

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-104663]

Order Extending Temporary Conditional Exemptive Relief, Pursuant to Section 36(a)(1) of the Securities Exchange Act of 1934 (“Exchange Act”) and Rule 608(e) of Regulation NMS Thereunder, from Certain Requirements of Appendix D, Section 3 of the National Market System Plan Governing the Consolidated Audit Trail Related to Representative Orders

January 23, 2026.

I. Introduction

On July 18, 2012, the Securities and Exchange Commission (the “Commission” or the “SEC”) adopted Rule 613 of Regulation NMS, which required the national securities exchanges and national securities associations (the “Participants”)¹ to jointly develop and submit to the Commission a national market system plan to create, implement, and maintain the consolidated audit trail (“CAT”).² The goal of Rule 613 was to create a modernized audit trail system that would provide regulators with timely access to a comprehensive set of trading data, thus enabling regulators to more efficiently and effectively analyze and reconstruct market events, monitor market behavior, conduct market analysis to support regulatory decisions, and perform surveillance, investigation, and enforcement activities. On November 15, 2016, the Commission

¹ The current Participants to the National Market System Plan Governing the Consolidated Audit Trail (“CAT NMS Plan”) are 24X National Exchange LLC, 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., Investors Exchange LLC, Long-Term Stock Exchange, Inc., MEMX LLC, Miami International Securities Exchange LLC, MIAX Emerald, LLC, MIAX PEARL, LLC, MIAX Sapphire, 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 National, Inc., and NYSE Texas, Inc.

² See Securities Exchange Act Release No. 67457 (July 18, 2012), 77 FR 45722 (Aug. 1, 2012); 17 CFR 242.613.

approved the national market system plan required by Rule 613—the CAT NMS Plan.³

On December 16, 2020, the Commission issued an exemptive relief order regarding the implementation of the CAT NMS Plan (the “First Order”).⁴ This order granted temporary conditional exemptive relief from several requirements set forth in the CAT NMS Plan, including the requirements set forth in Appendix D, section 3 that the CAT “must be able to create the lifecycle between . . . [c]ustomer orders to ‘representative’ orders created in firm accounts for the purpose of facilitating a customer order (e.g., linking a customer order handled on a riskless principal basis to the street-side proprietary order).”⁵ This relief was initially granted until July 31, 2023.⁶

On July 8, 2022, the Commission issued a new exemptive relief order (the “Second Order”),⁷ which superseded the First Order and modified and/or clarified certain aspects of the First Order. The Second Order granted temporary conditional exemptive relief until July 31, 2024, from the above-described linkage requirements set forth in Appendix D, section 3 for “representative order scenarios in which Industry Members do not have a systematic or direct link between their order management systems and execution management systems.”⁸ The Commission subsequently issued an order (the “Third Order”), on May 19, 2023, extending such

³ See Securities Exchange Act Release No. 79318, 81 FR 84696 (Nov. 23, 2016) (“CAT NMS Plan Approval Order”). Unless otherwise noted, capitalized terms are used as defined in the CAT NMS Plan.

⁴ See Securities Exchange Act Release No. 90688, 85 FR 83634 (Dec. 22, 2020).

⁵ See id. at 83636. The Commission stated its understanding that “the Participants do not currently have the ability to create lifecycles in certain representative order scenarios, particularly because of the difficulty of linking representative orders for Industry Members with separate order management systems and execution management systems that do not currently have a systematic or direct link between them.” Id.

⁶ Id.

⁷ See Securities Exchange Act Release No. 95234, 87 FR 42247 (July 14, 2022).

⁸ Id. at 42256. The term “Industry Member” is defined as “a member of a national securities exchange or a member of a national securities association.” See CAT NMS Plan, at section 1.1.

exemptive relief until January 31, 2025.⁹ This relief was superseded by a new order issued by the Commission on November 2, 2023 (the “Fourth Order”),¹⁰ which was intended to mirror the temporary conditional exemptive relief granted by the Third Order (and the Second Order) with respect to the requirements set forth in Appendix D, section 3 of the CAT NMS Plan regarding lifecycle linkages between customer orders and representative orders for scenarios in which Industry Members do not have a systematic or direct link between their order management systems and execution management systems.¹¹ The Fourth Order maintained the January 31, 2025 deadline established by the Third Order.¹² On January 17, 2025, the Commission extended this temporary conditional exemptive relief until July 31, 2025 (the “Fifth Order”).¹³ On July 23, 2025, the Commission again extended this temporary conditional exemptive relief until January 31, 2026 (the “Sixth Order”).¹⁴

For the reasons set forth below, the Commission has determined to grant a two year extension of the temporary conditional exemptive relief previously provided by the Commission with respect to the above-described requirements set forth in Appendix D, section 3 of the CAT NMS Plan for representative order scenarios in which Industry Members do not have a systematic or direct link between their order management systems and execution management systems. Specifically, the exemptive relief applies to the CAT NMS Plan requirement in Appendix D, section 3 of the CAT NMS Plan, requiring that the CAT “must be able to create the lifecycle between . . . [c]ustomer orders to ‘representative’ orders created in firm accounts for the

⁹ See Securities Exchange Act Release No. 97530, 88 FR 33655 (May 24, 2023).

