

August 10, 2022

**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 Provisions of the National Market System Plan Governing the Consolidated Audit Trail Related to LTIDs

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”) use its exemptive authority under Section 36 of the Securities Exchange Act of 1934 (“Exchange Act”)<sup>3</sup> and/or Rule 608(e) of Regulation NMS under the Exchange Act<sup>4</sup> to provide temporary exemptive relief until December 12, 2022 from certain reporting and processing requirements related to large trader identifiers (“LTIDs”) under the CAT NMS Plan and the exemptive relief (“Phased Reporting Exemption”) previously provided to the Participants to allow for the implementation of phased Industry Member reporting (“Phased Reporting”) to the consolidated audit trail (“CAT”),<sup>5</sup> as described in detail below. The Participants believe that the requested exemption is “necessary or appropriate in the public interest, and consistent with the protection of investors,”<sup>6</sup> and is “consistent with the

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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., 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, 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 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.”

<sup>5</sup> Securities Exchange Act Rel. No. 88702 (Apr. 20, 2020), 85 Fed. Reg. 23075 (Apr. 24, 2020) (“Phased Reporting Exemption”).

<sup>6</sup> 15 U.S.C. § 78mm(a)(1).

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>7</sup> In connection with the requested exemptive relief, the Participants plan to file revisions to their Compliance Rules consistent with the exemptive relief requested in this letter.

#### **A. Phased Reporting of LTIDs**

On April 20, 2020, the Commission granted the Participants’ request for exemptive relief from Sections 6.4, 6.7(a)(v) and 6.7(a)(vi) of the CAT NMS Plan related to Industry Member<sup>8</sup> reporting of Industry Member Data<sup>9</sup> to the Central Repository to allow for the implementation of Phased Reporting, subject to certain conditions. Specifically, the Commission exempted each Participant from the requirement in Section 6.7(a)(v) for each Participant, through its Compliance Rule, to require its Large Industry Members to report to the Central Repository Industry Member Data within two years of the Effective Date (that is, by November 15, 2018). In addition, the SEC exempted each Participant from the requirement in Section 6.7(a)(vi) for each Participant, through its Compliance Rule, to require its Small Industry Members to report to the Central Repository Industry Member Data within three years of the Effective Date (that is, by November 15, 2019). Furthermore, the SEC provided an exemption from the requirement in Section 6.4 that “[t]he requirements for Industry Members under this Section 6.4 shall become effective on the second anniversary of the Effective Date in the case of Industry Members other than Small Industry Members, or the third anniversary of the Effective Date in the case of Small Industry Members.”

Under the Phased Reporting Exemption, Phased Reporting replaced the November 15, 2018 and November 15, 2019 CAT reporting schedule for Industry Members set forth in the CAT NMS Plan. Phased Reporting has five phases, Phase 2a through Phase 2e. For each of the five phases, Industry Members are required to report certain categories of Industry Member Data. Industry Members are required to commence reporting certain Customer information in Phases 2c, 2d and 2e under the Phased Reporting Exemption.

Industry Members are required to commence reporting Phase 2c Industry Member Data in Phase 2c. Phase 2c Industry Member Data includes, among other things, Industry Member Data that is related to Eligible Securities that are equities and that is related to reporting of LTIDs (if applicable) for accounts with Reportable Events that are reportable to CAT as of and including Phase 2c. Large Industry Members were required to commence reporting to the Central Repository Phase 2c Industry Member Data by April 26, 2021, and Small Industry Members were required commence reporting to the Central Repository Phase 2c Industry Member Data by December 13, 2021 (“Phase 2c Deadline”).

Similarly, Industry Members are required to commence reporting Phase 2d Industry Member Data in Phase 2d. Phase 2d Industry Member Data includes with respect to the Eligible

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<sup>7</sup> 17 C.F.R. § 242.608(e).

<sup>8</sup> The CAT NMS Plan defines an Industry Member as a member of a national securities exchange or a member of a national securities association. *See* Section 1.1 of the CAT NMS Plan.

<sup>9</sup> Industry Member Data is the data specified in Sections 6.4(d)(i)-(ii) of the CAT NMS Plan, which includes Customer information.

Securities that are options, among other things, LTIDs (if applicable) for accounts with Reportable Events for Phase 2d. Large Industry Members and Small Industry Members were required to commence reporting to the Central Repository Phase 2d Industry Member Data by December 13, 2021 (“Phase 2d Deadline”).

