

June 5, 2020

VIA HAND DELIVERY

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 FINRA Facility Data Linkage

Dear Ms. Countryman:

The Participants¹ in the National Market System Plan Governing the Consolidated Audit Trail (“CAT NMS Plan” or “Plan”)² respectfully request 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 certain requirements in the CAT NMS Plan related to FINRA Facility Data linkage described below. This letter amends and replaces in its entirety the amended exemptive request letter submitted to the SEC on February 12, 2020 related to the FINRA Facility Data Linkage.⁵ Each of the exemptive requests described below

¹ The twenty-four 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. (“FINRA”); Investors Exchange 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., NYSE National, Inc., and Long Term Stock Exchange, 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 17 C.F.R. § 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.”

⁵ Letter from Mike Simon, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, SEC re: Request for Exemption from Certain Provisions of the National Market System Plan Governing the Consolidated Audit Trail (February 12, 2020). The letter submitted on February 12, 2020 replaced the section of the exemptive request related to the FINRA Facility Data Linkage set forth in the exemptive request letter submitted on September 26, 2019. Letter from Mike Simon, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, SEC re: Request for Exemption from Certain Provisions of the National Market System Plan Governing the Consolidated Audit Trail (September 26, 2019).

are integral to the Participants' determination to seek relief from the Commission. Therefore, the Participants request that the Commission approve each of the requests below and, absent a determination by the Commission to grant all of the requests, the Participants would elect to require Industry Members to report all of the information described herein to CAT directly.

The Participants believe that the requested exemptions are "necessary or appropriate in the public interest, and consistent with the protection of investors,"⁶ and are "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."⁷ The Participants further believe that the requested relief would further the goal of creating a consolidated audit trail ("CAT") that captures customer and order event information for orders in NMS Securities and OTC Equity Securities across all markets, from the time of order inception through routing, cancellation, modification, or execution. In addition, the Participants believe that the requested relief would serve to maintain and enhance the reliability and accuracy of the data reported to the Central Repository, the security and confidentiality of such data, the use of the data by regulators, and competition, efficiency, and capital formation, and do so in a way that takes into consideration a cost-benefit analysis of the requested relief. In connection with the requested exemptions, the Participants plan to file revisions to their Compliance Rules⁸ consistent with the exemptive relief requested in this letter as necessary.

a. Background

i. Proposed Alternative Approach

Section 6.4(d)(ii)(A)(2) of the CAT NMS Plan requires, in relevant part, each Participant, through its Compliance Rule, to require its Industry Members to record and report to the Central Repository if the order is executed, in whole or in part, the SRO-Assigned Market Participant Identifier of the clearing broker, if applicable. In addition, Section 6.4(d)(ii)(B) of the CAT NMS Plan requires, in relevant part, each Participant, through its Compliance Rule, to require its Industry Members to record and report to the Central Repository, if the trade is cancelled, a cancelled trade indicator. The Participants propose to implement an alternative approach to the collection of this data for the CAT.

FINRA is required to report to the Central Repository data collected by FINRA's Trade Reporting Facilities, FINRA's OTC Reporting Facility or FINRA's Alternative Display Facility (collectively, "FINRA Facility") pursuant to applicable SRO rules ("FINRA Facility Data").⁹

⁶ 15 U.S.C. § 78mm(a)(1).

⁷ 17 C.F.R. § 242.608(e).

⁸ Section 1.1 of the CAT NMS Plan defines "Compliance Rule" to mean, with respect to a Participant, the rule(s) promulgated by such Participant as contemplated by Section 3.11."

⁹ Industry Members would be responsible for satisfying applicable self-regulatory organization rules regarding reporting to the CAT and to the FINRA Facility. If an Industry Member reports inaccurate data to a FINRA Facility, then it may be subject to an enforcement action for violating applicable SRO rules regarding reporting to the FINRA Facility. Inadvertent errors reported to the FINRA Facility, such as entering an invalid clearing number or contra party identifier, may result in a trade break and the Industry Member will be notified of the issue and have the opportunity to correct the error.

Included in this FINRA Facility Data is the clearing number of the clearing broker¹⁰ for a reported trade as well as the cancelled trade indicator. Under the proposed alternative approach, the clearing number and cancelled trade indicator of the FINRA Facility Data that is reported to the CAT would be linked to the related execution reports reported by Industry Members, in accordance with the phased implementation discussed below.