¹⁰ See Securities Exchange Act Release No. 98848, 88 FR 77128 (Nov. 8, 2023).

¹¹ Id. at 77132.

¹² Id.

¹³ See Securities Exchange Act Release No. 102234, 90 FR 8078 (Jan. 23, 2025).

¹⁴ See Securities Exchange Act Release No. 103528, 90 FR 35561 (July 28, 2025).

purpose of facilitating a customer order (e.g., linking a customer order handled on a riskless principal basis to the street-side proprietary order).”¹⁵

III. Discussion and Exemptive Relief

Section 36(a)(1) of the Exchange Act grants the Commission the authority 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.”¹⁶ Rule 608(e) of Regulation NMS similarly grants the Commission the authority to “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 mechanisms of, a national market system.”¹⁷

Without an extension of the existing exemptive relief, Industry Members would be required to report linkage between a customer order to a specific representative order for representative order scenarios in which Industry Members do not have a systematic or direct link between their order management systems and execution management systems after January 31, 2026. However, in its request for a six-month extension submitted to the Commission on May

¹⁵ See CAT NMS Plan, at Appendix D, section 3. A representative order is an order originated in a firm-owned or -controlled account, including principal, agency average price and omnibus accounts, by an industry member for the purpose of working one or more customer or client orders. See, e.g., Securities Exchange Act Release No. 88702 (Apr. 20, 2020), 85 FR 23075, 23076 n.26 (Apr. 24, 2020).

¹⁶ 15 U.S.C. 78mm(a)(1).

¹⁷ 17 CFR 242.608(e).

29, 2025,¹⁸ Financial Information Forum (“FIF”) stated that there are several unresolved issues related to reporting these orders, including, but not limited to, the absence of a method to report linkage for some specific types of representative orders.¹⁹ FIF cautioned that Industry Members would be faced with “one of the following choices: (i) submit large numbers of Order Fulfillment events that the CAT system would reject and that would not be repairable; (ii) abandon certain common existing trading workflows that are fundamental to the current equity trading markets; or (iii) refrain from reporting large numbers of Order Fulfillment events to CAT.”²⁰

The Commission has determined that additional time is needed to identify and evaluate appropriate long-term solutions for certain trading scenarios. Granting two additional years of exemptive relief is appropriate given the difficulty and complexity of representative order scenarios, and in light of the Commission’s comprehensive review of the CAT.²¹ In developing those solutions, the Commission emphasizes its willingness to consider alternative solutions that achieve the regulatory goals of Rule 613 and the CAT NMS Plan. The Commission therefore determines that extension of the existing temporary conditional exemptive relief is appropriate in the public interest and consistent with the protection of investors under section 36(a)(1) of the Exchange Act, as well as consistent with the public interest, the protection of investors, the

¹⁸ See letter from Howard Meyerson, Managing Director, Financial Information Forum, to Commission, dated May 29, 2025 (“FIF May 2025 Letter”), at 2, available at <https://fif.com/index.php/working-groups/category/271-comment-letters?download=3276:fif-request-for-six-month-extension-of-the-current-exemptive-relief-relating-to-rep-order-linkage&view=category>.

¹⁹ See Sixth Order, at 35562.

²⁰ See FIF May 2025 Letter, at 2-3.

²¹ See Securities Exchange Act Release No. 104144 (Sept. 30, 2025), 90 FR 47853, 47854 (Oct. 2, 2025) (stating that “the Chairman of the Commission instructed the staff to undertake a comprehensive review of the CAT” and citing Prepared Remarks Before SEC Speaks, Chairman Paul S. Atkins, May 19, 2025, available at <https://www.sec.gov/newsroom/speeches-statements/atkins-prepared-remarks-sec-speaks-051925>).

maintenance of fair and orderly markets, and the perfection of the mechanisms of a national market system under Rule 608(e) of Regulation NMS.

Specifically, the Commission extends the existing temporary conditional exemptive relief granted by the Commission from the requirements set forth in Appendix D, section 3 of the CAT NMS Plan related to lifecycle linkages between customer orders and representative orders²² for representative order scenarios in which Industry Members do not have a systematic or direct link between their order management systems and execution management systems, until January 31, 2028. Such relief is intended to mirror the exemptive relief provided by the Second Order, the Third Order, the Fourth Order, the Fifth Order, and the Sixth Order. As a condition to this relief the Participants must continue to require Industry Members to report “representative” orders as currently described in FAQs F5-F7, and as described in other exemptive relief issued by the Commission.²³

²² The requirements related to lifecycle linkages between customer orders and representative orders set forth in Appendix D, section 3 of the CAT NMS Plan are described in the Second Order. See Second Order, at 42255-56.

²³ To avoid confusion, this exemptive relief is, by its terms, not limited to any specific type of CAT reportable security, e.g., equities.

IV. Conclusion

Accordingly, IT IS HEREBY ORDERED, pursuant to section 36(a)(1) of the Exchange Act²⁴ and Rule 608(e) under the Exchange Act,²⁵ that the above-described temporary conditional exemptive relief be extended.

By the Commission.

Stephanie J. Fouse,

Assistant Secretary

²⁴ 15 U.S.C. 78mm(a)(1).

²⁵ 17 CFR 242.608(e).