In accordance with the requirements of the Phased Reporting Exemption, in 2020, each Participant revised its Compliance Rule to incorporate the Phase 2c Deadline and the Phase 2d Deadline.<sup>10</sup> In accordance with the Phase 2c and Phase 2d Deadlines, Industry Members were required to commence reporting to the Central Repository LTIDs that are Phase 2c Industry Member Data and Phase 2d Industry Member Data to the Central Repository in April 2021 or December 2021 (as applicable) and have continued to be required to report such LTIDs to the Central Repository to date (“LTID Only Reporting”). LTID Only Reporting does not involve the reporting of all other Customer information; such additional Customer information is required in Phase 2e.

The CAT NMS Plan requires LTIDs and other Customer information to be processed within established timeframes “to ensure data can be made available to Participants’ regulatory staff and the SEC in a timely manner.”<sup>11</sup> Specifically, Section 6.2 of Appendix D of the CAT NMS Plan requires the following:

- (1) Industry Members submitting new or modified Customer information must provide it to the Central Repository no later than 8:00 a.m. Eastern Time on T+1.
- (2) The Central Repository must validate the data and generate error reports no later than 5:00 p.m. Eastern Time on T+1.
- (3) Industry Members must submit corrected data no later than 5:00 p.m. Eastern Time on T+3.
- (4) The Central Repository must process the resubmitted data no later than 5:00 p.m. Eastern Time on T+4.
- (5) Corrected data must be available to regulators no later than 8:00 a.m. Eastern Time on T+5 (collectively, the “Customer Information Reporting Timeframes”).

Since Industry Members commenced reporting LTIDs to the Central Repository pursuant to the Phased Reporting Exemption, Industry Members have been required to comply with the Customer Information Reporting Timeframes applicable to Industry Members with regard to LTIDs that are Phase 2c Industry Member Data and Phase 2d Industry Member Data. The Customer Information Reporting Timeframes applicable to Industry Members are steps (1) and (3) above: Industry Members submitting new or modified Customer information must provide it to the Central Repository no later than 8:00 a.m. Eastern Time on T+1; and Industry Members must submit corrected data no later than 5:00 p.m. Eastern Time on T+3.

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<sup>10</sup> See, e.g., BOX Rule 16095; Cboe Rule 7.31; FINRA Rule 6895.

<sup>11</sup> Appendix D of the CAT NMS Plan at D-20.

Correspondingly, the CAT System has been required to comply with the Customer Information Reporting Timeframes applicable to the Central Repository. The Customer Information Reporting Timeframes applicable to the Central Repository are steps (2), (4) and (5) above: the Central Repository must validate the data and generate error reports no later than 5:00 p.m. Eastern Time on T+1; the Central Repository must process the resubmitted data no later than 5:00 p.m. Eastern Time on T+4; and corrected data must be available to regulators no later than 8:00 a.m. Eastern Time on T+5.

## **B. Transition to Full CAIS Reporting**

Under the Phased Reporting Exemption, Industry Members are required to commence reporting Phase 2e Industry Member Data (“Full CAIS Reporting”) by July 11, 2022. Phase 2e Industry Member Data includes Customer Account Information<sup>12</sup> and Customer Identifying Information,<sup>13</sup> other than LTIDs, date account opened/Account Effective Date and Firm Designated ID type flag previously reported to the CAT. On June 30, 2022, the Participants requested exemptive relief to extend the CAIS Reporting Deadline from July 11, 2022 to December 12, 2022 to assist in addressing reporting challenges and delays in error feedback and processing and allow time for such issues to be remediated.<sup>14</sup> With this proposed extended CAIS Reporting Deadline, there would be a period in which Industry Members would transition from LTID Only Reporting to Full CAIS Reporting.

During the transition period from LTID Only Reporting to Full CAIS Reporting, Industry Members may report their LTIDs that are Phase 2c or Phase 2d Industry Member Data to the Central Repository in two ways. First, Industry Members may report such LTIDs, in whole or in part, in the format for LTID Only Reporting. As discussed above, LTIDs reported to the Central Repository in the format of the LTID Only Reporting have been and will continue to be required to comply with the Customer Information Reporting Timeframes applicable to Industry Members. As such, this request for exemptive relief does not apply to LTIDs solely reported in the format for LTID Only Reporting.<sup>15</sup>

Second, Industry Members may report LTIDs that are Phase 2c or Phase 2d Industry Member Data to the Central Repository in the format for Full CAIS Reporting, in whole or in part. Industry Members may commence the reporting of Customer information, including LTIDs, in the format of Full CAIS Reporting as soon as they are ready. To facilitate compliance with the proposed extended CAIS Reporting Deadline of December 12, 2022, the Participants have established an implementation schedule with interim steps for reporting Customer

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<sup>12</sup> “Customer Account Information” is defined in Section 1.1 of the CAT NMS Plan.

