

February 19, 2020

VIA HAND DELIVERY

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 Industry Member Reporting
Dates

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 Sections 6.4 and 6.7(a)(v) and (vi) of the CAT NMS Plan to allow for the implementation of phased reporting for the consolidated audit trail (“CAT”), as described below. The Participants believe that the requested exemptions are “necessary or appropriate in the public interest, and consistent with the protection of investors,”⁵ and are “consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets and the removal of impediments to, and perfection of the mechanisms of, a national market system.”⁶ In connection with the requested exemptions,

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, MIAIX Emerald, LLC, MIAIX 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 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.”

⁵ 15 U.S.C. § 78mm(a)(1).

⁶ 17 C.F.R. § 242.608(e).

the Participants plan to file revisions to their Compliance Rules⁷ consistent with the exemptive relief requested in this letter, including revisions to testing and related dates associated with Industry Member CAT reporting. This letter amends and replaces in its entirety the original exemptive request letter submitted to the SEC on September 26, 2019.⁸

A. Description of Phased Reporting for Industry Members

Under the CAT NMS Plan, the Participants are required, 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, 2019.⁹ After in-depth discussions with the industry and FINRA CAT, LLC, the Plan Processor, regarding the scope and timing of Industry Member reporting, the Participants propose to implement phased reporting for Industry Member reporting to the CAT (“Phased Reporting”) in place of this CAT reporting schedule for Industry Members set forth in the CAT NMS Plan. The Phased Reporting would have five phases, each of which is described in detail below.¹⁰ The full scope of CAT Data will be available when all five phases of the Phased Reporting are complete, subject to any applicable exemptive relief or amendments to the CAT NMS Plan. The Participants believe that the Phased Reporting would facilitate significant Industry Member reporting as quickly as possible by leaving certain complex reporting requirements to later phases.

The proposed exemptive relief to allow for the implementation of Phased Reporting would provide Industry Members with definitive guidance from the SEC as to when they are required to commence reporting to the CAT. Such certainty would assist Industry Members in their efforts to ensure compliance with the regulatory requirements related to the CAT. Concerned with being out of compliance with the reporting deadlines as currently set forth in the Compliance Rules, Industry Members have indicated the need for formal guidance as to the revised CAT reporting schedule for Industry Members.¹¹

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 Letter from Mike Simon, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, SEC re: Request for Exemption from Provisions of the National Market System Plan Governing the Consolidated Audit Trail related to Industry Member Reporting Dates (September 26, 2019).

⁹ See Sections 6.7(a)(v) and (vi) of the CAT NMS Plan.

¹⁰ Phases 2a-2e of the Phased Reporting are described in Table 1: Industry Specifications Phased Approach in the CAT Reporting Technical Specifications for Industry Members (version 2.2.1 r3) (Jan. 31, 2020); Table 1: Industry Specifications Phased Approach, CAT Reporting Technical Specifications for Industry Member (version 3.0.0) (Jan. 31, 2020); and Table 1: Industry Customer & Account Specifications Phased Approach, CAT Reporting Customer & Account Technical Specifications for Industry Members (Version 1.0) (Jan. 23, 2020) (collectively with amendments, “Industry Member Technical Specifications”), each of which is available at www.catnmsplan.com. The Industry Member Technical Specifications also provide detailed guidance regarding the data required to be reported for each Phase.

¹¹ For example, in response to industry questions about the Industry Member reporting timeline, the Operating Committee approved CAT FAQs A.5 and A.6. FAQ A.5 states that

Under this Phased Reporting, both Large Industry Members and Small Industry Members that are required to record and report information to FINRA's Order Audit Trail System pursuant to applicable self-regulatory organization ("SRO") rules ("Small Industry OATS Reporters") would commence reporting as of April 20, 2020. Requiring all current OATS reporters to begin reporting at the same time will expedite the retirement of OATS, providing a significant cost savings for Industry Members.

1. Phase 2a

In the first phase of Phased Reporting, referred to as Phase 2a, Large Industry Members and Small Industry OATS Reporters would be required to report to the Central Repository "Phase 2a Industry Member Data" by April 20, 2020.¹²

a. Scope of Reporting in Phase 2a

"Phase 2a Industry Member Data" would be Industry Member Data required to be reported to the Central Repository commencing in Phase 2a as set forth in the Industry Member Technical Specifications. Phase 2a Industry Member Data would include Industry Member Data solely related to Eligible Securities that are equities. The following summarizes the categories of Industry Member Data required for Phase 2a; the full requirements are set forth in the Industry Member Technical Specifications.¹³

Phase 2a Industry Member Data would include all events and scenarios covered by OATS. FINRA Rule 7440 describes the OATS requirements for recording information, which includes information related to the receipt or origination of orders, order transmittal, and order modifications, cancellations and executions. Large Industry Members and Small Industry OATS Reporters would be required to submit data to the CAT for these same events and scenarios during Phase 2a.

