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January 29, 2020

VIA HAND DELIVERY

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

> **Re:** **Request for Exemptive Relief from Certain Provisions of the CAT NMS Plan related to Social Security Numbers, Dates of Birth and Account Numbers**

Dear Ms. Countryman:

The Participants[1] 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 Act[4] from certain requirements in the CAT NMS Plan, as described further below. This request amends and replaces in its entirety the Participants' request for exemptive relief that was filed with the Commission on October 16, 2019, and addressed the same CAT NMS Plan requirements described below.[5]

In particular, the Participants seek exemptive relief from certain requirements in the CAT NMS Plan: (1) related to individual tax payer identification numbers and social security numbers (collectively, "SSNs") to allow for an alternative approach to SSNs that requires the use of a CAT Customer ID ("CCID") instead of the receipt and storage of SSNs in the consolidated audit trail ("CAT") ("CCID Alternative"); and (2) related to dates of birth and account numbers to allow for a modified approach to such data in which dates of birth and account numbers for natural persons would not be provided to the CAT ("Modified PII Approach"). The Participants

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[1]   The twenty-four 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. ("FINRA"); Investors Exchange LLC; Long Term Stock Exchange, Inc.; 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]   *See* Letter from Michael Simon, Chair, CAT NMS Plan Operating Committee to Vanessa Countryman, Secretary, SEC (Oct. 16, 2019).

believe that the implementation of the CCID Alternative and the Modified PII Approach will significantly reduce the risk profile of data collected and stored in the CAT while still preserving the CAT's intended regulatory uses.

Subject to the conditions described herein, the Operating Committee requests exemptive relief from the following provisions of the CAT NMS Plan to implement the CCID Alternative and Modified PII Approach:

(1)   the requirement set forth in Section 6.4(d)(ii)(C) of the CAT NMS Plan for each Participant, through its Compliance Rule,[6] to require its Industry Members to record and report to the Central Repository, for the original receipt or origination of an order, in accordance with Section 6.4(d)(iv) of the CAT NMS Plan, SSNs, dates of birth and account numbers for individuals for the relevant Customers;

(2)   the requirements in Section 9.1 of Appendix D of the CAT NMS Plan to: (a) capture and store SSNs, dates of birth and account numbers for individuals; (b) maintain SSNs, dates of birth and account numbers for individuals for each trading day and provide a method for Participants' regulatory staff and the SEC to easily obtain historical changes to that information; and (c) have a robust data validation process for submitted SSNs (including validations that confirm the number of digits on an SSN), dates of birth and account numbers for individuals;

(3)   the requirement in Section 9.2 of Appendix D of the CAT NMS Plan that the Central Repository accept SSNs;

(4)   the requirement in Section 9.4 of Appendix D of the CAT NMS Plan for the Plan Processor to resolve errors related to SSNs, dates of birth and account numbers for individuals;

(5)   the requirement in Sections 4.1.6, 8.1.1 and 8.2 of Appendix D of the CAT NMS Plan that state that regulators can gather SSNs, dates of birth and account numbers for individuals that correspond to CCIDs and Firm Designated IDs;

(6)   the requirement in Section 6.2 of Appendix D of the CAT NMS Plan to make SSNs, dates of birth and account numbers of individuals "available to regulators immediately upon receipt of initial data and corrected data, pursuant to security policies for retrieving PII;"

(7)   the requirement in Section 10.1 of Appendix D of the CAT NMS Plan for the Plan Processor to provide technical, operational and business support to CAT Reporters

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[6]   Section 1.1 of the CAT NMS Plan defines "Compliance Rule" to mean, with respect to a Participant, the rule(s) promulgated by such Participant as contemplated by Section 3.11." Section 3.11 of the CAT NMS Plan provides that each Participant shall comply with and undertake to enforce compliance by its Industry Members with the provisions of Rule 613 and the CAT NMS Plan, as applicable, to the Participant and its Industry Members, and the Participants shall endeavor to promulgate consist rules requiring compliance by their respective Industry Members with the requirements of Rule 613 and the CAT NMS Plan.

