

December 4, 2020

**VIA EMAIL (tradingandmarkets@sec.gov)**

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 Resubmission of Corrected Data

Dear Ms. Countryman:

The Participants<sup>1</sup> in the National Market System Plan Governing the Consolidated Audit Trail (“CAT NMS Plan” or “Plan”)<sup>2</sup> 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”)<sup>3</sup> and Rule 608(e) of Regulation NMS under the Exchange Act<sup>4</sup> from certain requirements in the CAT NMS Plan related to the resubmission of corrected data as set forth in Section 6.1 of Appendix D of the CAT NMS Plan. Specifically, the Participants request that the Commission exempt CAT Reporters from the requirement to resubmit corrected data to CAT by T+3 at 8 am ET, conditioned upon CAT Reporters resubmitting corrected data to CAT by T+4 at 8 am ET, as discussed further herein. The Participants believe that the requested relief is “necessary or appropriate in the public interest, and is consistent with the protection of investors,” and 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.”<sup>5</sup> In connection with the requested exemptions, the Participants plan to

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<sup>1</sup> 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.; 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.

<sup>2</sup> 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.

<sup>3</sup> 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.”

<sup>4</sup> 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.”

<sup>5</sup> 17 CFR § 242.608(e).

file amendments to their Compliance Rules consistent with the exemptive relief requested in this letter.<sup>6</sup>

## I. Background

The CAT NMS Plan sets forth certain timeframes for data processing and availability, including timeframes for the Plan Processor to communicate errors to CAT Reporters and for CAT Reporters to resubmit corrected data to the CAT. Specifically, Section 6.1 of Appendix D of the CAT NMS Plan provides the following timeframes:

- T+1<sup>7</sup> at 8 am ET: CAT Reporters must provide initial data submissions to the CAT
- T+1 at noon ET: initial data validation, lifecycle linkages and communication of errors to CAT Reporters by the Plan Processor
- T+3 at 8 am ET: resubmission of corrected data by CAT Reporters
- T+5 at 8 am ET: corrected data available to Participant regulatory staff and the SEC

The timeframes applicable to Industry Member CAT Reporters are also included in the CAT Reporting Technical Specifications for Industry Members<sup>8</sup> and the Participants' Compliance Rules.<sup>9</sup>

## II. Request for Exemption

The Participants received extensive feedback from the Advisory Committee and industry generally, including via industry trade associations, regarding the requirement for CAT Reporters to resubmit corrected data to CAT by T+3 at 8 am ET. This feedback includes various technical and operational issues faced by Industry Members that make it difficult or impractical for them to meet the deadline. In light of this feedback and ongoing discussions with the Advisory Committee and industry generally, the Participants believe that it is appropriate to provide CAT Reporters with additional time to resubmit corrected data.

Accordingly, the Participants request relief from compliance with the requirement set forth in Section 6.1 of Appendix D of the CAT NMS Plan applicable to CAT Reporters resubmitting corrected data to CAT by T+3 at 8 am ET. Such relief would be conditioned upon CAT Reporters resubmitting corrected data to CAT by T+4 at 8 am ET. Based on discussions with the Advisory Committee and industry generally, the Participants believe that the proposed new deadline on T+4 at 8 am ET would provide Industry Member CAT Reporters with sufficient time to correct identified errors and resubmit corrected data to CAT without impacting the availability of corrected data to Participant regulatory staff and the SEC by T+5 at 8 am ET. The

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<sup>6</sup> Section 3.11 of the CAT NMS Plan requires Participants to “endeavor to promulgate consistent rules . . . requiring compliance by their respective Industry Members with the provisions of SEC Rule 613 and [the Plan].”

<sup>7</sup> “T” is the transaction date and “T+1” is the transaction date plus one day.

<sup>8</sup> See CAT Reporting Technical Specifications for Industry Members Version 2.2.1 r8, Section 6.4 (Nov. 6, 2020) (discussing “CAT Reporting Hours”), available at [https://catnmsplan.com/sites/default/files/2020-11/11.06.20\\_CAT\\_Reporting\\_Technical\\_Specifications\\_for\\_Industry\\_Members\\_v2.2.1r8\\_CLEAN.pdf](https://catnmsplan.com/sites/default/files/2020-11/11.06.20_CAT_Reporting_Technical_Specifications_for_Industry_Members_v2.2.1r8_CLEAN.pdf).

<sup>9</sup> See, e.g., FINRA Rule 6830(b), (e) (regarding “Timing of Recording and Reporting” and “Error Correction”).

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Participants believe that the requested exemption would ultimately result in more accurate and complete data being reported to the CAT, without any impact to the availability of corrected data to Participant regulatory staff or the SEC by T+5 at 8 am ET, as previously discussed. The Participants understand that to the extent that they avail themselves of exemptive relief from a CAT NMS Plan requirement, any exempted requirement shall not be included in the requirements for a particular Financial Accountability Milestone provided that the conditions of the exemption are satisfied.<sup>10</sup>

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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  
Ms. Manisha Kimmel, Sr. Policy Adviser to Chairman  
Mr. Brett Redfearn, 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  
CAT NMS Plan Participants

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<sup>10</sup> See Exchange Act Release No. 88890 (May 5, 2020), 85 Fed. Reg 31322, 31335 (May 22, 2020) (“[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.”).