<sup>13</sup> “Customer Identifying Information” is defined in Section 1.1 of the CAT NMS Plan.

<sup>14</sup> Letter from Michael Simon, Chair, CAT NMS Plan Operating Committee, to Vanessa Countryman, Secretary, SEC (June 30, 2020) (“CAIS Exemptive Request”).

<sup>15</sup> As discussed below, as part of the Plan Processor’s implementation schedule, CAT Reporters may transfer LTIDs from LTID Only Reporting format to the Full CAIS Reporting format. LTIDs transferred to Full CAIS Reporting format will be subject to the rules governing Full CAIS reporting and shall no longer be subject to the requirements of LTID Only Reporting.

information, including LTIDs.<sup>16</sup> Under this implementation schedule, Industry Members would phase in their reporting of Customer information, including LTIDs, using the format for Full CAIS Reporting pursuant to a number of interim steps leading to Full CAIS Reporting.<sup>17</sup> The following sets forth interim steps in the implementation schedule as they relate to the reporting of LTIDs in the format for Full CAIS Reporting:

(1) from August 15, 2022 – September 15, 2022, for a single date within the range specified, complete a scheduled partial submission of accounts with CAT-reportable activity, including LTID information, to the production environment in the format for Full CAIS Reporting;

(2) from October 10, 2022 – October 31, 2022, for a single date within the range specified, complete a scheduled submission of accounts with CAT-reportable activity, including LTID information, between June 12, 2022 and September 30, 2022 to the production environment in the format for Full CAIS Reporting;

(3) by November 7, 2022, Industry Members to provide daily reports of accounts with CAT-reportable activity (including LTID information), including any changes or additions to such data, in the format for Full CAIS Reporting;

(4) by December 5, 2022, Industry Members to repair all outstanding rejections and resolve all outstanding material inconsistencies with regard to accounts with CAT-reportable activity, including repairing outstanding rejections and resolving outstanding material inconsistencies with regard to LTIDs, in the format for Full CAIS Reporting; and

(5) by December 12, 2022, Industry Members to comply with Full CAIS Reporting requirements for accounts with CAT-reportable activity, including providing the required LTID information.<sup>18</sup>

The implementation schedule would require the reporting of LTIDs and other Customer information, including updates and corrections, in compliance with the CAT NMS Plan by December 12, 2022.

### **C. Issues with Reporting LTIDs in the Format for Full CAIS Reporting**

As described in detail in the CAIS Exemptive Request, the Participants determined that the CAIS Reporting Deadline of July 11, 2022 – the remaining condition related to Phase 2e Industry Member Data set forth in the Phased Reporting Exemption – would need to be extended to December 12, 2022, and therefore have requested exemptive relief in that regard. In the CAIS Exemptive Request, the Participants described that, as Industry Members have increased

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<sup>16</sup> These interim reporting steps are described in detail in CAT Alert 2022-01, <https://www.catnmsplan.com/sites/default/files/2022-07/07.12.22-CAT-Alert-2022-01.pdf>

<sup>17</sup> These interim reporting obligations, however, are minimum reporting obligations; Industry Members may commence Full CAIS Reporting as soon as they are ready.

<sup>18</sup> Errors related to accounts with CAT-reportable activity will appear in the Transaction Report Card beginning in the month of January 2023, published in February 2023.

reporting data to the testing and production environment for CAIS, the current CAIS system functionality, although collecting data and providing feedback, has experienced processing delays, including delays related to concurrent file processing and error feedback. The proposed extension of the CAIS Reporting Deadline to December 12, 2022 is intended to provide time to address these developments.