With this proposed approach, the cancelled trade indicator would be required to be reported to the Central Repository in each instance in which it is required to be reported to the Central Repository pursuant to Section 6.4(d)(ii)(A)(2) of the CAT NMS Plan, either as part of the FINRA Facility Data or reported directly by an Industry Member. The Participants' Compliance Rules would provide that if an Industry Member does not submit a cancellation for a canceled trade to a FINRA Facility, or is unable to provide a link between the execution reported to the Central Repository and the related FINRA Facility trade report, then the Industry Member would be required to record and report to the Central Repository a cancelled trade indicator as well as a cancelled trade timestamp.¹¹

Similarly, under the alternative approach, the clearing number of the clearing broker would be required to be reported to the Central Repository in each instance in which the SRO-Assigned Market Participant Identifier of the clearing broker is required to be reported to the Central Repository pursuant to Section 6.4(d)(ii)(B) of the CAT NMS Plan, either as part of the FINRA Facility Data or reported directly by an Industry Member. The Participants' Compliance Rules would provide that if an Industry Member does not submit the clearing number of the clearing broker to a FINRA Facility for a trade, or is unable to provide a link between the execution reported to the Central Repository and the related FINRA Facility trade report, then the Industry Member would be required to record and report directly to the Central Repository the clearing number as well as contra party information.

There are very limited instances in which an Industry Member would be unable to provide a link between the execution reported to the Central Repository and the related FINRA Facility report and therefore would be required to provide the clearing number directly to CAT. In these same circumstances, the Industry Member also would be required to report contra party information directly to CAT. The first scenario involves the circumstances in which an Industry Member executes a trade between two desks or departments involving two proprietary accounts of the firm. Since there is no change in beneficial ownership, no trade is reported to a FINRA Facility.¹² This first scenario does not involve a large number of trades. For example, in the

¹⁰ Note that the clearing number of the clearing broker is an SRO-Assigned Market Participant Identifier for purposes of the CAT NMS Plan because it is assigned by The Depository Trust Company, which is a self-regulatory organization ("SRO") under the Exchange Act.

¹¹ If the cancellation is rejected by the FINRA Facility, and it is not re-entered, then the Industry Member is required to report to the Central Repository a cancelled trade indicator and a cancelled trade timestamp. If the cancellation is rejected, but the Industry Member re-enters the cancellation in the FINRA Facility and the FINRA Facility accepts the cancellation, then the cancellation data will be included in the FINRA Facility Data and the Industry Member is not required to separately report the cancellation to the CAT.

¹² See Reporting Exception Codes, Section 4.12 of the CAT Reporting Technical Specifications for Industry Members (version 2.2.1 r3) (Jan. 31, 2020) (description of reportingExceptionCode) ("Industry Member Technical Specifications").

fourth quarter of 2019, these types of trade represented approximately 0.3% of the trades captured in FINRA's Order Audit Trail System ("OATS"). The second scenario involves the circumstances in which an Industry Member executes a trade and must report the trade via Form T.¹³ A trade is reported on Form T instead of to a FINRA Facility in certain limited circumstances, such as where the security symbol is no longer available or the firm's market participant identifier is no longer active. This second scenario is a rare circumstance. For example, in 2019, there were only 1640 trades reported on Form T.¹⁴ The third scenario involves the circumstances in which a trade was executed by a non-FINRA member firm and was reported to the FINRA Facility by the FINRA member counterparty.¹⁵ In this case, the non-FINRA member executing party has no FINRA Facility reporting obligation. This third scenario does not involve a large number of trades either.¹⁶ The final scenario involves the circumstances in which an Industry Member was the contra side of the trade report for a negotiated trade which was reported to a FINRA Facility via a Qualified Service Representative agreement ("QSR") or Automatic Give-up Agreement ("AGU"). In these instances, the Industry Member on the contra side is not able to enter a unique identifier in the FINRA Facility report as it was automatically submitted without the Industry Member taking any action on the trade. This fourth scenario does not involve a large number of trades. For example, in the fourth quarter of 2019, only 2% of executions were negotiated trades, and only approximately 0.1% of executions were the type of negotiated trades relevant here.

ii. Phased Implementation

The Participants proposed to implement the alternative approach in three phases, with the alternative approach to be fully implemented by December 15, 2022. Once the alternative approach is fully implemented, the Participants believe that the CAT will contain data equivalent to the data required in the CAT NMS Plan as adopted.

The Participants propose to implement the first phase by October 26, 2020. As of this date, the Plan Processor will begin linking FINRA Facility Data to the related execution reports reported by Industry Members to the CAT.

