457 (July 18, 2012), 77 Fed. Reg. 45722, 45747 (Aug. 1, 2012) (emphasis added) (“Rule 613 Adopting Release”).

¹¹ See Consolidated Audit Trail, Exchange Act Release No. 67457 (July 18, 2012), 77 Fed. Reg. 45722, 45747 (Aug. 1, 2012) (“The Commission, however, is not including indications of interest in the definition of ‘order’ for purposes of the consolidated audit trail because the Commission believes that the utility of the information such data would provide to regulators would not justify the costs of reporting the information.”). See also FAQ B3 and B38 regarding indications of interest (“IOL”) and requests for quotes (“RFQ”), available at www.catnmsplan.com/faq/index.html.

b. Current Commission Exemptive Order

Reporting the Exempt Activities to the Central Repository currently is not required pursuant to the July 2023 Exemptive Order, which will expire on July 31, 2026.¹² Accordingly, the Participants are filing the Verbal Quotes Amendment with the Commission to permanently exclude the Exempt Activities from reporting to the Central Repository. If approved, the Verbal Quotes Amendment would supersede the July 2023 Exemptive Order in its entirety and, therefore, render the reporting provisions required in the July 2023 Exemptive Order moot.

c. Proposed Revisions to the CAT NMS Plan

To provide clarity to market participants, CAT LLC proposes to amend the CAT NMS Plan to state that the Exempt Activities do not fall within the scope of Participant Data or Recorded Industry Member Data that Participants and Industry Members, as applicable, must record and report to the Central Repository. Specifically, CAT LLC proposes to add new Section 6.3(g) to the CAT NMS Plan. New Section 6.3(g) would be entitled “Verbal Activity, Floor and Upstairs Activity” and would state the following:

“(g) Verbal Activity, Floor and Upstairs Activity. Notwithstanding any other provision of SEC Rule 613 or the CAT NMS Plan, the following categories of data shall not be reportable to the Central Repository under Section 6.3(d):

- (i) floor broker verbal announcements of firm orders on an exchange that are otherwise reported as systematized orders;
- (ii) market maker verbal announcements of firm quotes on an exchange trading floor;
- (iii) telephone discussions between an Industry Member and a client that may involve firm bid and offer communications; and
- (iv) unstructured electronic and verbal communications that are not currently captured by Industry Member order management or execution systems (e.g., electronic chats, text messages).”

In addition, CAT LLC proposes to add references to new Section 6.3(g) to Section 6.3(d) and Section 6.4(d)(i) of the CAT NMS Plan. Specifically, CAT LLC proposes to add the parenthetical phrase “(subject to the exclusions outlined in Section 6.3(g))” to Section 6.3(d) and Section 6.4(d)(i) of the CAT NMS Plan.

¹² See July 2023 Exemptive Order; November 2020 Exemptive Order.

For the avoidance of doubt, the proposed Plan amendment is intended to have an effect similar to permanent incorporation into the CAT NMS Plan of the existing Commission-approved provisions of the July 2023 Exemptive Order. It is not intended to affect activity that is currently reported to CAT or to otherwise modify the categories in the July 2023 Exemptive Order as applied to date. In addition, for the avoidance of doubt, the term “client” in romanette (iii) above is intended to include both a non-Industry Member customer of the Industry Member or another Industry Member.

2. Justifications for the Verbal Quotes Amendment

a. Overall CAT Costs Are Unsustainable and Must Be Reduced, Not Increased.

