

October 20, 2023

VIA EMAIL (tradingandmarkets@sec.gov)

Ms. Emily Westerberg Russell
Chief Counsel
Division of Trading and Markets
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Request for No-Action Relief regarding 2X Load Testing

Dear Ms. Russell:

The Consolidated Audit Trail, LLC (“CAT LLC” or “Company”), on behalf of the Participants¹ in the National Market System Plan Governing the Consolidated Audit Trail (the “CAT NMS Plan” or “Plan”), requests confirmation that the staff (the “Staff”) of the Securities and Exchange Commission (the “Commission” or the “SEC”) will not recommend enforcement action against the Participants pursuant to the CAT NMS Plan or the requirements to comply with the CAT NMS Plan as set forth in Rule 613(h) and 608(c) of Regulation NMS under the Exchange Act if CAT LLC does not perform “2X Load Testing,” as defined below, during the 2023 calendar year, subject to completing 2X Load Testing by end of the second quarter of 2024.

CAT LLC believes it is advisable and in the best interests of the Company, the Participants, and Industry Members to pursue all available measures to facilitate cost savings, while preserving and advancing the regulatory objectives for the CAT. The requested relief would allow CAT LLC to perform a single 2X Load Test instead of two 2X Load Tests within a brief period of time, resulting in estimated cost savings of approximately \$1 million - \$1.25 million. CAT LLC believes that these cost savings significantly outweigh any perceived regulatory benefit of conducting duplicative 2X Load Testing so close in time.²

Given the lead time necessary to prepare and complete 2X Load Testing, CAT LLC respectfully requests a response from the Staff by October 23, 2023.

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., 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.

² In June 2023, CAT LLC separately requested no-action relief to allow for risk-based testing generally as an effective and less costly alternative to requiring 2X Load Testing on an annual basis. The Staff has not acted on this request. See Letter from Brandon Becker, CAT NMS Plan Operating Committee Chair, to Emily Westerberg Russell, Chief Counsel, Division of Trading and Markets, Commission, dated June 6, 2023, <https://catnmsplan.com/sites/default/files/2023-06/06.06.23-No-Action-Request-for-2X-Load-Testing.pdf>.

A. Definition of 2X Load Testing

For purposes of this letter, the term “2X Load Testing” (or a “2X Load Test”) means stress testing of the functioning of the CAT’s data ingestion, linker and other data processing based on twice (2X) the historical peak day data volume for the most recent six years. Generally, load testing is a form of performance testing that measures the capability of a system to process high loads of data. 2X Load Testing is one form of load testing for measuring the capability of the CAT environment.

B. 2X Load Testing Conducted to Date

CAT LLC conducted 2X Load Testing in the fourth quarter of 2022, and the report with the results of these tests was provided to the Staff. Such testing is resource intensive and expensive. Based on current estimates for twice the peak volume, a 2X Load Test would involve approximately 1.2 trillion events per day for each of the four days used in the test. Such testing requires the generation of the necessary data, and then running the load test, a process that takes several weeks. As a result of these efforts, the cost of performing 2X Load Testing, which includes technology and human resources expenses, is approximately \$1 million - \$1.25 million for each test.

C. CAT NMS Plan Requirements

As an initial matter, and although CAT LLC has conducted such testing historically, the CAT NMS Plan does not specifically require 2X Load Testing of its systems on an annual basis. Section 1.1 of Appendix D of the CAT NMS Plan, which describes the technical architecture requirements for the Central Repository, requires that the CAT “must be scalable and able to readily expand its capacity to process significant increases in data volumes beyond the baseline capacity,” and that “[t]he initial baseline capacity requirements will be based on twice (2X) the historical peaks for the most recent six years, and the Plan Processor must be prepared to handle peaks in volume that could exceed this baseline for short periods.” Section 1.1 of Appendix D further states that, after the Plan is approved, the Operating Committee will define the baseline metrics on an ongoing basis. While the CAT NMS Plan requires the CAT System to have adequate capacity to handle the initial baseline capacity of twice the historical peaks for the most recent six years, and for the baseline defined by the Operating Committee going forward, the CAT NMS Plan does not dictate the baseline metrics, manner or frequency in which the Plan Processor must test to ensure that the CAT System would satisfy the applicable baseline capacity requirements on an ongoing basis.

D. 2X Load Testing Scheduled in Connection with Upcoming Production Release

On August 1, 2023, the Operating Committee approved a change order directing the Plan Processor to assemble options quote lifecycles only once, with the final CAT Order ID delivered by T+2 at 8 a.m. ET instead of T+5 at 8 a.m. ET, resulting in estimated annual cost savings of

\$5.4 million with de minimis regulatory impact.³ Because this would be a significant architectural change to the CAT System, consistent with the Plan Processor's Capacity Plan Policy, the Plan Processor intends to conduct 2X Load Testing prior to implementing this functionality. The Plan Processor currently expects to complete this 2X Load Testing in advance of an anticipated production release in the second quarter of 2024. Even if this production release is unexpectedly deferred or canceled, the Plan Processor will conduct 2X Load Testing by the end of the second quarter of 2024 as a condition to the requested no-action relief.

Performing two 2X Load Tests within a brief period of time would impose significant and unnecessary costs. CAT LLC believes there is no reason to incur the substantial costs of an annual 2X Load Test during the 2023 calendar year given that a separate 2X Load Test will be performed in connection with the options quote lifecycle production release just a few months later. Moreover, because linker and data processing will be modified as a result of the planned release, incurring the costs of 2X Load Testing of the prior system architecture shortly before this change would be inefficient and uneconomical.

E. Request for No-Action Relief

Accordingly, CAT LLC respectfully requests that the Staff not recommend enforcement action to the Commission against the Participants pursuant to the CAT NMS Plan or the requirements to comply with the CAT NMS Plan as set forth in Rule 613(h) and 608(c) of Regulation NMS under the Exchange Act if CAT LLC does not perform 2X Load Testing during the 2023 calendar year, subject to completing 2X Load Testing by the end of the second quarter of 2024.

Respectfully submitted,

/s/ Brandon Becker

Brandon Becker
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

³ To facilitate the ability of the Plan Processor to implement the change order upon completion, the Participants will require an exemption relating to the delivery of an interim CAT Order ID by T+1 at 9 p.m. ET for options quotes. Even if such exemptive relief is not granted, the Plan Processor will conduct 2X Load Testing by the end of the second quarter of 2024 as a condition to the requested no-action relief.

Ms. Emily Westerberg Russell

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Mr. Mark Donohue, Senior Policy Advisor, Division of Trading and Markets

Ms. Erika Berg, Special Counsel, Division of Trading and Markets

CAT NMS Plan Participants