Phase 2a Industry Member Data also would include Reportable Events for:

- proprietary orders, including market maker orders, for Eligible Securities that are equities;

The CAT NMS Plan requires Industry Members (other than Small Industry Members) to begin reporting Industry Member Data to the CAT by November 15, 2018. However, the CAT System has not been ready to accept data from Industry Members. Although the SEC has not granted an extension to this date, the Participants are working toward an April 2020 CAT reporting date for Large Industry Members and Small Industry Members currently reporting to OATS.

FAQ A.6 makes a similar statement for Small Industry Members that are not reporting to OATS, although the reporting date is the later date of December 2021.

¹² Small Industry Members that are not required to record and report information to FINRA's OATS pursuant to applicable SRO rules ("Small Industry Non-OATS Reporters") would be required to report to the Central Repository "Phase 2a Industry Member Data" by December 13, 2021, which is twenty months after Large Industry Members and Small Industry OATS Reporters begin reporting.

¹³ The items required to be reported commencing in Phase 2a do not include the items required to be reported in Phase 2c or Phase 2d.

- electronic quotes in listed equity Eligible Securities (*i.e.*, NMS stocks) sent to a national securities exchange or FINRA’s Alternative Display Facility (“ADF”);
- electronic quotes in unlisted Eligible Securities (*i.e.*, OTC Equity Securities) received by an Industry Member operating an interdealer quotation system (“IDQS”); and
- electronic quotes in unlisted Eligible Securities sent to an IDQS or other quotation system not operated by a Participant or Industry Member.

Phase 2a Industry Member Data would include Firm Designated IDs. During Phase 2a, Industry Members would be required to report Firm Designated IDs to the CAT, as required by Sections 6.3(d)(i)(A), and 6.4(d)(ii)(C) of the CAT NMS Plan. Section 6.3(d)(i)(A) of the CAT NMS Plan, as applied by Section 6.4(d)(i), requires Industry Members to submit the Firm Designated ID for the original receipt or origination of an order. Section 6.4(d)(ii)(C) of the CAT NMS Plan requires Industry Members to record and report to the Central Repository, for original receipt and origination of an order, the Firm Designated ID.

In Phase 2a, Industry Members would be required to report all street side representative orders, including both agency and proprietary orders and mark such orders as representative orders, except in certain limited exceptions as described in the Industry Member Technical Specifications. A representative order is an order originated in a firm owned or controlled account, including principal, agency average price and omnibus accounts, by an Industry Member for the purpose of working one or more customer or client orders.

In Phase 2a, Industry Members would be required to report the link between the street side representative order and the order being represented when: (1) the representative order was originated specifically to represent a single order received either from a customer or another broker-dealer; and (2) there is (a) an existing direct electronic link in the Industry Member’s system between the order being represented and the representative order and (b) any resulting executions are immediately and automatically applied to the represented order in the Industry Member’s system.

Phase 2a Industry Member Data also would include the manual and Electronic Capture Time for Manual Order Events. Specifically, for each Reportable Event in Section 6.3(d), Industry Members would be required to provide a timestamp pursuant to Section 6.8(b) of the CAT NMS Plan. Section 6.8(b) of the CAT NMS Plan states that Industry Members

shall be permitted to record and report: (i) Manual Order Events to the Central Repository in increments up to and including one second, provided that . . . Industry Members shall be required to record and report the time when a Manual Order Event has been captured electronically in an order handling and execution system of such . . . Industry Member (“Electronic Capture Time”) in milliseconds.

Accordingly, for Phase 2a, Industry Members would be required to provide both the manual and Electronic Capture Time for Manual Order Events.¹⁴

Industry Members would be required to report special handling instructions for the original receipt or origination of an order during Phase 2a. In addition, during Phase 2a, Industry Members will be required to report, when routing an order, whether the order was routed as an intermarket sweep order (“ISO”). Industry Members would be required to report special handling instructions on routes other than ISOs in Phase 2c, rather than Phase 2a.

In Phase 2a, Industry Members would not be required to report modifications of a previously routed order in certain limited instances. Specifically, if a trader or trading software modifies a previously routed order, the routing firm is not required to report the modification of an order route if the destination to which the order was routed is a CAT Reporter that is required to report the corresponding order activity. If, however, the order was modified by a Customer or other non-CAT Reporter, and subsequently the routing Industry Members sends a modification to the destination to which the order was originally routed, then the routing Industry Member must report the modification of the order route.¹⁵ In addition, in Phase 2a, Industry Members would not be required to report a cancellation of an order received from a Customer after the order has been executed.

b. Phase 2a Reporting for Large Industry Members and Small Industry OATS Reporters

Under the CAT NMS Plan, the Participants are required, through their Compliance Rules, to require their Small Industry Members to commence reporting to the Central Repository on November 15, 2019, one year after Large Industry Members. The Participants, however, propose to make the CAT reporting of Small Industry OATS Reporters coterminous with that of Large Industry Members for Phase 2a under the Phased Reporting. Small Industry OATS Reporters would begin reporting to the Central Repository on April 20, 2020, at the same time as Large Industry Members. The Participants do not propose to make the CAT reporting of Small Industry Non-OATS Reporters coterminous with reporting by Large Industry Members in Phase 2a.