Overall CAT costs include not only the direct costs incurred by CAT LLC in building and maintaining the CAT, but also the costs incurred by CAT Reporters in order to comply with CAT reporting requirements. Market participants, FINRA, SEC Commissioners, and members of Congress have all raised significant concerns about the extent of CAT costs.¹³ CAT LLC is focused on identifying changes to the CAT NMS Plan that would reduce both the costs imposed on CAT LLC to build and maintain the CAT and the costs imposed on Participants and Industry Members to comply with CAT reporting requirements. Among other initiatives, CAT LLC has recently filed Plan amendments and exemptive requests aimed at reducing direct costs associated with building and maintaining the CAT.¹⁴ The direct costs of building and maintaining the CAT are significant, and, therefore, costs that would be incurred by Participants and Industry Members to comply with CAT reporting requirements should be carefully controlled, especially in the absence of a fully implemented funding model.¹⁵ Here, the costs that would be incurred by Participants and Industry Members, collectively, related to reporting data concerning the Exempt Activities are estimated to be in the billions in the aggregate. Requiring CAT Reporters to incur these costs over the next two years in order to begin reporting the Exempt Activities, along with the additional costs that would be required to maintain that reporting, directly conflicts with CAT LLC’s ongoing cost-saving efforts. Moreover, as described in more detail

¹³ See, e.g., Letter from Rep. Bill Huizenga, Chairman, House Subcommittee on Oversight and Investigations, and Rep. Ann Wagner, Chairman, House Subcommittee on Capital Markets, to Deborah J. Jeffrey, Inspector General, Commission (Dec. 11, 2023) (“Huizenga-Wagner Letter”); Letter from Joseph Corcoran, Managing Director, Associate General Counsel, SIFMA, Ellen Greene, Managing Director, Equities & Options Market Structure, SIFMA, Howard Meyerson, Managing Director, Financial Information Forum, to Commission (July 31, 2023); Hester Peirce, *Who’s Paying?: Statement on the CAT’s Funding Model* (Sept. 6, 2023) <https://www.sec.gov/news/statement/peirce-statement-cat-funding-090623> (“Peirce Dissent”); Robert Cook, President and CEO, FINRA, Testimony Before the House Financial Services Subcommittee on Capital Markets, *Examining the Agenda of Regulators, SROs (Self-Regulatory Organizations), and Standards-Setters for Accounting, Auditing* (Dec. 12, 2023) <https://plus.cq.com/doc/congressionaltranscripts-7899923?3>.

¹⁴ See, e.g., Exchange Act Release No. 99938 (Apr. 10, 2024), 89 Fed. Reg. 26983 (Apr. 16, 2024) (proposing cost savings amendments expected to result in approximately \$23 million in annual cost savings in the first year with limited impact on the regulatory function of the CAT).

¹⁵ Although the Commission recently has approved a funding model, it has determined to temporarily suspend the Participants’ fee filings to recover any historical costs incurred prior to January 1, 2022. CAT reporting should not be expanded to introduce new CAT costs absent a fully implemented funding model. Exchange Act Release No. 98290 (Sept. 6, 2023), 88 Fed. Reg. 62628 (Sept. 12, 2023), <https://www.sec.gov/files/rules/sro/nms/2023/34-98290.pdf>.

below, any potential marginal utility of the information such data would provide to regulators would not justify the added costs and burdens of reporting the information.

b. It Remains Technologically Infeasible to Reliably, Accurately, and Consistently Collect Data Concerning the Exempt Activities for CAT Reporting Without Human Intervention.

It would be unreasonable to impose a technologically infeasible requirement on CAT Reporters. Without human intervention, it remains technologically infeasible to reliably, accurately, and consistently collect and report data concerning the Exempt Activities, which include verbal floor activity and unstructured verbal and electronic upstairs activity. The Commission has recognized that manually capturing and reporting verbal and electronic activity through human intervention would be impracticable and not cost-effective.¹⁶ Accordingly, the Commission's original November 2020 Exemptive Order was premised on the Commission's belief that future technological breakthroughs in artificial intelligence would make collecting information concerning the Exempt Activities more feasible by the time the temporary exemptive relief expires. These developments have not materialized in a way that would allow market participants to effectively and reliably capture data associated with the Exempt Activities for reporting to the Central Repository without human intervention. For example, FIF has provided the Commission with numerous examples of the challenges associated with verbal and unstructured electronic communications to illustrate why it is not feasible for Industry Members to automate the reporting of the Exempt Activities to the CAT.¹⁷

