

August 27, 2020

VIA E-MAIL AND 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 Allocations

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 Section 6.4(d)(ii)(A)(1) and (2) of the CAT NMS Plan with regard to Allocation Reports. This letter amends and replaces in its entirety the exemptive request letter submitted to the SEC on April 27, 2020 related to allocations.⁵ The Participants believe that the requested exemptions are “necessary or appropriate in the public interest, and [are] 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

¹ The twenty-five 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; 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; and New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, 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 CFR § 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 related to Allocations (April 27, 2020).

⁶ 15 U.S.C. § 78mm(a)(1).

national market system.”⁷ In addition, if the requested exemptions are granted, the Participants would revise their Compliance Rules⁸ required by the CAT NMS Plan to reflect the exemptive relief requested in this letter as necessary.

1. Background

Pursuant to Section 6.4(d)(ii)(A) of the CAT NMS Plan, each Participant must, through its Compliance Rule, require its Industry Members to record and report to the Central Repository, if the order is executed, in whole or in part: (1) an Allocation Report; (2) the SRO-Assigned Market Participant Identifier of the clearing broker or prime broker, if applicable; and (3) CAT-Order-ID of any contra-side order(s). Section 1.1 of the Plan defines an “Allocation Report” as

a report made to the Central Repository by an Industry Member that identifies the Firm Designated ID for any account(s), including subaccount(s), to which executed shares are allocated and provides the security that has been allocated, the identifier of the firm reporting the allocation, the price per share of shares allocated, the side of shares allocated, the number of shares allocated to each account, and the time of the allocation; provided for the avoidance of doubt, any such Allocation Report shall not be required to be linked to particular orders or executions.

Accordingly, under the CAT NMS Plan, the Participants must require their Industry Members that are executing brokers to submit to the Central Repository, among other things, Allocation Reports and the SRO-Assigned Market Participant Identifier of the prime broker, if applicable.

The Participants propose to implement an alternative approach to reporting allocations to the Central Repository. Under this proposal, any Industry Member that performs allocations to a client account would submit Allocation Reports to the Central Repository any time shares/contracts are allocated to a client account regardless of whether the Industry Member was involved in executing the underlying order(s) (the “Allocation Alternative”).⁹ Under the Allocation Alternative, an “Allocation” would be defined as: (1) the placement of shares/contracts into the same account for which an order was originally placed; or (2) the placement of shares/contracts into an account based on allocation instructions (*e.g.*, subaccount allocations, DVP allocations). The Industry Member that performs Allocations must report to the Central Repository all Allocations to a client account for all Eligible Securities. The Industry Member that performs Allocations to accounts other than a client account (*e.g.*, proprietary accounts, step outs, correspondent flips) is not required to report such Allocations to the Central Repository. Industry Members may report Allocations to accounts other than client accounts, but if reported, such Allocations must be marked as Allocations to accounts other than client accounts. Allocations Reports are not required to be linked to particular orders or executions.

⁷ 17 CFR § 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 A “client account” is any account that is not owned or controlled by the Industry Member.

To implement the Allocation Alternative, the Participants propose to require the reporting of the data elements that are currently required in the CAT NMS Plan, as set forth in the definition of Allocation Report in Section 1.1. of the CAT NMS Plan. Although the definition of “Allocation Report” in Section 1.1 of the CAT NMS Plan only refers to shares with regard to these elements, the Allocation Alternative would require each of these elements to be reported with regard to both shares and contracts, as applicable, for all Eligible Securities. Specifically, the Participants would require the reporting of the following: (1) the FDID for the account receiving the allocation, including subaccounts; (2) the security that has been allocated; (3) the identifier of the firm reporting the allocation; (3) the price per share/contracts of shares/contracts allocated; (4) the side of shares/contracts allocated; (4) the number of shares/contracts allocated; and (5) the time of the allocation. In addition, the Participants propose to require the following new information on all Allocation Reports: (1) Allocation ID, which is the internal allocation identifier assigned to the allocation event by the Industry Member; (2) trade date; (3) settlement date; (4) IB/correspondent CRD# (if applicable); (5) FDID of new order(s) (if available in the booking system);¹⁰ (6) allocation instruction time (optional); (7) if account meets the definition of institution under FINRA Rule 4512(c);¹¹ (8) type of allocation (allocation to a custody account, allocation to a DVP account, step out, correspondent flip, allocation to a firm owned or controlled account, or other non-reportable transactions (e.g., option exercises, conversions)); (9) for DVP allocations, custody broker-dealer clearing number (prime broker) if the custodian is a U.S. broker-dealer, DTCC# if the custodian is a U.S. bank, or a foreign indicator, if the custodian is a foreign entity; and (10) if an allocation was cancelled, a cancel flag, which indicates if the allocation was cancelled, and a cancel timestamp, which represents the time at which the allocation was cancelled.