Reporting LTIDs in the format for Full CAIS Reporting during the transition period until December 12, 2022 may raise issues with compliance with Customer Information Reporting Timeframes applicable to Industry Members and the Central Repository with regard to LTIDs that are Phase 2c or Phase 2d Industry Member Data. Due to the different format designs for LTID Only Reporting and Full CAIS Reporting, once an Industry Member reports an LTID in the format for Full CAIS Reporting, it can no longer report the LTID in the format for LTID Only Reporting. Therefore, once an Industry Member reports an LTID in the Full CAIS Reporting format, any reporting related to that LTID thereafter must comply with the requirements applicable to the format for Full CAIS Reporting, not for LTID Only Reporting. This requirement to shift LTID reporting from one format to another may create issues in complying with Customer Information Reporting Timeframes from the time an LTID is submitted in the format for Full CAIS Reporting until December 12, 2022.

With the proposed extension of the CAIS Reporting Deadline to December 12, 2022, the compliance date for reporting of Customer information that is Phase 2e Industry Member Data would be moved to December 12, 2022, and, accordingly, the Customer Information Reporting Timeframes applicable to the Central Repository would not apply to such data until December 12, 2022 if the relief is granted. However, once an Industry Member begins reporting an LTID in the format for Full CAIS Reporting, such LTIDs that are Phase 2c and Phase 2d Industry Member Data must be processed pursuant to the format for Full CAIS Reporting. Therefore, the processing of LTIDs that are Phase 2c and Phase 2d Industry Member Data that have been reported in the format for Full CAIS Reporting would not be subject to all Customer Information Reporting Timeframes applicable to the Central Repository until December 12, 2022 (if the CAIS Exemptive Request is granted). Similarly, Industry Member reporting of LTIDs that are Phase 2c and Phase 2d Industry Member Data that have been reported in the format for Full CAIS Reporting would not be subject to the Customer Information Reporting Timeframes applicable to Industry Members until December 12, 2022 (if the CAIS Exemptive Request is granted). Therefore, the Participants request temporary exemptive relief until December 12, 2022 from certain reporting and processing requirements related to LTIDs under the CAT NMS Plan and the Phased Reporting Exemption.

#### **D. Benefits of Extension of CAIS Reporting Deadline**

The benefits of the requested relief outweigh the burdens. The requested relief from certain LTID reporting and processing requirements would only be in place during the short transition from LTID Only Reporting to Full CAIS Reporting. This relief would only be in effect for no more than five months as all requirements for Full CAIS Reporting are planned to be effective by December 12, 2022. Moreover, the period in which the Customer Information Reporting Timeframes would not apply to any particular LTID may be less than five months depending on various factors. For example, the relief would only apply once an Industry

Member submits an LTID in the format for Full CAIS Reporting, rather than in the format for LTID Only Reporting. In addition, with the interim steps set forth in the implementation plan, LTIDs would be subject to certain timeframes prior to December 12, 2022. For example, the requested relief with regard to the daily LTID submissions by T+1 would apply from the reporting of the LTID in the format for Full CAIS Reporting until November 7, 2022. During this brief period, an Industry Member's updates to the LTID data may not occur on a daily basis. After November 7, 2022, pursuant to the implementation plan, Industry Members would be required to report all additions, deletions, and updates to LTIDs by T+1.<sup>19</sup>

In addition, the LTID update and correction activity that would be subject to the exemption would be limited due to the high quality nature of the LTID data that has been reported to the Central Repository to date. Corrections to and rejections of LTID data have not been significant to date. For example, corrections to LTIDs are not frequent. While there are approximately 58.4 million accounts reported in the format for LTID Only Reporting, average daily account reporting volume is only approximately 800,000, of which approximately 90% appears to be from Industry Members that submit a full file submission everyday whether they have changes to the accounts or not. This suggests that there are a very limited number of changes to LTIDs reported each day to date. Further, daily rejection rates on the approximately 800,000 accounts are generally less than 0.06%, again reflecting a very small number of rejections that require repair and resubmission. Furthermore, in June 2022, the average LTID rejection rate was 0.004%.

Moreover, upon conclusion of the exemptive period, Industry Members would be required to report updates and corrections to the LTIDs. Therefore, upon conclusion of the proposed relief, the most up-to-date version of the LTIDs (including rejection repair and material inconsistency resolution within Plan-established deadlines) would be required to be captured in the format for Full CAIS Reporting as of December 12, 2022. Furthermore, the LTIDs submitted in the format for LTID Only Reporting will remain available for use by the regulators even after Industry Members commence reporting LTIDs in the format for Full CAIS Reporting. Accordingly, for an LTID reported in the format for LTID Only Reporting that has not changed after it was reported during the transition period, all required LTID information will be captured in the Central Repository. The focus of this relief is on additions, deletions or other changes to LTIDs that occur after an Industry Member has transitioned the LTID to the format for Full CAIS Reporting during the transition period. As indicated by the above statistics, the relief will involve only a small percentage of the LTID population.