To be sure, many market participants are exploring how recent advancements in artificial intelligence, including machine learning, natural language processing, and voice recognition technology, may be used in various business functions. Nevertheless, current artificial intelligence technology is not sophisticated enough to reliably, accurately, and consistently capture, parse, analyze, and report these interactions in the current trading environments and workflows given stringent CAT reporting requirements. A number of Industry Members have conducted internal analyses on this question and concluded that there is currently no artificial intelligence software or algorithm with a feasible architecture to accurately capture and report the Exempt Activities to the CAT in an automated manner.¹⁸ In particular, those Industry Members provided detailed explanations regarding why natural language processing is not suitable for this purpose.¹⁹

Notably, it has been four years since the Commission posited that technological and business developments could advance to such an extent that automated processes could be used to capture and report the Exempt Activities to the CAT in an efficient and reliable manner.

¹⁶ November 2020 Exemptive Order at 73547.

¹⁷ See December 2022 FIF Letter at 5, 14-18. While the December 2022 FIF Letter focuses on these challenges in the context of upstairs activities, these same challenges exist for Industry Members and Participants on exchange trading floors.

¹⁸ December 2022 FIF Letter at 5.

¹⁹ December 2022 FIF Letter at 19.

Given the amount of time that has passed since the Commission first contemplated those developments and the amount of further advancement that is still required, it is exceedingly unlikely that the necessary developments will materialize in the next two years. Furthermore, even if those developments were to materialize, the potential regulatory benefit of reporting the Exempt Activities to the CAT is limited given the scope of data related to the Exempt Activities that it already reported, as outlined further in Section A.2.d below.²⁰

In short, because the technological and business developments anticipated in the current temporary exemptive relief have not materialized in a manner that lends itself to the efficient and accurate reporting of the Exempt Activities, the only way for Participants and Industry Members to report data associated with the Exempt Activities to the CAT would be to manually capture that data through human intervention, which the Commission has recognized would not be practical or cost-effective, as discussed in more detail below. Again, any potential marginal utility of the information such data would provide to regulators would not justify the added costs and burdens of reporting the information.

c. Because Reporting the Exempt Activities Would Require Substantial Human Intervention, the Costs of Reporting the Exempt Activities to the Central Repository Would Be Significant and Vastly Outweigh Any Potential Marginal Regulatory Benefit.

Importantly, the costs associated with reporting the Exempt Activities would include more than just the direct costs to CAT LLC associated with CAT reporting. Rather, they would also include substantial costs incurred by Participants and Industry Members in addition to the costs incurred by CAT LLC.²¹ For example, because the Exempt Activities have never been reportable to an audit trail, Participants and Industry Members would need to establish, implement, and maintain procedures to collect and record data associated with the Exempt Activities in the Central Repository. These costs would be especially significant as applied to the Exempt Activities because there is currently no effective way for Participants and Industry Members to collect the required data to be reported to the Central Repository in a cost-justified or consistent manner.²²

As discussed in greater detail above, the technological and business developments on which the current temporary exemptive relief is based, including developments in artificial intelligence, have not materialized. Therefore, the only way for the Participants and Industry Members to report the Exempt Activities to the CAT would be to manually capture these events by requiring a human being to listen to every verbal interaction of every floor broker, market maker, or upstairs trader either live or from tape, and/or to sift through electronic

²⁰ Therefore, even if the contemplated technological and business developments permitting automated reporting of the Exempt Activities did potentially occur someday, they would still need to be evaluated from a cost-benefit perspective before requiring the Exempt Activities to be reported to the CAT.

²¹ See Peirce Dissent; Huizenga-Wagner Letter.