regarding managing SSNs, dates of birth and account numbers of individuals; and

(8) the requirement in Section 10.3 of Appendix D of the CAT NMS Plan for the Plan Processor to provide CAT Help Desk support function requirements with regard to SSNs, dates of birth and account numbers of individuals.[7]

The Participants believe that this exemptive request is narrowly tailored to address security concerns related to the capture and storage of SSNs, dates of birth and account numbers of individuals in the Central Repository. In connection with the requested exemptions, the Participants plan to file revisions to their Compliance Rules consistent with the exemptive relief requested in this letter.

A.   **Security Concerns with Reporting Social Security Numbers, Dates of Birth and Account Numbers to CAT**

Under the CAT NMS Plan, Industry Members are required to report Customer Identifying Information and Customer Account Information to the CAT for each of their Customers.[8] Customer Identifying Information includes personally identifiable information ("PII") and is defined in the CAT NMS Plan to include, in relevant part, SSNs and dates of birth. Customer Account Information includes account numbers, among other data.[9] The CAT NMS Plan requires the CAT to capture and store the SSNs, dates of birth and account numbers, along with other Customer information, in the Central Repository.[10] Participants, Industry Members and others have raised concerns regarding the security risk of having personally identifying Customer information for individual Customers of every securities brokerage account involving Eligible Securities in the U.S. securities markets in the CAT.

SEC Chairman Clayton has expressed cybersecurity concerns regarding CAT Data:

With regard to cybersecurity, I have informed the SROs that protection of the information submitted to the CAT is of paramount importance and that I am open to various paths for addressing cybersecurity matters. Additionally, I have made it clear that the SEC will not retrieve sensitive information from the CAT unless we believe appropriate protections are in place. In this regard, Commission staff is currently conducting an evaluation of our needs for PII in the CAT. It is important that the Commission, the SROs, and the plan processor continuously evaluate the approach to the collection, retention and protection of PII and other sensitive data, as we continue to progress in the development and operation of the CAT.[11]

Members of Congress similarly have emphasized the need to protect Customer information in

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[7]   The Plan Processor will provide CAT Help Desk and operational support with regard to CCIDs, year of birth and Firm Designated ID matters, among other matters.

[8]   *See* Sections 6.4(d)(ii)(C) and 6.4(d)(iv) of the CAT NMS Plan.

[9]   Section 1.1 of the CAT NMS Plan.

[10]   Section 9.1 of Appendix D of the CAT NMS Plan.

[11]   Chairman Jay Clayton, Statement on Status of the Consolidated Audit Trail (Nov. 14, 2017) (https://www.sec.gov/news/public-statement/statement-status-consolidated-audit-trail-chairman-jay-clayton).

the CAT.[12]

The broker-dealer community has echoed these concerns. For example, in congressional testimony, the Securities Industry and Financial Markets Association ("SIFMA") emphasized that collecting customer PII and identifiable proprietary trading data in the CAT

> creates tremendous risk in the event of a breach. As such, the SEC and the SROs should have to make the case that the CAT's collection, storage, and use of PII and identifiable proprietary trading information is required for effective surveillance. It should be possible to build the CAT in a manner that would allow the SEC and the SROs to make follow-up requests for identifying information on an as-needed basis.[13]

The Financial Information Forum ("FIF") and American Securities Association similarly has highlighted the security concerns with reporting Customer information to the CAT.[14]

The Operating Committee of the Consolidated Audit Trail, LLC ("CATLLC") shares these security concerns and formed a PII Working Group to research and recommend potential alternatives regarding the handling of PII, including SSNs. After considering various alternatives over the course of 2018, the PII Working Group recommended an approach that involved the creation of a separate PII request/response system. However, at the suggestion of the Commission staff, the PII Working Group had further discussions and ultimately recommended to the Operating Committee the CCID Alternative that is described in this exemptive request. The CCID Alternative and the Modified PII Approach described in this request are designed to address security concerns related to Customer information in the CAT.

