

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 Exemption from Certain Provisions of the National Market System Plan Governing the Consolidated Audit Trail Related to Industry Member CAT Reporting Requirements

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 to allow Industry Members to report the following in Phase 2d: (1) rejected external route flags related to the equity leg of a multi leg order; (2) certain OTC Equity Securities quotes; (3) certain OTC Equity Securities messages; and (4) quote identifiers. Each of these items is discussed more fully below. The Participants request that the Commission grant this relief by amending and clarifying certain aspects of the Commission’s April 20, 2020 exemption order (the “Phased Reporting Exemption”), as described further herein.⁵

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

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

of impediments to, and perfection of the mechanisms of, a national market system.”⁶ In connection with the requested exemptions, the Participants plan to file amendments to their Compliance Rules consistent with the exemptive relief requested in this letter, as necessary.⁷

I. Background

Under the CAT NMS Plan, the Participants are required, unless otherwise ordered by the Commission, through their Compliance Rules, to require their Industry Members (other than Small Industry Members) (“Large Industry Members”) to commence reporting Industry Member Data to the Central Repository by November 15, 2018, and to require their Small Industry Members to commence reporting Industry Member Data to the Central Repository by November 15, 2019.⁸ On February 19, 2020, the Participants requested that the Commission provide exemptive relief to allow for the implementation of phased reporting for the CAT.⁹ On April 20, 2020, the Commission issued the Phased Reporting Exemption, which granted conditional exemptive relief that permitted the requested implementation of reporting for the CAT across five phases, Phases 2a through 2e, as described further in the Phased Reporting Exemption and the Industry Member Technical Specifications.¹⁰

A. Rejected Route of Equity Leg

Phase 2c Industry Member Data, which must be reported to CAT by April 26, 2021 for Large Industry Members and December 13, 2021 for Small Industry Members, includes, in relevant part: “Industry Member Data that is related to Eligible Securities that are equities and that is related to: . . . flagging rejected external routes to indicate a route was not accepted by the receiving destination.”¹¹ Pursuant to this requirement, when Phase 2c reporting commences, Industry Members must report to CAT a rejected external route flag when an equity leg of a multi leg order is rejected (the “Rejected Route of Equity Leg Issue”).

B. OTC Equity Securities Quotes

The Phased Reporting Exemption requires certain quotes in unlisted Eligible Securities sent to an interdealer quotation system (“IDQS”) to be reported to CAT in Phase 2c. Specifically, the Phased Reporting Exemption states that Phase 2c Industry Member Data, which must be reported to CAT by April 26, 2021 for Large Industry Members and December 13, 2021 for Small Industry Members, includes: “quotes in unlisted Eligible Securities sent to an IDQS operated by a CAT Reporter (reportable by the Industry Member sending the quotes).”¹² The Phased Reporting Exemption explains further that Phase 2c reporting includes OTC Equity Securities quotes sent to an IDQS that matches and executes orders (the “OTC Equity Securities Quotes Issue”). Specifically, the Phased Reporting Exemption states: “OTC Equity Securities quotes sent by an Industry Member to an IDQS operated by an Industry Member CAT Reporter

⁶ 17 CFR § 242.608(e).

⁷ 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].”

⁸ Sections 6.7(a)(v) and (vi) of the CAT NMS Plan.

⁹ Letter from Michael Simon, Chair, CAT NMS Plan Operating Committee, to Vanessa Countryman, Secretary, SEC (Feb. 19, 2020).

¹⁰ See generally Phased Reporting Exemption.

¹¹ *Id.* at 23078.