²² In addition to financial costs, reporting the Exempt Activities to CAT would impose significant ongoing and resource-intensive operational, technological, and support burdens on Participants and Industry Members.

communications to determine if and precisely when a quote was given and whether it was firm. This manual review would be impracticable and costly because it would require Industry Members that are floor brokers and floor-based market makers, many of which are small firms, to hire additional staff and develop new technology resources to capture and analyze data associated with the Exempt Activities.²³ The Participants estimate that the discussions of each floor broker and floor-based market maker would need to be tracked on a one-to-one basis by a full-time equivalent (“FTE”) responsible for parsing and interpreting when a CAT-reportable event has occurred.²⁴ It would not be practicable for floor brokers or floor-based market makers to capture their own verbal interactions in real time without severely impacting existing workflows and those floor brokers’ and floor-based market makers’ ability to participate in fast-moving markets because doing so would require them to pause and turn their attention away from the market to record their verbalized quote.²⁵ With respect to upstairs activities, similar manual intervention would be required to consistently capture, parse, analyze, and report data concerning the Exempt Activities.²⁶ Any such manual reporting processes would be inconsistent and prone to error because human reviewers would be required to determine whether verbal and unstructured electronic activities involve a firm bid or offer, which is a necessarily subjective determination. Indeed, the Commission has previously acknowledged that “the reporting of such orders and quotes [*i.e.*, the Exempt Activities] involves complexity and/or costs, especially because capture of this information may require significant manual intervention.”²⁷

The Participants previously estimated the costs associated with developing the operational and technological infrastructure necessary for Participants to report the Exempt Activities to the CAT. In particular, \$64.35 million to \$112.86 million per year would be required to designate an FTE for each floor broker and floor-based market maker with an additional one-time cost of \$20 million to \$30 million on top of direct personnel costs to build the additional space required to support the increased number of personnel performing the manual reviews because the relevant exchanges do not currently have room for the additional staff to be present on the exchange floor.²⁸ Similarly, Industry Members would be required to hire additional staff and to update their technology systems to manually capture and report the Exempt Activities to the CAT, which Industry Members estimate would cost the industry a total of more than \$4.4 billion per year.²⁹ These estimated costs are substantial, and there is no reason

²³ Letter from Mike Simon, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission, Appendix A at 11 (June 3, 2022), <https://www.catnmsplan.com/sites/default/files/2022-06/06.03.2022-CAT-Exemption-Request-Verbal-Floor-and-Upstairs-Activity-Final.pdf> (“June 2022 Exemption Request”).

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ November 2020 Exemptive Order at 73547.

²⁸ See June 2022 Exemption Request at Appendix A. The Participants estimate that each FTE would cost between \$130,000 and \$228,000 annually, inclusive of compensation and benefits. On the relevant NYSE, Cboe, and Nasdaq exchanges alone, there are approximately 495 floor brokers and designated market makers requiring an FTE to interpret their communications.

²⁹ December 2022 FIF Letter at 6, 20-21.

to believe that they would have decreased since they were previously calculated.³⁰ These costs may very well be passed through to investors. Furthermore, the manual nature of the reviews would also make it exceedingly likely that a CAT Reporter will miss the requirement to report CAT data by T+1 at 8:00 am ET.

Requiring reporting of the Exempt Activities to the CAT also would disrupt trading and reduce the benefits of floor trading because of the added burdens it would impose on open outcry bidding and offering, which would ultimately be to the detriment of investors. The difficulty in capturing and reporting verbal and unstructured electronic activities will give firms and markets an incentive to use indications of interest that are not reportable to CAT rather than firm orders or bids or offers. The CAT was intended to enhance audit trails for regulators, not impact how Industry Members source market liquidity and trade.

Because current estimates of the costs that Participants and Industry Members would need to incur to report the Exempt Activities to the Central Repository are substantial, vastly outweigh any limited potential regulatory benefit (*i.e.*, because reporting would be inconsistent and prone to error) and would disrupt trading and reduce the use of firm quotations and orders, the CAT NMS Plan should be amended to clarify that the Exempt Activities are excluded from CAT reporting. To the extent the Commission would seek to impose such an obligation in the future, it should be accomplished through formal rulemaking, which should include a cost-benefit analysis of any potential marginal utility of the information such data would provide to regulators that would justify the added costs and burdens of reporting the information.

d. Including the Exempt Activities in the Central Repository Would Provide Limited Added Benefit for Regulatory and Surveillance Purposes.