Finally, Industry Members have requested relief from LTID reporting requirements and have expressed support for the relief proposed in this request.<sup>20</sup> In the absence of the proposed exemptive relief, Industry Members may need to implement coding immediately to support reporting in both the format for LTID Only Reporting and the format for Full CAIS Reporting. Industry Members have indicated that they would have practical difficulties in supporting both

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<sup>19</sup> As of November 7, 2022, Industry Members are not required to repair any rejections received as a result of their daily submissions or resolve any material inconsistencies within Plan-established deadlines; the requirements to do so will occur as of the full CAIS compliance go-live date of December 12, 2022.

<sup>20</sup> See, e.g., Letter from Howard Meyerson, Managing Director, Financial Information Forum, to Mike Simon, Chair, CAT NMS Plan Operating Committee (July 15, 2022), 1-2.

formats in this brief period as a practical matter. The extended timeframe would provide Industry Members with additional time to address customer and account reporting issues, including file structures, and data validation and quality. Correspondingly, the additional time will allow the Plan Processor to work closely with Industry Members to help them optimize their reporting of customer and account data to the CAT. Accordingly, Industry Members are in favor of the proposed relief to facilitate the transition to LTID Only Reporting to Full CAIS Reporting.

**E. Request for Temporary Exemptive Relief Related to LTID Reporting Requirements**

For the reasons discussed above, the Participants request that the Commission provide temporary conditional exemptive relief from certain reporting and processing requirements set forth in the Phased Reporting Exemption and Appendix D of the CAT NMS Plan related to LTIDs that are Phase 2c and Phase 2d Industry Member Data until December 12, 2022. Specifically, the Participants request exemptive relief until December 12, 2022 from the requirements for each Participant to require, via its Compliance Rule, its Large and Small Industry Members that have begun reporting LTIDs that are Phase 2c and Phase 2d Industry Member Data in the format for Full CAIS Reporting to comply with the Customer Information Reporting Timeframes applicable to Industry Members, that is, the requirement to (1) submit new or modified LTIDs that are Phase 2c and Phase 2d Industry Member Data to the Central Repository no later than 8:00 a.m. Eastern Time on T+1; and (2) submit corrected LTIDs that are Phase 2c and Phase 2d Industry Member Data in response to errors identified by the CAT System no later than 5:00 p.m. Eastern Time on T+3.

In addition, the Participants request exemptive relief until December 12, 2022 from the Customer Information Reporting Timeframes applicable to the Central Repository with regard to LTIDs that are Phase 2c or Phase 2d Industry Member Data that have been reported in the format for Full CAIS Reporting. Specifically, the Participants request exemptive relief from the following requirements for the Central Repository to: (1) validate LTIDs that are Phase 2c or Phase 2d Industry Member Data that have been reported in the format for Full CAIS Reporting and generate error reports related thereto no later than 5:00 p.m. Eastern Time on T+1; (2) process resubmitted LTIDs that are Phase 2c or Phase 2d Industry Member Data that have been reported in the format for Full CAIS Reporting no later than 5:00 p.m. Eastern Time on T+4; and (3) make corrected LTIDs that are Phase 2c or Phase 2d Industry Member Data that have been reported in the format for Full CAIS Reporting available to regulators no later than 8:00 a.m. Eastern Time on T+5.

As a condition of the proposed relief, each Participant would be required to revise its Compliance Rule to reflect the exemptive relief.

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Ms. Vanessa Countryman

August 10, 2022

Page 9

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

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Mike Simon".

Mike Simon

CAT NMS Plan Operating Committee Chair

cc: The Hon. Gary Gensler, Chair  
The Hon. Hester M. Peirce, Commissioner  
The Hon. Caroline A. Crenshaw, Commissioner  
The Hon. Mark T. Uyeda, Commissioner  
The Hon. Jaime Lizárraga, Commissioner  
Mr. Hugh Beck, Senior Advisor for Regulatory Reporting  
Mr. Haoxiang Zhu, 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  
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CAT NMS Plan Participants