¹² *Id.*

(other than such an IDQS that does not match and execute orders) are reportable by the Industry Member sending them in Phase 2c.”¹³

C. OTC Equity Securities Messages

With respect to an IDQS that does not match and execute orders, while the Phased Reporting Exemption states that OTC Equity Securities quotes are not reportable until Phase 2d, it does not specifically address the reporting obligations applicable to such IDQS and its subscribers relating to messages sent through the IDQS in response to a market maker’s OTC Equity Securities quote posted on the IDQS (the “OTC Equity Securities Messages Issue”). Such messages that express a firm indication of a willingness to buy or sell fall within the definition of “order” for purposes of CAT reporting, as set forth in SEC Rule 613(j)(8).¹⁴

The Participants understand that Industry Members currently report these messages to the CAT only in the event that they result in a trade execution and in the scenario described in CAT Frequently Asked Question (“FAQ”) J3.¹⁵ Otherwise, Industry Members are not reporting these messages to the CAT.

On November 15, 2018, the Operating Committee published FAQ J2 on the CAT NMS Plan website to address CAT reporting responsibilities with respect to OTC Link messages. That version of FAQ J2 stated:

J2. What are the CAT reporting responsibilities with respect to OTC Link messages?

As a general matter, based on the Participants current understanding of OTC Link functionality the Participants consider the use of OTC Link messages to be negotiations since these messages are not immediately actionable and require trader intervention before a trade can occur. Therefore, no CAT reporting obligation exists until the terms and conditions of a trade have been agreed upon.

After further consideration and discussions with the industry regarding the operation of OTC Link, the Operating Committee published an amended FAQ J2 on the CAT NMS Plan website on November 3, 2020. Amended FAQ J2 states that OTC Link messages are orders “for purposes of CAT reporting obligations to the extent such messages represent a ‘firm indication of a willingness to buy or sell a security.’”¹⁶ Specifically, amended FAQ J2 states:

¹³ *Id.* at 23079. Note that the Phased Reporting Exemption also states that OTC Equity Securities quotes sent to an IDQS that does not match and execute orders are reportable in Phase 2d. Specifically, the Phased Reporting Exemption states: “OTC Equity Securities quotes sent by an Industry Member to an IDQS operated by an Industry Member CAT Reporter that does not match and execute orders” are reportable in Phase 2d. *Id.*

¹⁴ The Operating Committee has previously published guidance that clarifies that “broker-dealers must determine whether trading interest falls within the definition of ‘order’ for CAT purposes,” and that, for CAT reporting purposes, “[i]f trading interest is firm, that trading interest is reportable to CAT (regardless of how it is labeled).” See CAT FAQ B38 at <https://catnmsplan.com/faq>; see also CAT FAQ B3 at <https://catnmsplan.com/faq> (regarding non-firm trading interests).

¹⁵ FAQ J3 addresses the CAT reporting obligations for OTC Link messages directed by an OTC Link ATS subscriber to a Global OTC quote displayed on the OTC Link ATS. See CAT FAQ J3, available at <https://catnmsplan.com/faq>.

¹⁶ Note that OTC Link ATS is an alternative trading system (“ATS”) that operates as an IDQS that connects its broker-dealer subscribers but does not match and execute orders.

J2. What are the CAT reporting responsibilities with respect to OTC Link messages?

Pursuant to Section 6.3(d) of the CAT NMS Plan (“Plan”), as applied to Industry Members by Section 6.4(d) of the Plan, Industry Members must report certain details to the CAT for each order and reportable event. These requirements are applied to Industry Members via each Plan Participant’s CAT Compliance Rules.

“Order,” as used in the Plan and the CAT Compliance Rules, is defined by SEC Rule 613(j)(8) to include “[a]ny order received by a member of a national securities exchange or national securities association from any person; [a]ny order originated by a member of a national securities exchange or national securities association; or [a]ny bid or offer.” SEC Rule 300 more specifically defines “order” as “any firm indication of a willingness to buy or sell a security, as either principal or agent, including any bid or offer quotation, market order, limit order, or other priced order.” Note that neither indications of interest (“IOIs”) nor requests for quotes (“RFQs”) fall within the definition of an order. See, e.g., CAT FAQs B3 and B38. A “reportable event” is defined by SEC Rule 613(j)(9) to “include, but not be limited to, the original receipt or origination, modification, cancellation, routing, and execution (in whole or in part) of an order, and receipt of a routed order.”