The Participants do not believe that reporting the Exempt Activities to the CAT would provide enough value from a regulatory or surveillance perspective to outweigh their substantial costs. On all exchanges with floor trading, every order must be systematized upon receipt by the floor broker on the floor of the exchange and is reportable to the CAT. An order is “systematized” when (A) the order is sent electronically to the floor broker’s system at the exchange; or (B) the order is manually systematized by the floor broker upon receipt outside of the floor broker’s system and prior to representation in the floor trading crowd.³¹ To the extent a floor broker is not holding a systematized order, the floor broker is not eligible to represent any firm bid or offer, or to request firm quotes from in-crowd market participants on the floor of an exchange.³² Accordingly, all firm bids or offers represented by a floor broker must be associated

³⁰ See June 2022 Exemption Request at Appendix A; December 2022 FIF Letter at 6, 20-21. If a new rulemaking were proposed to make the Exempt Activities reportable to CAT, then the Participants would update these cost estimates as part of the detailed cost-benefit analysis that would be required in connection with considering a new reporting requirement.

³¹ See, *e.g.*, Consolidated Options Audit Trail System (“COATS”) requirements, such as Cboe Rule 5.7(f). NYSE options exchanges require that particular elements of an order be systematized so that the exchange may fulfill requirements for COATS reporting. See NYSE Arca Rule 6.67-O and NYSE American Rule 955NY.

³² See NYSE Rule 7.35B, NYSE Arca Rule 6.67-O, NYSE American Rule 955NY and Cboe Rule 5.91(a)(4).

with orders that have already been systematized. Conversely, any activity by the floor broker prior to systematization cannot be related to an order, bid, or offer pursuant to the CAT NMS Plan. Because the Participants require that any firm verbal interest expressed by a floor broker must be related to a CAT reportable systematized order, and any resulting trade must be reported to CAT, all verbal interest expressed by a floor broker that may be a CAT Reportable Event is already reported to CAT. Further, any cancellation or change to an order transmitted to an exchange floor broker must occur within the systematized order record. In short, every order verbalized on an exchange floor by a floor broker has already been systematized, and that systematization is already reportable to the CAT. Likewise, with respect to upstairs activity, manual orders (including any orders following from indications of interest) are already reportable to the CAT. And trades, whether occurring on an exchange floor or off-floor, are also already reportable to the CAT. The Reportable Events that are currently captured for exchange floor transactions are adequate to achieve CAT's regulatory purposes. The additional information that would be associated with the Exempt Activities does not need to be captured to allow for effective surveillance and regulation of exchange floor activity.

Similarly, with respect to bilateral negotiations in upstairs activity, such as between customers and broker-dealers, or between two broker-dealers, the Reportable Events that are currently captured when the broker either creates an order when dealing with a customer, or accepts an order from another broker-dealer, and when the trade execution occurs are adequate to achieve CAT's regulatory purposes. In these "event types," all necessary information required to fulfill CAT reporting requirements—customer, broker-dealer, time stamps, FDID, etc.—are captured. The additional information that would be associated with the Exempt Activities does not need to be captured to allow for effective surveillance of upstairs activity.

The ultimate regulatory value-add of expanding the existing CAT reporting to include the Exempt Activities is minimal given the scope of the data associated with the Exempt Activities that is already reported. Moreover, because they are not widely disseminated, communications related to the Exempt Activities do not lend themselves to the types of market manipulation considered in the adoption of Rule 613.³³ Any small incremental value added for regulatory purposes would be significantly outweighed by costs imposed on Industry Members, their customers, and the Participants, as well as the disruption to trading on Participant trading floors.

B. Governing or Constituent Documents

Not applicable.

³³ See, e.g., Exchange Act Release No. 67457 (July 18, 2012), 77 Fed. Reg. 45722 (Aug. 1, 2012) (explaining that the CAT would be useful in investigating frontrunning, spoofing and layering in today's high-speed electronic markets).

C. Implementation of Amendment

The Participants propose to implement the proposal upon approval of the proposed amendment to the CAT NMS Plan.

D. Development and Implementation Phases

Not applicable.