B.   CCID Alternative

In light of the security concerns raised with regard to the maintenance of Customer information in the CAT, the Participants request these exemptions to eliminate one of the most sensitive CAT data elements – SSNs – from the CAT. In lieu of retaining such sensitive information in the CAT, the Participants would use an alternative strategy referred to as the CCID Alternative. The CCID Alternative is a strategy developed by the Chief Information Security Officer for the CAT and the chief information security officers from each of the Participants, in consultation with security experts from member firms of SIFMA. The CCID Alternative allows the Plan Processor to generate a unique identifier for a Customer (the "CAT

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[12]   *See, e.g.*, The American Customer and Market Information Protection Act, H.R. 4785 – 115th Congress (2017-18) (prohibiting the CAT from accepting personally identifying information).
[13]   Written Testimony of Lisa Dolly, CEO, Pershing on behalf of the Securities Industry and Financial Markets Association before the U.S. House of Representatives Committee on Financial Services
Subcommittee on Capital Markets, Securities, and Investment Hearing entitled "Implementation and Cybersecurity Protocols of the Consolidated Audit Trail" (Nov. 30, 2017) (https://www.sifma.org/wp-content/uploads/2017/11/SIFMA-Written-Testimony-on-CAT.pdf). SIFMA also expressed its concerns regarding the collection of PII in a June 19, 2019 letter to Chairman Clayton. *See* Letter from Kenneth E. Bentsen, Jr., Chief Executive Officer and President, SIFMA, to The Honorable Jay Clayton, Chairman, SEC (June 19, 2019).
[14]   *See, e.g.*, Letter from Mary Lou Von Kaenel, FIF, to Brent Fields, SEC re: SEC Release No. 34-77724; File No. 4-698; Consolidated Audit Trail National Market System Plan (July 18, 2016)
(https://www.sec.gov/comments/4-698/4698-13.pdf); Letter from Christopher A. Iacovella, Chief Executive Officer, American Securities Association, to CAT NMS Plan Participants and Robert Cook, FINRA (May 16, 2019).

Customer ID" or "CCID") without requiring the Plan Processor to receive SSNs or store SSNs within the CAT. The CCID Alternative also is designed such that it avoids any need for Industry Members to maintain the generated CCID. Using generated CCIDs instead of SSNs in the CAT reduces the security risks (i.e., the potential use of illegally obtained SSNs to facilitate identity theft or other fraud) associated with the CAT while preserving regulatory benefits of the CAT. The CCID Alternative has been discussed with the CATLLC Advisory Committee.[15]

Under the CCID Alternative, a CAT Reporter would not report the SSN to the CAT and the CAT would not collect nor retain SSNs for any natural persons. Instead, the Plan Processor would generate a unique CCID using a two-phase transformation process that avoids SSNs in the CAT. In the first transformation phase, a CAT Reporter would transform the SSN to an interim value. This transformed value, and not the SSN, would be submitted to a separate system within the CAT ("CCID Subsystem").[16] Note that there would be no cost imposed by the Plan Processor or CATLLC on an Industry Member CAT Reporter if it uses the CAT Reporter Portal to transform an SSN prior to submission. For Industry Member CAT Reporters that perform the CCID transformation and submit it via a machine to machine interface, there would be ordinary costs associated with installing the transformation logic but neither the Plan Processor nor CATLLC would impose any costs on Industry Member CAT Reporters. Actual costs would depend on the specific Industry Member's technology architecture but would not be anticipated to be significant.

The transformed value would be sent to the CAT separate and apart from the other customer and account information. The CCID Subsystem would then perform the second transformation phase to create a globally unique CCID for each Customer that is unknown to and not shared with the original CAT Reporter. The CCID is then sent to the customer and account information system of the CAT, where it is linked with the other customer and account information. The CCID then may be used by the Participant's regulatory staff and the SEC in queries and analysis of CAT Data.