Messages sent through OTC Link ATS constitute “orders,” as defined above, for purposes of CAT reporting obligations to the extent such messages represent a “firm indication of a willingness to buy or sell a security.” OTC Link ATS and the OTC Link ATS broker-dealer subscribers are required to report all applicable CAT reportable events relating to such orders, both executed and unexecuted.

As set forth in Table 1 (Industry Specifications Phased Approach) of the Industry Member Technical Specifications (see, e.g., Phase 2a spec version 2.2.1 r7, dated 9/9/2020), all OTC Link messages are reportable as orders, tentatively scheduled for Phase 2d, but no later than July 2022. Detailed reporting scenarios will be forthcoming.

D. Quote Identifier

Phase 2c Industry Member Data includes, in relevant part: “Industry Member Data that is related to Eligible Securities that are equities and that is related to: . . . quote identifier on trade events.”¹⁷ Pursuant to this requirement, Industry Members must report to CAT the quote identifier on OTC Equity Security trade events by April 26, 2021 for Large Industry Members and December 13, 2021 for Small Industry Members (the “Quote Identifier Issue”).

II. Request for Exemption

The Participants request that the Commission amend or clarify certain aspects of the Phased Reporting Exemption related to the Rejected Route of Equity Leg Issue, OTC Equity Securities Quotes Issue, OTC Equity Securities Messages Issue and Quote Identifier Issue to

¹⁷ Phased Reporting Exemption at 23078.

allow Industry Members additional time to comply with these requirements, as described below. 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.¹⁸

A. Rejected Route of Equity Leg Issue

Pursuant to discussions with members of the Advisory Committee and industry, the Participants understand that Industry Members cannot complete the technical work necessary to comply with the requirement to report a rejected external route flag when an equity leg of a multi leg order is rejected by Phase 2c. However, based on discussions with members of the Advisory Committee and Industry Members more broadly, the Participants understand that if Industry Members are permitted additional time to complete the required technical work, they could begin to report this information to the CAT in Phase 2d. Accordingly, the Participants request that the Commission amend the Phased Reporting Exemption to permit Industry Members to report to CAT a rejected external route flag when an equity leg of a multi leg order is rejected in Phase 2d, rather than in Phase 2c. This change would ultimately facilitate more accurate and complete CAT reporting by Industry Members.

To effect this change, the Participants request that the Commission amend the Phased Reporting Exemption to move the following reporting requirement from Phase 2c to Phase 2d: “Industry Member Data that is related to Eligible Securities that are equities and that is related to: . . . flagging rejected external routes to indicate a route was not accepted by the receiving destination.” As part of Phase 2d, this information would be reported to CAT by December 13, 2021 for both Large Industry Members and Small Industry Members.

B. OTC Equity Securities Quotes Issue

Based on discussions with members of the Advisory Committee and Industry Members more generally, the Participants understand that Industry Members will not be able to report to the CAT OTC Equity Securities quotes that they send to an IDQS by Phase 2c. Industry Members have explained that they require additional time to perform the technical work necessary to report this information to the CAT. Accordingly, the Participants request that the Commission amend the Phased Reporting Exemption to permit Industry Members to report this information to the CAT in Phase 2d, rather than in Phase 2c. This relief would require an Industry Member to report to the CAT all OTC Equity Securities quotes it sends to an IDQS operated by an Industry Member CAT Reporter, regardless of whether the IDQS matches and executes orders, in Phase 2d. This change would ultimately facilitate more accurate and complete CAT reporting by Industry Members.

To effect this change, the Participants request that the Commission amend the Phased Reporting Exemption to move the following requirement from Phase 2c to Phase 2d: “quotes in unlisted Eligible Securities sent to an IDQS operated by a CAT Reporter (reportable by the

¹⁸ 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.”).

Industry Member sending the quotes).” The Participants also request that the Commission move the following requirement from Phase 2c to Phase 2d: “OTC Equity Securities quotes sent by an Industry Member to an IDQS operated by an Industry Member CAT Reporter are reportable by the Industry Member sending them.” As part of Phase 2d, this quote information would be reported to CAT by December 13, 2021 for both Large Industry Members and Small Industry Members.

