

September 1, 2015

Mr. Brent J. Fields
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Supplement to Request for Exemptive Relief from Certain Provisions of SEC Rule 613 of Regulation NMS under the Securities Exchange Act of 1934

Dear Mr. Fields:

Enclosed please find a supplement to the request for exemptions from the requirement to submit a national market system plan that meets certain reporting requirements specified in Rule 613(c) and (d) of Regulation NMS under the Securities Exchange Act of 1934, submitted to the Securities and Exchange Commission (“SEC”) by the eighteen registered national securities exchanges and FINRA (collectively, the “SROs”) on January 30, 2015 (the “Exemptive Request Letter”).¹ As part of the Exemptive Request Letter discussing the Customer Information Approach,² the SROs requested an exemption from the requirement in Rule 613(c)(7)(viii)(B) to provide the “date account opened” under certain circumstances. The SROs submit this supplement to the Exemptive Request Letter to further address the use of an “effective date” in lieu of a “date account opened.” Specifically, this supplement clarifies the requested exemption from the requirement in Rule 613(c)(7)(viii)(B) (including, in certain instances, also seeking an exemption from the requirement to provide the account number and account type under Rule 613(c)(7)(viii)(B)) and provides examples of scenarios in which the requested exemption would apply. The requested exemption is described in detail in Exhibit A to this letter. This supplement should be incorporated into, read with, and considered part of, the Exemptive Request Letter. However, to the extent that there are any inconsistencies between this supplement and the Exemptive Request Letter with respect to the use of an “effective date” in lieu of the “date account opened,” the terms of this supplement shall control.

If there are any questions concerning these requests, please contact Mr. Robert Colby at (202) 728-8484, or any other SRO representative as part of the consortium working to implement Rule 613.

Sincerely,

¹ Letter from the SROs to Brent J. Fields, Secretary, SEC re: Request for Exemptive Relief from Certain Provisions of SEC Rule 613 Of Regulation NMS under the Securities Exchange Act of 1934 (Jan. 30, 2015).

² Exemptive Request Letter at 8-18.

[Executed signature pages are located at the end of this letter and related appendices.]

BATS EXCHANGE, INC.

BATS Y-EXCHANGE, INC.

BY: _____

BY: _____

BOX OPTIONS EXCHANGE LLC

C2 OPTIONS EXCHANGE, INCORPORATED

BY: _____

BY: _____

CHICAGO BOARD OPTIONS
EXCHANGE, INCORPORATED

CHICAGO STOCK EXCHANGE, INC.

BY: _____

BY: _____

EDGA EXCHANGE, INC.

EDGX EXCHANGE, INC.

BY: _____

BY: _____

FINANCIAL INDUSTRY
REGULATORY AUTHORITY, INC.

INTERNATIONAL SECURITIES
EXCHANGE, LLC

BY: _____

BY: _____

ISE GEMINI LLC

MIAMI INTERNATIONAL
SECURITIES EXCHANGE LLC

BY: _____

BY: _____

NASDAQ OMX BX, INC.

NASDAQ OMX PHLX LLC

BY: _____

BY: _____

Exhibit A

Rule 613(c)(7)(viii)(B) requires a CAT Reporter to record and electronically report to the central repository “customer account information” “[f]or original receipt or origination of an order.” Rule 613(j)(4), in turn, defines “customer account information” to “include, but not be limited to, account number, account type, customer type, date account opened, and large trader identifier (if applicable).” In the section of the Exemptive Request Letter discussing the Customer Information Approach,³ the SROs requested an exemption from the requirement in Rule 613(c)(7)(viii)(B) to provide the “date account opened” at the original receipt or origination of an order under certain circumstances. Instead, the SROs proposed that CAT Reporters be permitted to provide an “effective date,” as defined further below, instead of the “date account opened” in certain circumstances. Specifically, as described in more detail below, the SROs request such relief in circumstances in which (1) no account has been established and (2) legacy system data issues prevent a broker-dealer from providing an account opening date.⁴ As discussed below, the SROs also propose that CAT Reporters be permitted to provide the relationship identifier in place of the account number, and identify the “relationship” in place of the account type where there is no account in the described circumstances.⁵

The SROs believe that the requested relief is narrowly drafted to address a limited set of circumstances involving primarily legacy issues regarding account opening dates. Moreover, in making the request, the SROs recognize that, if the SROs or the SEC need more detailed information regarding account opening dates, then the SROs and the SEC have the ability to request follow-up information from CAT Reporters to supplement the data available in the CAT.

Please note that customer account information required by Rule 613 applies to CAT Reporters that are broker-dealers, not to the SROs. Therefore, the SROs are submitting this request based upon extensive discussions with the Development Advisory Group (“DAG”) about customer account information.

Requested Relief

1. Circumstances in which No Account is Established

a. Factual Background

The SROs propose to permit CAT Reporters to report an effective date in lieu of a date account opened in circumstances in which an account has not been established for certain institutional trading activity. Based on discussions with the DAG, the SROs understand that a

³ Exemptive Request Letter at 8-18.