Industry Members would continue to store individual customer SSNs outside the CAT, as they do currently. If a Participant's regulatory staff or the SEC needs to obtain a Customer SSN during an investigation, the regulator would need to request that information from the CAT Reporter (e.g., via a FINRA Rule 8210 request or the Electronic Blue Sheets). If, however, a Participant's regulatory staff or the SEC has an SSN via means other than the CAT, the regulator will have the ability to use that SSN to query the CAT. Similar to the process described above, the SSN would be transformed into the CCID, which, in turn, may be used by the Participant's regulatory staff and the SEC in queries and analysis of CAT Data.

The Participants believe that the proposed CCID Alternative is necessary and appropriate in the public interest, 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. The Participants reasonably believe that the CCID

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[15]   Section 4.13 of the CAT NMS Plan describes the composition and functions of the Advisory Committee.
[16]   If a Customer does not have an SSN, the CAT Reporter would not be required to submit the transformed value to the CCID Subsystem.

Alternative will have the capability to create a reliable and accurate CCID that is unique for each Customer, and that regulators will be able to use a unique CCID to track orders from any Customer throughout the order's lifecycle, regardless of what brokerage account was used to enter the order. Thus, the use of CCIDs would enhance the security of the Central Repository while preserving regulatory benefits of the CAT. Because only CCIDs would be stored in the Central Repository, rather than the SSNs, the proposed relief would eliminate the risk of having a comprehensive aggregated source for all individual Customer SSNs (i.e., the potential use of illegally obtained SSNs to facilitate identity theft or other fraud). No SSNs would be collected or stored in the CAT. Instead, only Industry Members would continue to collect individual Customer SSNs, as they do currently. Moreover, the process to create the CCIDs using, in part, SSNs would be secure. The significant reduction in the risk that information in CAT could be used to facilitate identity theft, achieved by use of CCIDs, does not compromise the regulatory benefits of the CAT.

The Participants also believe that eliminating the retention of SSNs in the CAT would not have an adverse impact on the effective operation of the CAT. Subject to accurate implementation by CAT Reporters, [17] the Central Repository would continue to have the capability to create a reliable and accurate CCID that is unique for each Customer, and to use the unique CCID to track orders from any Customer throughout the order's lifecycle, regardless of what brokerage account was used to enter the order. In addition, regulators would continue to have the ability to query data using an SSN.

The Participants recognize, however, that, the elimination of the collection of SSNs would cause CAT Reporters to assume a critical role in the accurate generation of CCIDs. To mitigate the potential risk to the integrity of the CCID values ultimately assigned to Customer records in the CAT, the Participants, working with the Plan Processor, will consider methods for detecting errors in the transformed values submitted by CAT Reporters, such as through validation processes and/or testing of accounts, as well as methods that may be identified by functionality supporting the Error Resolution for Customer Data requirement by Section 9.4 of Appendix D of the CAT NMS Plan. The Plan Processor is currently exploring potential validation checks that could be performed upon submission by an Industry Member of an initial CCID, such as ensuring the value submitted is within an expected range of values. Such a validation check would help identify transformation errors (e.g., transformation resulted in an invalid or malformed SSN) but would not ensure the correct SSN for a specific customer was used for the transformation.

The Participants, in consultation with the working group of industry members that developed the CCID Alternative, believe that the value of eliminating the need for CAT Reporters to transmit SSNs to the CAT exceeds the potential increased risk to the integrity of CCID assignments.

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[17] If the Commission grants this request for exemptive relief, each Participant will propose to amend its Compliance Rules consistent with the exemptive relief requested in this letter. Each Participant is obligated to enforce compliance by its members with such Compliance Rules, such as via examination, including rules related to implementation of the CCID Alternative.