The Participants propose to implement the second phase by April 26, 2021, as a part of Phase 2c. As of this date, Industry Members that are required to report the clearing number and contra party information directly to the CAT, as discussed above, will be required to report such information to the CAT.¹⁷ Although this information would not be reported prior to April 26, 2021, the Participants note that this subset of data will be very limited and involve *de minimis* trade events, as described above.

¹³ *Id.*

¹⁴ For context, there typically are more than a million trades reported to one of the FINRA Facilities each day.

¹⁵ *Id.*

¹⁶ Statistics are not readily available for this scenario, however, as it is not data that is readily available via OATS.

¹⁷ Industry Members required to report cancelled trade indicators to the CAT in the limited circumstances noted above will be able to do so at the outset of Industry Member reporting to CAT on June 22, 2020.

The Participants propose to implement the third phase by December 15, 2021 for FINRA's Trade Reporting Facilities and FINRA's Alternative Display Facility and December 15, 2022 for FINRA's OTC Reporting Facility. The third phase would address the current difference in timestamp granularity requirements of the FINRA Facility versus the CAT. CAT Reporters are required to report Reportable Events to the CAT up to nanoseconds to the extent that the CAT Reporters utilize timestamps in increments finer than milliseconds. In contrast, the FINRA Facility collects data using timestamps up to milliseconds. Accordingly, FINRA will seek to revise the FINRA Facility to accept timestamps up to the granularity required by the CAT NMS Plan, through any necessary rule changes,¹⁸ changes to the relevant technical specifications and implementation timeframes.

iii. Benefits of Proposed Approach

The Participants believe that, once the alternative approach is fully implemented, the data reported to the CAT will be equivalent to the data required to be reported under the CAT NMS Plan as adopted. In addition, the Participants propose this alternative approach because the Participants believe that, once the alternative approach is fully implemented, the use of FINRA Facility Data is an equivalent and more reliable source for the clearing and cancellation data than when such data is separately reported by the Industry Members, as the FINRA Facility Data is used for clearing and publishing trades. In addition, the proposed approach has the additional benefit of avoiding the cost and effort for Industry Members to report the data regarding clearing brokers and cancelled trades pursuant to two reporting regimes. The Participants request the exemption described below so that Industry Members are not required to report information regarding the SRO-Assigned Market Participant Identifier for clearing brokers and a cancelled trade indicator for cancelled trades to the Central Repository as clearing numbers and cancelled trade information would be reported to the FINRA Facility, and FINRA would report FINRA Facility Data to the Central Repository. FINRA would report such data instead of the Industry Members, thereby reducing Industry Members' reporting burdens.

c. Requests for Exemptions

i. Alternative Approach

To implement this approach, the Participants request exemptive relief from the requirement in Section 6.4(d)(ii)(A)(2) and (B) of the CAT NMS Plan to require, through their Compliance Rules, that Industry Members record and report to the Central Repository:

(1) if the order is executed, in whole or in part, the SRO-Assigned Market Participant Identifier of the clearing broker, if applicable; and

(2) if the trade is cancelled, a cancelled trade indicator,

when such data is reported to the CAT as part of the FINRA Facility Data.

¹⁸ The Participants note that SEC approval of such a rule change may be necessary to meet this deadline.

The following are the proposed conditions for this exemption:

- Industry Members would continue to be required to submit a trade report for a trade, and, if the trade is cancelled, a cancellation to a FINRA Facility pursuant to applicable SRO rules.
- Industry Members are required to report the corresponding execution reports to the Central Repository beginning June 22, 2020 for Large Industry Members and Small Industry OATS Reporters.¹⁹ Industry Members would be required, through the Participants' Compliance Rules, to report to the Central Repository with an execution report the unique trade identifier reported to a FINRA Facility with the corresponding trade report. For example, the unique trade identifier for the OTC Reporting Facility and the Alternative Display Facility would be the Compliance ID, for the FINRA/Nasdaq Trade Reporting Facilities would be the Branch Sequence Number, and for the FINRA/NYSE Trade Reporting Facility would be the FINRA Compliance Number. This unique trade identifier would be used by the Plan Processor to link the FINRA Facility Data, including the clearing broker and cancelled trade information, with the Industry Member's execution report. Specifically, if an Industry Member submits a trade report to a FINRA Facility pursuant to applicable SRO rules, and reports the corresponding execution to the Central Repository, the Industry Member would be required to report to the Central Repository the unique trade identifier reported by the Industry Member to such FINRA Facility for the trade.²⁰
- FINRA would continue to report FINRA Facility Data to the Central Repository as it has done since Participant reporting commenced in November 2018. FINRA Facility Data includes the clearing numbers of the firms that cleared a reported trade as well as whether a trade was cancelled.²¹
- The Plan Processor would be required to link FINRA Facility Data to the execution reports submitted by Industry Members to the CAT beginning October 26, 2020, when it begins to require the use of unique trade identifiers.
- Participants' Compliance Rules would provide that if an Industry Member does not submit a cancellation to a FINRA Facility, or is unable to provide a link between the execution reported to the Central Repository and the related FINRA Facility trade report, then the Industry Member would be required to record and report to the Central Repository a cancelled trade indicator if the trade is cancelled beginning June 22, 2020 for Large Industry Members and Small Industry OATS Reporters.
- Participants' Compliance Rules would provide that if an Industry Member does not submit the clearing number of the clearing broker to a FINRA Facility for a trade, or is