2. Request for Exemption

To implement the Allocation Alternative, the Participants request exemptive relief from the requirements in Section 6.4(d)(ii)(A)(1) and (2) of the CAT NMS Plan. First, the Participants request exemptive relief from the requirement for executing brokers to provide Allocation Reports to the Central Repository for those executing brokers that do not perform Allocations (as defined above). Specifically, the Participants request exemptive relief for such executing brokers from the requirement in Section 6.4(d)(ii)(A)(1) of the CAT NMS Plan for each Participant, through its Compliance Rule, to require its Industry Members that are executing brokers to record and report to the Central Repository, if the order is executed, in whole or in

¹⁰ For scenarios where the Industry Member responsible for reporting the Allocation has the FDID of the related new order(s) available, such FDID must be reported. This would include scenarios in which (1) the FDID structure of the top account and subaccounts is known to the Industry Member responsible for reporting the Allocation(s); and (2) the FDID structure used by the IB/Correspondent when reporting new orders is known to the clearing firm reporting the related Allocations.

¹¹ FINRA Rule 4512(c) states the following:

For purposes of this Rule, the term “institutional account” shall mean the account of:

- (1) a bank, savings and loan association, insurance company or registered investment company;
- (2) an investment adviser registered either with the SEC under Section 203 of the Investment Advisers Act or with a state securities commission (or any agency or office performing like functions); or
- (3) any other person (whether a natural person, corporation, partnership, trust or otherwise) with total assets of at least \$50 million.

part, an Allocation Report. In those circumstances in which the Allocation is performed by an Industry Member other than an executing broker (*e.g.*, by a prime broker or a clearing broker), such Industry Member would be required to submit the Allocation Report to the Central Repository. For example, if an executing broker is not self-clearing, then the clearing broker may perform the Allocation. In such a case, the clearing broker that performs the Allocation would be required to submit the Allocation Report to the Central Repository, not the executing broker. Under this approach, because the shares/contracts for every execution must be allocated to an account by the clearing broker, there would be no loss of information by shifting the reporting obligation from the executing broker to the clearing broker. Similarly, if a prime broker performs an Allocation to a subaccount, then the prime broker would be required to submit an Allocation Report to the Central Repository.

The Participants believe this approach is consistent with the basic approach taken by the SEC in adopting Rule 613. The SEC sought to require each broker-dealer and exchange that touches an order to record the required data with respect to actions it takes on the order.¹² Without the proposed relief, executing brokers that do not perform Allocations would be required to report Allocations.

Second, the Participants request exemptive relief from the requirement in Section 6.4(d)(ii)(A)(2) of the CAT NMS Plan for 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 prime broker, if applicable. With the implementation of the Allocation Alternative, the identity of the prime broker would be required to be reported by the clearing broker on the Allocation Report and, in addition, the prime broker itself would be required to report the ultimate allocation, which would provide more complete information. Therefore, it would be duplicative for the executing broker to separately identify the prime broker for allocation purposes.