C.   Modified PII Approach

In light of the security concerns raised with regard to the maintenance of Customer information in the CAT, the Participants also propose to eliminate dates of birth and account numbers for individuals from the CAT. The Participants refer to this alternative approach as the Modified PII Approach. Under the Modified PII Approach, dates of birth and account numbers for natural persons would not be reported to the CAT, and, therefore, would not be stored in the CAT.[18] Similar to SSNs, the Participants believe that this information is particularly sensitive from a security perspective and should not be included in the CAT (i.e., such information, if illegally obtained, could be used to facilitate identity theft or other fraud). The Modified PII Approach has been discussed with the CATLLC Advisory Committee.

The Participants believe that the proposed Modified PII Approach is necessary and appropriate in the public interest, 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. By eliminating dates of birth and account numbers from the CAT, the proposed relief would significantly reduce the risk profile of data collected and stored in the CAT by eliminating the PII data elements that would support attempted identity theft. In addition, the elimination of dates of birth and account numbers for individuals would not compromise the regulatory benefits of the CAT, including the ability of regulators to identify Customers and their related trading activity. Instead of reporting dates of birth and account numbers for individuals, CAT Reporters would report to the CAT year of birth and Firm Designated IDs for accounts for individuals.

D.   Requested Exemptive Relief from CAT NMS Plan

To implement the CCID Alternative and the Modified PII Approach, the Participants request exemptive relief from certain requirements related to SSNs, dates of birth and account numbers for individuals in the CAT NMS Plan, as set forth below. The requirements set forth below would still apply to data elements other than SSNs, dates of birth and account numbers for individuals, in accordance with the CAT NMS Plan. The Participants believe that the implementation of the CCID Alternative and the Modified PII Approach will significantly reduce the risk profile of data collected and stored in the CAT while still preserving the CAT's intended regulatory uses. Accordingly, the Participants believe that the requested exemption is "necessary or appropriate in the public interest, and is consistent with the protection of investors,"[19] and that it 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."[20]

1.   Section 6.4(d)(ii)(C) of the CAT NMS Plan

Section 6.4(d)(ii)(C) of the CAT NMS Plan requires the Participants to require their

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[18]   Industry Members would continue to be required to report year of birth.
[19]   15 U.S.C. § 78mm(a)(1).
[20]   17 CFR § 242.608(e).

Industry Members to record and report to the Central Repository SSNs, dates of birth and account numbers for individuals for the original receipt or origination of an order from such individual Customers. Specifically, Section 6.4(d)(ii)(C) of the CAT NMS Plan states:

> Subject to Section 6.4(c) and Section 6.4(d)(iii) with respect to Options Market Makers, and consistent with Appendix D, Reporting and Linkage Requirements, and the Technical Specifications, each Participant shall, through its Compliance Rule, require its Industry Members to record and report to the Central Repository the following, as applicable ("Received Industry Member Data" and collectively with the information referred to in Section 6.4(d)(i) "Industry Member Data"): . . . (C) for original receipt or origination of an order, ... in accordance with Section 6.4(d)(iv), Customer Account Information and Customer Identifying Information for the relevant Customer.

Section 1.1 of the CAT NMS Plan, in turn, defines "Customer Identifying Information" to include, with respect to individuals, dates of birth and SSNs. In addition, Section 1.1 of the CAT NMS Plan defines "Customer Account Information" to include account numbers. Accordingly, to implement the CCID Alternative and the Modified PII Approach, the Participants request exemptive relief from the requirement in Section 6.4(d)(ii)(C) of the CAT NMS Plan to require, through their Compliance Rules, Industry Members to record and report to the Central Repository for the original receipt of an order SSNs, dates of birth and account numbers for individuals.[21] As discussed above, in place of the SSN, dates of birth and account numbers, Industry Members will report to the Central Repository a transformed value for the SSN, year of birth and the Firm Designated ID for accounts for individuals.