⁴ “Account opening date” generally refers to when an account is setup in a firm’s system as ready to trade. This typically corresponds to completing account documentation, though practices may vary among firms.

⁵ This request for an exemption is limited to the requirements of Rule 613(c)(7)(viii)(B) as discussed above, and does not pertain to other requirements of the Securities Exchange Act of 1934, the rules thereunder or SRO rules requiring account opening date, account number or account type information.

broker-dealer may not establish an account under the following circumstances, and, therefore, no account opening date would be available.

When an institutional trading relationship is established at a broker-dealer, the broker-dealer typically creates a parent account, under which additional sub-accounts would be created. In some cases, however, the broker-dealer will establish the parent institutional relationship using a relationship identifier as opposed to an account. The relationship identifier is typically established when the relationship is entered into a firm's system(s) (e.g., a trading system, a reference data system, etc.); however, this practice may vary across the industry as some firms may create relationship identifiers during the onboarding process. The relationship identifier could be any of a variety of identifiers, such as the Legal Entity Identifier ("LEI") or a short name for the relevant institution. This relationship identifier would be established prior to any trading related to the relevant institution. If a relationship identifier has been established in lieu of a parent account, and an order is placed on behalf of that institutional trading relationship, any executed trades will be kept in a firm account (e.g., a facilitation or average price account) until they are allocated to an account related to the relationship identifier (referred to below as a "sub-account").

In this example, the order would originate from a parent relationship using the relationship identifier, rather than the sub-account that ultimately will receive the allocation for two reasons. First, sub-accounts may be established before or simultaneously with order origination. Even when a sub-account exists before the order is transmitted, there may be multiple sub-accounts for a given institutional relationship and the broker-dealer CAT Reporter may not know which sub-account will receive the allocation for a particular trade at the time of order origination. Second, the sub-account that receives the allocation may not exist at the time of the order origination. For example, two sub-accounts may exist prior to order origination, but a third sub-account that may receive an allocation may be added after the order is submitted. Information about allocations to sub-accounts will be submitted with the allocation reports.

In the above circumstances, no account opening date is available for the parent relationship as there is no parent account. Moreover, historically, broker-dealers have not maintained the date such relationships have commenced in a uniform manner. Some broker-dealers have maintained the date the relationship identifier was established, while others may have maintained the date trading began using the relationship identifier. Account opening dates would be available for sub-accounts, except under the conditions described in section 2, below.

b. Requested Relief for Relationships Established Prior to CAT NMS Plan Implementation

The SROs request exemptive relief from the requirement in Rule 613(c)(7)(viii)(B) for broker-dealer CAT Reporters to report the "date account opened" for relationships described above that were established prior to the implementation date of the CAT NMS Plan applicable to the relevant CAT Reporter, as set forth in Rule 613(a)(3)(v) and (vi) ("Implementation").⁶ The

⁶ Rule 613(a)(3)(v) requires broker-dealer other than small broker-dealers to provide the required data to the central repository within two years after effectiveness of the CAT NMS Plan. Rule 613(a)(3)(vi) requires small

requested relief would permit broker-dealer CAT Reporters to report to the central repository an effective date in lieu of the date account opened. In these circumstances, the effective date would be either (1) the date the relationship identifier was established within the firm, or (2) the date when trading began (i.e., the date the first order is received) using the relevant relationship identifier⁷.

Furthermore, as noted above, Rule 613(j)(4) defines “customer account information” to include “account number” and “account type”, in addition to “date account opened.” In the circumstances described above, no account number or account type would be available, as no account has been established. Therefore, the SROs also request an exemption from the requirement in Rule 613(c)(7)(viii)(B) for broker-dealer CAT Reporters to report the “account number” and “account type” to the central repository in the circumstances described above. Instead, broker-dealer CAT Reporters would provide the relationship identifier in place of the account number, and identify the “type” as a “relationship” in place of the account type.

c. Requested Relief for Relationships Established After CAT NMS Plan Implementation

The SROs also request exemptive relief from the requirement in Rule 613(c)(7)(viii)(B) for broker-dealer CAT Reporters to report to the central repository the “date account opened” for relationships described above that were established after Implementation of the CAT NMS Plan. The requested relief would permit broker-dealer CAT Reporters to report to the central repository an effective date in lieu of the date account opened. For relationships established after Implementation, the effective date would be the date the broker-dealer established the relationship identifier, and would be no later than the date the first order was received. Additionally, a uniform definition of effective date would be included in the CAT technical specifications to ensure consistent usage by all CAT reporters going forward.

In addition, as with relationships established prior to Implementation of the CAT NMS Plan, the SROs also request a continuing exemption from the requirement in Rule 613(c)(7)(viii)(B) for broker-dealer CAT Reporters to report the “account number” and “account type” to the central repository after Implementation of the CAT NMS Plan. After Implementation, broker-dealer CAT Reporters would continue to provide the relationship identifier in place of the account number, and identify the “type” as a “relationship” in place of the account type.