¹⁹ Small Industry Non-OATS Reporters commence reporting on December 13, 2021.

²⁰ See Section 4.12.1 of the Industry Member Technical Specifications (describing the tapeTradeID).

²¹ See FINRA Trade Reporting Facility (TRF) Fields, Appendix D of the CAT Reporting Technical Specifications for Plan Participants (version 3.0.0) (Nov. 19, 2019).

unable to provide a link between the execution reported to the Central Repository and the related FINRA Facility trade report, then the Industry Member would be required to record and report to the Central Repository the clearing number as well as contra party information beginning April 26, 2021 for Large Industry Members and Small Industry OATS Reporters.

- FINRA would seek to amend its FINRA Facility rules and technical specifications to permit the FINRA Facility to accept timestamps up to the granularity required by the CAT NMS Plan, and to implement such changes, by December 15, 2021 for FINRA's Trade Reporting Facilities and FINRA's Alternative Display Facility and December 15, 2022 for FINRA's OTC Reporting Facility.

ii. Financial Accountability Milestones

The Commission recently adopted amendments to the CAT NMS Plan that established target deadlines for four Financial Accountability Milestones and that gradually reduced the amount of fees that the Participants would be permitted to recover from Industry Members if those target deadlines are missed.²² The Participants understand that to the extent that they avail themselves of exemptive relief from a CAT NMS Plan requirement, such requirement shall not be included in the requirements for a particular Financial Accountability Milestone provided that the conditions of the exemption are satisfied.²³ Accordingly, and while the ability to attain relief not only from the substantive requirements of the CAT NMS Plan discussed herein but also from the related requirements of the Financial Accountability Milestones is integral to the Participants' determination to seek the requested relief, the Participants understand that they need not separately request exemptive relief with respect to the Financial Accountability Milestones set forth in the Commission's recent amendment. In this regard, the various conditions for the exemptive relief set forth herein would need to be met prior to the next applicable Financial Accountability Milestone. For instance, linkage of FINRA Facility reports with CAT execution reports, scheduled to begin in October 2020, would be relevant to the Full Implementation of Core Equity Reporting Milestone (Period 2), which must be satisfied no later than December 31, 2020, rather than the Initial Industry Member Core Equity and Option Reporting, which must be satisfied no later than July 31, 2020 (Period 1).

²² See Amendments to the National Market System Plan Governing the Consolidated Audit Trail, Exchange Act Release No. 88890 (May 15, 2020), 85 Fed. Reg. 31322 (May 22, 2020).

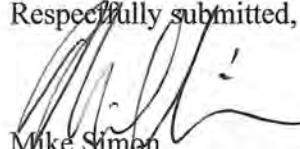
²³ See *id.* at 31335 (“[T]he Commission has the authority to grant exemptive relief from any requirement associated with a particular Financial Accountability Milestone. The Commission believes that this ability, in particular, should alleviate the Participants’ concerns regarding the potential impact of unforeseeable or reasonable delays.”) (citation omitted).

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Thank you for your attention to this matter. Please contact me at (212) 229-2455 if you have any questions or comments.

Respectfully submitted,



Mike Simon
CAT NMS Plan Operating Committee Chair

cc: The Hon. Jay Clayton, Chairman
The Hon. Hester M. Peirce, Commissioner
The Hon. Elad L. Roisman, Commissioner
The Hon. Allison Herren Lee, Commissioner
Ms. Manisha Kimmel, Senior Policy Advisor to Chairman Clayton, Regulatory Reporting
Mr. Brett Redfearn, Director, Division of Trading and Markets
Mr. David S. Shillman, Associate Director, Division of Trading and Markets
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CAT NMS Plan Participants