    2.   **Section 9.1 of Appendix D of the CAT NMS Plan (CAT Customer and Customer Account Information Storage)**

    a.   **Capturing Customer and Customer Account Information**

Section 9.1 of Appendix D of the CAT NMS Plan states that "[t]he CAT must capture and store Customer and Customer Account Information in a secure database physically separated from the transactional database," and that "[t]he following attributes, at a minimum, must be captured: Social security number (SSN) or Individual Taxpayer Identification Number (ITIN); Date of birth." Section 9.1 of Appendix D also states that "[t]he Plan Processor must maintain valid Customer and Customer Account Information for each trading day." The Participants request exemptive relief from these requirements in Section 9.1 of Appendix D of the CAT NMS Plan that the CAT capture and store SSNs, dates of birth and account numbers in the CAT. As

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[21] Participants are required through their Compliance Rules to require Industry Members to submit information required by Section 6.4(d)(iv) of the CAT NMS Plan. *See* Section 6.4(d)(iv). If the Commission grants this requested exemption from Section 6.4(d)(ii)(C) of the CAT NMS Plan, Participants would file proposed changes to their Compliance Rules to remove the requirement that Industry Members submit to the CAT SSNs, dates of birth and account numbers for individuals. The Participants note that Industry Members are required to record and retain SSNs, dates of birth and account numbers for their customers pursuant to Commission recordkeeping, such as SEC Rules 17a-3, 17a-4 and 17a-25 under the Exchange Act, respectively. Industry Member books and records should include historical changes to such information as well pursuant to SEC recordkeeping rules.

discussed above, in place of the SSN, dates of birth and account numbers, Industry Members will report to the Central Repository a transformed value for the SSN, year of birth and the Firm Designated ID for accounts for individuals.

b.   Historical Changes

Section 9.1 of Appendix D of the CAT NMS Plan also requires that the Plan Processor "provide a method for Participants' regulatory staff and the SEC to easily obtain historical changes to that [Customer and Customer Account] information." If the Commission grants the requested exemptions, SSNs, dates of birth and account numbers for individuals would not be stored within the CAT and, thus, Participants' regulatory staff and the SEC would not be able to obtain historical changes to SSNs, dates of birth and account numbers for individuals. Accordingly, the Participants request exemptive relief from the requirement in Section 9.1 of Appendix D that the Plan Processor provide a method for Participants' regulatory staff and the SEC to easily obtain historical changes to SSNs, dates of birth and account numbers. Instead, the Plan Processor will manage changes to CCIDs, years of birth and Firm Designated IDs to provide a history of such data over time.

c.   Validation Process

Section 9.1 of Appendix D of the CAT NMS Plan states that "[t]he Plan Processor will design and implement a robust data validation process for submitted Firm Designated ID, Customer Account Information and Customer Identifying Information, and must continue to process orders while investigating Customer information mismatches," and that "[v]alidations should: . . . Confirm the number of digits on a SSN, Confirm dates of birth, and Accommodate the situation where a single SSN is used by more than one individual." If the Commission grants the requested exemption from the requirement that SSNs, dates of birth and account numbers for individuals be submitted to the CAT, no validation process would be necessary for these elements. However, in lieu of validation of SSNs and dates of birth, the Plan Processor will implement a validation process for transformed values submitted by CAT Reporters to the Plan Processor. The Plan Processor and Participants believe the validations in the CAT NMS Plan that require the identification and handling of inconsistencies in Customer information can still be performed as envisioned using CCID rather than SSN. This would include things such as validating that there are not duplicate CCID and significantly different name, and duplicate CCID and different year of birth. Accordingly, the Participants request exemptive relief from the requirement in Section 9.1 of Appendix D for the Plan Processor to design and implement a robust data validation process with regard to SSNs, dates of birth and account numbers.