2. Legacy System Data Issues for Existing Accounts

a. Factual Background

broker-dealers to provide the required data to the central repository within three years after effectiveness of the CAT NMS Plan.

⁷ The SROs anticipate that where a broker-dealer has both dates available, the earlier date would be used to the extent that the dates differ.

The SROs also propose to permit broker-dealer CAT Reporters to report an effective date in lieu of an account opened date in circumstances in which legacy system data issues may prevent a broker-dealer from providing a date account opened for any type of account (i.e., institutional, proprietary or retail). Based on discussions with the DAG, the SROs understand that the term “account opening date” has not been clearly defined as an historical matter. Moreover, the SROs understand that, given the lack of guidance on the definition of account opening date as well as systems issues, a broker-dealer may not have an account opening date, and/or may have used an alternative date to indicate when an account was established in the following circumstances:

- When a broker-dealer has switched back office providers or clearing firms, the new back office/clearing firm system, in some cases, may identify the date account opened as the date the account was opened on the new system. The manner in which accounts are transferred from one system to another may impact the account opening date field (e.g., ACATs transfers may reflect the date of the transfer itself, while tape-to-tape transfers may reflect the date that an account is opened at a new correspondent broker-dealer).
- When a broker-dealer is acquired, the date account opened may become the date that an account was opened on the post-merger back office/clearing firm system.
- Historically, the account opening date was not required for a broker-dealer’s proprietary accounts, if it was not available. Indeed, according to the regulatory guidance regarding Blue Sheet submissions, the “date account opened” should be provided for proprietary accounts “if it is known.”⁸ Otherwise, the “date account opened” field should be left blank.⁹
- Certain firms may maintain multiple dates associated with accounts in their systems, including an account opening date and status change date (i.e., the effective date of when accounts are established), where the parameters of each date are determined by the individual broker-dealer. Therefore, the use of any of these dates for the “date account opened” field may not consistently identify the appropriate date for CAT purposes across the industry.

b. Requested Relief for Accounts Established Prior to Implementation of CAT NMS Plan

Given the historical data issues outlined above as well as the lack of a definitive historical definition for account opening date, the SROs request exemptive relief from the requirement in Rule 613(c)(7)(viii)(B) for broker-dealer CAT Reporters to report the “date account opened” in the circumstances involving the legacy systems data issues described above, provided no account opening date is available. The requested relief would permit broker-dealer CAT Reporters to

⁸ Intermarket Surveillance Group: Frequently Asked Questions regarding Electronic Blue Sheets Submission; Remediation Dates Extended, NASD Notice to Members 06-33 (Jun. 2006).

⁹ Id.

provide an effective date in lieu of the date account opened for accounts existing prior to the Implementation of the CAT NMS Plan in the described circumstances.¹⁰ In circumstances involving changes in back office providers or clearing firms or broker-dealer acquisitions, the effective date would be the date an account was established at the relevant broker-dealer, either directly or via a transfer (e.g., via ACATS). Where there are multiple dates associated with accounts, firms will use the earliest available date as the effective date. In circumstances involving broker-dealer proprietary accounts, the effective date reported by broker-dealers would be (1) the date established for the account in the firm or in a firm system¹¹ or (2) the date when proprietary trading began in the account (i.e., the date on which the first orders were submitted from the account). In all cases, the effective date would be a date no later than the date trading occurs at the firm or in a firm system (as described above).

The request for exemptive relief with regard to legacy systems data issues is not required in those circumstances in which a “date account opened” is available. For example, if an account is transferred to a new broker-dealer and it is deemed to be a new account, then the account opening date and the date an account was established at the relevant broker-dealer are the same. In such circumstances, no exemptive relief is necessary. If, however, an account is transferred to a new broker-dealer and it is not deemed to be a new account, then the date the account was established at the broker-dealer is different from the account opening date. In such circumstances, exemptive relief would be necessary to permit the reporting of the date the account was established at the broker-dealer.

c. No Requested Relief for Accounts Established After CAT NMS Plan Implementation

The SROs understand that, after Implementation of the CAT NMS Plan, broker-dealer CAT Reporters will report to the CAT the “date account opened” as required under Rule 613(c)(7)(viii)(B) for the circumstances involving legacy systems data issues.¹² Therefore, the SROs do not request an exemption from Rule 613(c)(7)(viii)(B) for accounts established after Implementation of the CAT NMS Plan.

¹⁰ For example, broker-dealers holding retail accounts and that have not experienced a change in back office providers or clearing firms, or a merger or acquisition would, in all likelihood, be able to provide an account opening date beginning with that period of time in which account opening date information became part of the broker-dealer books and records requirements.

¹¹ For purposes of this request for exemptive relief, the term “firm system” refers to any system of a broker-dealer CAT Reporter that captures an effective date or date account opened.

¹² The SROs believe that the date an account was established, as described above, would be the date account opened going forward in circumstances involving changes in back office providers or clearing firms, broker-dealer acquisitions, and systems having multiple dates associated with accounts (noted above). In circumstances involving broker-dealer proprietary accounts, broker-dealer CAT Reporters would provide the account opening date.