

March 17, 2021

VIA EMAIL (tradingandmarkets@sec.gov)

Ms. Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Request for Temporary Exemption from Certain Provisions of the National Market System Plan Governing the Consolidated Audit Trail Related to the Phase 2c Reporting and the Communication of Errors to CAT Reporters

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 temporary 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 set forth in Section 6.1 of Appendix D of the Plan regarding the communication of errors to CAT Reporters. Specifically, for a four day period from April 26, 2021 through April 29, 2021, the Participants request that the Commission grant a temporary exemption from the requirement that the Plan Processor communicate errors to CAT Reporters by T+1⁵ at noon ET, and instead allow the Plan Processor to communicate errors to such CAT Reporters four hours later, by T+1 at 4 pm ET. The purpose of this request for a targeted and limited exemption is to facilitate the cutover from the Phase 2a Industry Member Technical Specifications to the Phase 2c Industry Member Technical Specifications, as discussed further below. The Participants do not anticipate that the requested relief would impact the other requirements set forth in Section 6.1 of Appendix D of the Plan. The Participants believe that the requested relief is “necessary or appropriate in

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.; 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 (“CATLLC”) 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 “T” is the transaction date and “T+1” is the transaction date plus one day.

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.”⁶

I. Background

The CAT NMS Plan sets forth certain timeframes for data processing and availability, including the requirement for the Plan Processor to communicate errors to CAT Reporters by T+1 at noon ET. Specifically, Section 6.1 of Appendix D of the CAT NMS Plan provides the following timeframes:

- T+1 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

As previously described, this request for temporary relief focuses on the requirement related to the Plan Processor communicating errors to CAT Reporters by T+1 at noon ET.⁷ This request relates to errors communicated to CAT Reporters via both machine-to-machine interfaces and the Industry Member CAT Reporter Portal.

Pursuant to temporary conditional exemptive relief granted by the Commission on April 20, 2020, Industry Members have begun reporting to the CAT pursuant to a phased implementation schedule.⁸ Phase 2c equities reporting commences on April 26, 2021 for Large Industry Members and December 13, 2021 for Small Industry Members. Some Industry Members have raised concerns regarding the initial implementation of Phase 2c reporting. Specifically, the Industry Members have explained that it would not be practicable for them to convert data from the equities Phase 2a reporting format to the equities Phase 2c reporting format from April 26, 2021 through April 29, 2021. During that period, an Industry Member will receive error reports from the Plan Processor related to the Industry Member’s submissions to CAT made in the Phase 2a reporting format; however, because Phase 2c reporting will commence on April 26, 2021, the Industry Member will be required to resubmit error corrections in the Phase 2c reporting format. Some Industry Members have indicated that they will not be able to perform the technical work required to convert error corrections from the Phase 2a reporting format to the Phase 2c reporting format by April 26, 2021. As a temporary solution, the Plan Processor is able to convert errors received from Industry Members in the Phase 2a

⁶ 17 CFR § 242.608(e).

⁷ On December 16, 2020, the Commission issued an order of temporary conditional exemptive relief from certain requirements in the CAT NMS Plan regarding, among others, the requirement to complete lifecycle linkages by T+1 at noon ET as set forth in Section 6.1 of Appendix D. *See* Exchange Act Release No. 90688 (Dec. 16, 2020), 85 Fed. Reg. 83634 (Dec. 22, 2020). The relief requested in this letter relates to a different aspect of Section 6.1 of Appendix D and, if granted, would not conflict with the relief described in the Commission’s December 16, 2020 order, nor would it impact other aspects of the timeframes set forth in Section 6.1 of Appendix D.

⁸ *See* Exchange Act Release No. 88702 (Apr. 20, 2020), 85 Fed. Reg. 23075 (Apr. 24, 2020).

reporting format to the Phase 2c reporting format before it makes error feedback files available to the Industry Members during the period of April 26, 2021 through April 29, 2021. After that period, Industry Members will report to the CAT using the Phase 2c reporting format so it will not be necessary for the Plan Processor to perform the reporting format data conversion.

II. Request for Exemption

The Plan Processor will not be able to perform the reporting format conversion described above and communicate errors to CAT Reporters in the Phase 2c reporting format by T+1 at noon ET. However, the Plan Processor analyzed the conversion process, including associated timeframes, and indicated that it can both perform the data conversion and communicate errors to CAT Reporters by T+1 at 4 pm ET.⁹ Accordingly, the Participants request temporary exemptive relief from the requirement in Section 6.1 of Appendix D of the CAT NMS Plan related to the Plan Processor communicating errors to CAT Reporters by T+1 at noon ET. The requested relief would be in effect from April 26, 2021 through April 29, 2021. During this period, the Plan Processor would be required to communicate errors to CAT Reporters by T+1 at 4 pm ET. This request for relief addresses only the requirement to communicate errors to CAT Reporters by T+1 at noon ET; the Participants do not anticipate that the requested relief would impact the other requirements set forth in Section 6.1 of Appendix D of the Plan.

If granted, the temporary relief requested in this letter would provide the Plan Processor with additional time to perform the reporting format conversion described above. This would, in turn, help Industry Members satisfy their CAT reporting obligations by facilitating their resubmission of corrected data in the Phase 2c reporting format after Phase 2c reporting commences. The requested relief also would provide consistency and certainty to Industry Members, Participants and the Plan Processor, regarding the communication of errors to CAT Reporters. Specifically, Industry Members and Participants would know with certainty the time by which they will receive error feedback files from the Plan Processor. 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.¹⁰

⁹ This timeframe does not take into account events that are not reasonably foreseeable, including, but not limited to, vendor delays and outages.

¹⁰ 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.”).

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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. Allison Herren Lee, Acting Chair
The Hon. Hester M. Peirce, Commissioner
The Hon. Elad L. Roisman, Commissioner
The Hon. Caroline A. Crenshaw, Commissioner
Hugh Beck, Senior Advisor for Regulatory Reporting to the Acting Chair
Christian Sabella, Acting Director, Division of Trading and Markets
David S. Shillman, Associate Director, Division of Trading and Markets
David Hsu, Assistant Director, Division of Trading and Markets
Mark Donohue, Senior Policy Advisor, Division of Trading and Markets
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CAT NMS Plan Participants