3.   Section 9.2 of Appendix D of the CAT NMS Plan (Required Data Attributes for Customer Information Data Submitted by Industry Members)

Section 9.2 of Appendix D of the CAT NMS Plan states that "[a]t a minimum, the following Customer information data attributes must be accepted by the Central Repository: . . . Account Tax Identifier (SSN, TIN, ITIN)." If the Commission grants the requested exemptions, SSNs would not be submitted to the CAT and, therefore, the Participants request exemptive

relief from the requirement in Section 9.1 of Appendix D for the Central Repository to accept SSNs. Instead, the Central Repository will accept a transformed value for SSNs.

4.   **Section 9.4 of Appendix D of the CAT NMS Plan (Error Resolution for Customer Data)**

Section 9.4 of Appendix D of the CAT NMS Plan states that "[t]he Plan Processor must design and implement procedures and mechanisms to handle both minor and material inconsistencies in Customer information." For example, "[m]aterial inconsistencies such as two different people with the same SSN must be communicated to the submitting CAT Reporters and resolved within the established error correction timeframe as detailed in Section 8." Section 9.4 of Appendix D also states that "[t]he Central Repository must have an audit trail showing the resolution of all errors." The required audit trail must, at a minimum, include a variety of items, including "duplicate SSN, significantly different Name" and "duplicate SSN, different DOB." If the Commission grants the requested exemptions, SSNs, dates of birth and account numbers for individuals would not be submitted to the CAT. Therefore, the Participants request exemptive relief from these error resolution requirements with regard to SSNs, dates of birth and account numbers of individuals. Instead, the Plan Processor will be required to design and implement an error resolution process for CCIDs and years of birth.

5.   **PII Data Requirements**

Section 4.1.6 of Appendix D of the CAT NMS Plan (PII Data Requirements) states that

> PII data must not be included in the result set(s) from online or direct query tools, reports or bulk data extraction. Instead, results will display existing non-PII unique identifiers (e.g., Customer-ID or Firm Designated ID). The PII corresponding to these identifiers can be gathered using the PII workflow described in Appendix D, Data Security, PII Data Requirements.

Similarly, Section 8.1.1 of Appendix D and Section 8.2 of Appendix D both state that "[t]he PII corresponding to these identifiers can be gathered using the PII workflow described in Appendix D, Data Security, PII Data Requirements," which is Section 4.1.6 of Appendix D. The PII corresponding to the identifiers referenced in this requirement include SSNs, dates of birth and account numbers for individuals. If the Commission grants the requested exemptions, SSNs, dates of birth and account numbers of individuals would not be available. Accordingly, the Participants request exemptive relief from this requirement to provide regulators with the ability to gather SSNs, dates of birth and account numbers that correspond with CCIDs and FDIDs. Regulators will have the ability to gather years of birth that correspond with CCIDs.

6.   **Section 6.2 of Appendix D of the CAT NMS Plan (Data Availability Requirements)**

Section 6.2 of Appendix D of the CAT NMS Plan states that "Customer information that includes PII must be available to regulators immediately upon receipt of initial data and

corrected data, pursuant to security policies." Section 1.1. of the CAT NMS Plan defines "PII" as "personally identifiable information, including a social security number or tax identifier number or similar information; Customer Identifying Information and Customer Account Information." Accordingly, PII includes SSNs, dates of birth and account numbers for individuals. If the Commission grants the requested exemptions, SSNs, dates of birth and account numbers would not be available. Therefore, the Participants request exemptive relief from the requirement to provide regulators with SSNs, dates of birth and account numbers in accordance with this provision. Years of birth, however, will be available to regulators immediately upon receipt of initial data and corrected data, pursuant to security policies.

7.   Section 10.1 of Appendix D of the CAT NMS Plan (CAT Reporter Support)

Section 10.1 of Appendix D of the CAT NMS Plan states that "[t]he Plan Processor will provide technical, operational and business support to CAT Reporters for all aspects of reporting. Such support will include, at a minimum: . . . Manage Customer and Customer Account Information." If the Commission grants the requested exemptions, SSNs, dates of birth and account numbers for individuals would not be submitted to the CAT. Therefore, the Participants request exemptive relief from these CAT Reporter support requirements with regard to SSNs, dates of birth and account numbers of individuals.[22] However, the Plan Processor will provide technical specifications and help desk support to CAT Reporters with respect to the implementation of the CCID Alternative and the reporting of years of birth.