Under the CAT NMS Plan, the Industry Member is required to report the prime broker in connection with the execution, which is part of an order's lifecycle, rather than via a separate Allocation Report that is not linked to the order lifecycle. However, associating a prime broker with a specific execution, rather than an allocation, does not reflect how the allocation process works as allocations to a prime broker are done post-trade and are performed by the clearing broker of the executing broker. If a particular customer only has one prime broker, the identity of the prime broker can be obtained from the customer and account information through the DVP accounts for that customer that contain the identity of the prime broker. Accordingly, in this circumstance, because the identity of the prime broker may be associated with the order lifecycle, there is no loss of information through the implementation of the Allocation Alternative versus what is required in the CAT NMS Plan. Further, Allocation Reports related to those executions would reflect that shares/contracts were allocated to the single prime broker. As a result, the proposal does not decrease the regulatory utility of the CAT for single prime broker circumstances.

¹² Securities Exchange Act Rel. No. 67457 (July 18, 2012), 77 Fed. Reg. 45722, 45748 (Aug. 1, 2012).

In cases where a customer maintains relationships with multiple prime brokers, because allocations to the prime broker are done on a post-trade basis, the executing broker will not have information at the time of trade as to which particular prime broker may be allocated all or part of the execution.¹³ Therefore, it would not be possible for an executing broker to report the prime broker at the time of trade.¹⁴ Accordingly, under the CAT NMS Plan, the executing broker would not be able to identify the prime broker on the execution report as required by Section 6.4(d)(ii)(A)(2) of the CAT NMS Plan. Similarly, under the Allocation Alternative, the prime broker may not be associated with a particular lifecycle in multiple prime broker cases. Under the Allocation Alternative, the executing broker (if self-clearing) or its clearing firm would report individual Allocation Reports identifying the specific prime broker to which shares/contracts were allocated and then each prime broker would itself report an Allocation Report identifying the specific customer accounts where the shares/contracts were finally allocated. To determine the prime brokers for a customer, a regulatory user would query the customer and account database using the customer's CCID to obtain all DVP accounts for the CCID at firms.

For example, Big Fund Manager (CCID AB345) has an account with Executing Firm A (EXA) and has two different prime brokers (PB1 and PB2). EXA will report to the customer and account database PB1 and PB2 as prime brokers on CCID AB345's DVP accounts. EXA executes 10,000 shares for CCID AB345. Post execution, CCID AB345 instructs EXA to allocate 2,500 shares to PB1 and 7,500 share to PB2. EXA or its clearing firm is required to report an Allocation Report for 2,500 shares to CCID AB345's DVP account for PB1 and an Allocation Report for 7,500 shares to CCID AB345's DVP account for PB2. Both the new order and the Allocation Reports will be associated with CCID AB345. Finally, PB1 and PB2 also will be required to report Allocation Reports reflecting the customer account to which the shares were allocated by CCID AB345. The accounts at PB1 and PB2 also will both reflect CCID AB345 as a customer on the account.

To implement the Allocation Alternative, the Participants would amend their Compliance Rules to require their Industry Members to provide Allocation Reports to the Central Repository any time they perform Allocations to a client account, whether or not the Industry Member was the executing broker for the trades. The Participants also would amend their Compliance Rules to require their Industry Members reporting the Allocation Reports to include the additional elements set forth above on all Allocation Reports, in addition to those elements required under the CAT NMS Plan.

¹³ Data on the number of customers that maintain relationships with multiple prime brokers is not available. However, based on discussions with members of the Advisory Committee, the Participants understand that these types of arrangements are common, particularly with respect to customers that are large funds.

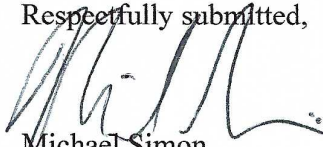
¹⁴ When a customer maintains relationships with multiple prime brokers, the customer typically has a separate DVP account with each prime broker, and the identities of those prime brokers can be obtained from the customer and account information.

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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,



Michael 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
The Hon. Caroline A. Crenshaw, Commissioner
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