C. OTC Equity Securities Messages Issue

With respect to the OTC Equity Securities Messages Issue, the Participants request that the Commission amend the Phased Reporting Exemption to expressly address the reporting of messages sent through an IDQS that does not match and execute orders in response to market makers’ OTC Equity Securities quotes posted on the IDQS. Specifically, such IDQS operated by an Industry Member CAT Reporter and its subscribers would be required to report to CAT in Phase 2d messages sent through the IDQS expressing a firm indication of a willingness to buy or sell that are not currently being reported to the CAT.¹⁹ The requested relief will not change an Industry Member’s current obligation to report such messages that result in a trade execution – these executions will continue to be reported to the CAT in accordance with the Industry Member Technical Specifications and Industry Member Reporting Scenarios applicable to Phase 2a. The requested relief would provide additional time to allow Industry Members to implement technical changes required to satisfy their CAT reporting obligations and report such messages to CAT in Phase 2d. This would ultimately result in more accurate and complete data being reported to the CAT.

To effect this change, the Participants request that the Commission amend the Phased Reporting Exemption to include as part of Phase 2d Industry Member Data: “except as otherwise reportable in Phase 2a, all messages that express a firm indication of a willingness to buy or sell a security, therefore constituting an ‘order’ for purposes of CAT Reporting as defined in SEC Rule 613(j)(8), sent by subscribers of an IDQS (that does not match and execute orders) operated by an Industry Member CAT Reporter through the IDQS; such messages include messages sent by IDQS subscribers in response to market makers’ OTC Equity Securities quotes posted on the IDQS and all counter messages sent between such market makers and IDQS subscribers and include messages sent using a dealer platform graphical user interface (‘GUI’) or otherwise.” This approach has been discussed at length with members of the Advisory Committee and industry representatives in numerous deep dive and working group discussion. This approach also is reflected in the current Industry Member Technical Specifications, so Industry Members are currently aware of, and planning to implement, this reporting requirement in Phase 2d. As part of Phase 2d, this information would be reported to CAT by December 13, 2021 for both Large Industry Members and Small Industry Members.

D. Quote Identifier Issue

The Plan Processor plans to link trades to the Quote Identifier at the order message level using information reported to the CAT by an IDQS that does not match and execute orders

¹⁹ See, e.g., CAT Industry Member Reporting Scenarios version 2.12 (Feb. 5, 2021), Scenarios 2.8.1 (Trade Negotiated Through an Inter-Dealer Quotation System) and 2.8.2 (Customer Order Executed as the result of a Negotiation through an Inter-Dealer Quotation System).

Ms. Vanessa Countryman

March 17, 2021

Page 7

operated by an Industry Member CAT Reporter (e.g., OTC Link ATS). Specifically, trades will be linked to the Quote Identifier assigned by such IDQS when the order directed to the quote is executed. This approach requires IDQS operators and Industry Members to implement technical changes to facilitate the reporting of Quote Identifiers on order messages to the CAT. Based on discussions with members of the Advisory Committee and Industry Members more generally, the Participants understand that IDQS operators and Industry Members cannot implement these technical changes by the beginning of Phase 2c. Thus, to provide them with additional time to implement such changes, the Participants request that the reporting of Quote Identifiers to the CAT on order events to facilitate the linking of quotes to trades commences in Phase 2d. This change would ultimately facilitate more accurate and complete CAT reporting by Industry Members.

To effect this change, the Participants request that the Commission amend the Phased Reporting Exemption to move the following reporting requirement from Phase 2c to Phase 2d: “Industry Member Data that is related to Eligible Securities that are equities and that is related to: . . . quote identifier on trade events.” As part of Phase 2d, this information would be reported to CAT by December 13, 2021 for both Large Industry Members and Small Industry Members.

* * * * *

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
Erika Berg, Special Counsel, Division of Trading and Markets
Mark Donohue, Senior Policy Advisor, Division of Trading and Markets
CAT NMS Plan Participants