E. Analysis of Impact on Competition

CAT LLC does not believe that the proposed amendment would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The proposed amendment would continue the status quo under the current temporary exemptive relief related to the Exempt Activities. Therefore, the proposed amendment does not introduce any new competition concerns. Indeed, CAT LLC believes that the proposed amendment will have a positive impact on competition, efficiency, and capital formation. The proposed amendment will provide clarity to market participants about their regulatory obligations and result in substantial savings in costs and cost avoidance opportunities while continuing to provide minimal impact on the regulatory use of CAT Data. Such substantial savings and cost avoidance opportunities would inure to the benefit of all participants in the markets for NMS Securities and OTC Equity Securities, including Participants, Industry Members, and most importantly, the investors. Furthermore, CAT LLC believes that any action to require the reporting of the Exempt Activities to CAT would impose a significant burden on competition that would be unnecessary and not appropriate for the reasons cited herein. To the extent that the Commission would seek to impose such an obligation in the future, it should be accomplished through formal rulemaking that includes a cost-benefit analysis and an analysis of the impact on competition.

F. Written Understanding or Agreements Relating to Interpretation of, or Participation in Plan

Not applicable.

G. Approval by Plan Sponsors in Accordance with Plan

Section 12.3 of the CAT NMS Plan states that, subject to certain exceptions, the CAT NMS Plan may be amended from time to time only by a written amendment, authorized by the affirmative vote of not less than two-thirds of all of the Participants, that has been approved by the SEC pursuant to Rule 608 of Regulation NMS under the Exchange Act or has otherwise become effective under Rule 608 of Regulation NMS under the Exchange Act. In addition, the proposed amendment was discussed during Operating Committee meetings. The Participants, by a vote of the Operating Committee taken on July 2, 2024, have authorized the filing of this proposed amendment with the SEC in accordance with the CAT NMS Plan.

H. Description of Operation of Facility Contemplated by the Proposed Amendment

Not applicable.

I. Terms and Conditions of Access

Not applicable.

J. Method of Determination and Imposition, and Amount of, Fees and Charges

Not applicable.

K. Method and Frequency of Processor Evaluation

Not applicable.

L. Dispute Resolution

Not applicable.

* * * * *

Thank you for your attention to this matter. If you have any questions or comments, please contact me at branbecker@deloitte.com.

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
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

EXHIBIT A

Proposed Revisions to the CAT NMS Plan

Additions **underlined**; deletions **[bracketed]**

* * * * *

ARTICLE VI

FUNCTIONS AND ACTIVITIES OF CAT SYSTEM

...

Section 6.3. Data Recording and Reporting by Participants.

...

(d) Participant Data. Subject to Section 6.3(c), and Appendix D, Reporting and Linkage Requirements, and in accordance with the Technical Specifications, each Participant shall record and electronically report to the Central Repository the following details for each order and each Reportable Event **(subject to the exclusions outlined in Section 6.3(g))**, as applicable (“Participant Data”):

...

(g) Verbal Activity, Floor and Upstairs Activity. Notwithstanding any other provision of SEC Rule 613 or the CAT NMS Plan, the following categories of data shall not be reportable to the Central Repository under Section 6.3(d):

- (i) floor broker verbal announcements of firm orders on an exchange that are otherwise reported as systematized orders;**
- (ii) market maker verbal announcements of firm quotes on an exchange trading floor;**
- (iii) telephone discussions between an Industry Member and a client that may involve firm bid and offer communications; and**

(iv) unstructured electronic and verbal communications that are not currently captured by Industry Member order management or execution systems (e.g., electronic chats, text messages).

...

Section 6.4. Data Recording and Reporting by Industry Members.

...

(d) Required Industry Member Data.

(i) Subject to Section 6.4(c) and Section 6.4(d)(iii) with respect to Options Market Makers, and consistent with Appendix D, Reporting and Linkage Requirements, and the Technical Specifications, each Participant shall, through its Compliance Rule, require its Industry Members to record and electronically report to the Central Repository for each order and each Reportable Event the information referred to in Section 6.3(d) **(subject to the exclusions outlined in Section 6.3(g))**, as applicable (“Recorded Industry Member Data”).

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