8.   Section 10.3 of Appendix D of the CAT NMS Plan (CAT Help Desk)

Section 10.3 of Appendix D of the CAT NMS Plan states that "CAT Help Desk support functions must include: . . . Supporting CAT Reporters with data submissions and data corrections, including submission of Customer and Customer Account Information." If the Commission grants the requested exemptions, SSNs, dates of birth and account numbers for individuals would not be submitted to the CAT. Therefore, the Participants request exemptive relief from these CAT Help Desk support function requirements with regard to SSNs, dates of birth and account numbers of individuals.[23] However, the CAT Help Desk will provide support to CAT Reporters with respect to the implementation of the CCID Alternative and the reporting of years of birth.

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[22]   While the term "Customer Information" is not defined in Section 1.1 of the CAT NMS Plan, it is used informally in Appendix C and D of the Plan to refer to Customer Identifying Information and Customer Account Information. The term "Customer information" is used in Section 6.4(d)(ii) and (iv) of the Plan in a similar manner. Accordingly, the Participants are seeking exemptive relief related to SSNs, dates of birth and account numbers under Sections 10.1 and 10.3 of Appendix D, both of which refer to Customer Information.

[23]   If the Commission grants this requested exemption from Section 6.4(d)(ii)(C) of the CAT NMS Plan and the noted provisions from Appendix D of the CAT NMS Plan, SSNs, dates of birth and account numbers for individuals would not be reported to, the CAT pursuant to Section 6.4(d)(ii)(C) and Appendix D of the CAT NMS Plan and would not be included in the definition of CAT Data. As a result, the Central Repository would no longer undertake with respect to SSNs, dates of birth and account numbers the requirements applicable to CAT Data, including Sections 6.5(a)(i), 6.5(c)(i) and 6.10(c) of the CAT NMS Plan.

9. Proposed Implementation of the Exemptive Relief

As previously discussed, the Participants understand that the requested exemptive relief, if granted, would apply if:
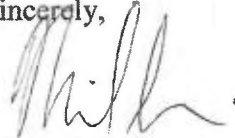
(1) The CCID Alternative and the Modified PII Approach are implemented in a manner consistent with this request for exemptive relief, including each of the representations made above with regard to the CCID Alternative and Modified PII Approach;

(2) Each Participant amends its Compliance Rules pursuant to Section 19(b) of the Exchange Act, and Rule 19b-4 thereunder, to require its members to satisfy the requirements described in this request regarding the CCID Alternative and Modified PII Approach;

(3) Each Participant enforces compliance by its members with the Participant's Compliance Rules, including rules related to the CCID Alternative;

(4) The CCID Subsystem is subject to the security provisions of the CAT NMS Plan;

(5) The Plan Processor provides to CAT Reporters the tools and/or technology to transform SSNs into interim values (i.e., the first transformation phase described in Section B), and the Plan Processor subsequently transforms the interim values into a unique CCID for each Customer that is unknown to and not shared with the original CAT Reporter (i.e., the second transformation phase described in Section B above.

*   *   *   *   *

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

Sincerely,

Michael Simon
CAT NMS Plan Operating Committee Chair

cc (via email):

The Hon. Jay Clayton, Chairman
The Hon. Robert J. Jackson, Jr., Commissioner
The Hon. Allison Herren Lee, Commissioner
The Hon. Hester M. Peirce, Commissioner
The Hon. Elad L. Roisman, Commissioner
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
Mr. Mark Donohue, Senior Policy Advisor, Division of Trading and Markets
Ms. Manisha Kimmel, Senior Policy Advisor, Regulatory Reporting to Chairman Clayton
CAT NMS Plan Participants