Aligning the start of CAT reporting for Small Industry OATS Reporters with that of Large Industry Members under the Phased Reporting approach is designed to accelerate the retirement of OATS. Having data from those Small Industry Members currently reporting to OATS available when Large Industry Members begin reporting would substantially facilitate a more expeditious retirement of OATS.¹⁶

¹⁴ Industry Members would be required to provide an Electronic Capture Time following the manual capture time only for new orders that are Manual Order Events and, in certain instances, routes that are Manual Order Events. The Electronic Capture Time would not be required for other Manual Order Events.

¹⁵ This approach is comparable to the approach set forth in OATS Compliance FAQ 35.

¹⁶ See, e.g., Securities Exchange Act Rel. No. 80783 (May 26, 2017), 82 Fed. Reg. 25423, 25425 (June 1, 2019).

Accordingly, the Participants propose to require Small Industry OATS Reporters to begin reporting Phase 2a Industry Member Data, which includes all events and scenarios covered by OATS, to the CAT at the same time as Large Industry Members.

The alignment of Phase 2a CAT reporting for Small Industry OATS Reporters and Large Industry Members would permit the retirement of OATS, which would lead to a significant cost savings for the industry. As described in the CAT NMS Plan and as noted by the industry, the retirement of OATS would significantly decrease costs by eliminating the need for two duplicative reporting systems.¹⁷

In addition, starting Phase 2a CAT reporting for Small Industry OATS Reporters and Large Industry Members at the same time should not create significant burdens for Small Industry OATS Reporters. The additional year for Small Industry Members under the CAT NMS Plan was intended to give Small Industry Members additional time to comply with the new reporting requirements. When the SEC adopted Rule 613, the Commission noted that it provided small broker-dealers with an additional year to begin reporting because “small broker-dealers, particularly those that operate manual systems, might be particularly impacted because of their more modest financial resources and may need additional time to upgrade to an electronic method of reporting audit trail data to the central repository.”¹⁸ Upon further analysis, however, the Participants do not believe that this concern applies to the small broker-dealers that are OATS Reporters.

The exemption proposed by the Participants would accelerate the CAT reporting obligations for approximately 230 Small Industry Members; however, 220 of those firms report to OATS through clearing firms or other third-party providers, all of which will begin reporting to the CAT at the same time Large Industry Members begin reporting. As a result, the Participants believe that there should be limited additional technical requirements or costs to accelerate the reporting requirements for these firms and, in fact, this change would allow introducing and clearing firms to avoid the costs associated with maintaining two systems during the additional transition year provided to Small Industry Members. Of the ten Small Industry Members that report to OATS on their own behalf, eight of them have very few reportable events and, consequently, the Participants believe that these Industry Members would not have significant burdens reporting to the CAT rather than continuing to report to OATS.¹⁹

The Participants believe that Phase 2a will be a substantial step forward for CAT reporting. As of April 20, 2020, the CAT not only will cover all OATS events and scenarios by all OATS reporters, but it will include a variety of data not covered by OATS or other SRO systems. For example, during Phase 2a, Large Industry Members and Small Industry OATS Reports will be required to report all proprietary orders, including market maker orders. Market making and representative proprietary orders are not required to be captured under the OATS

¹⁷ See, e.g., Appendix C, CAT NMS Plan.

¹⁸ Securities Exchange Act Rel. No. 67457 (July 18, 2012), 77 Fed. Reg. 45722, 45749 (August 1, 2012) (“Rule 613 Adopting Release”).

¹⁹ In one recent month, five of the ten firms submitted fewer than 100 reports during the month, with four submitting fewer than 50.

rules. In addition, Large Industry Members and Small Industry OATS Reporters would be required to report the Firm Designated ID during Phase 2a. During Phase 2a, the Firm Designated ID will allow regulators to identify that the same account is trading within a single broker-dealer.²⁰ In addition, during Phase 2a, certain linkages between street side representative orders and the related customer order will be enabled; these linkages are not required under the OATS rules and will provide significant benefits to regulators using the data.

c. Phase 2a Industry Member Reporting for Small Industry Non-OATS Reporters

The Participants do not propose to make the CAT reporting of all Small Industry Members coterminous with the start of CAT reporting by Large Industry Members in Phase 2a. Specifically, the Participants do not propose to require Small Industry Non-OATS Reporters to commence CAT reporting on April 20, 2020. Instead, the Participants propose to require Small Industry Non-OATS Reporters to begin reporting Phase 2a Industry Member Data by December 13, 2021, twenty months after Large Industry Members and Small Industry OATS Reporters begin reporting Phase 2a Industry Member Data to the Central Repository.

The Participants determined not to accelerate Phase 2a CAT reporting for Small Industry Non-OATS Reporters. Unlike with Small Industry OATS Reporters, the burdens of CAT reporting are significantly greater for those firms that are not reporting to OATS currently. In addition, because Small Industry Non-OATS Reporters do not report to OATS, accelerating their reporting would not have any effect on the retirement of OATS.

2. Phase 2b

In the second phase of the Phased Reporting, referred to as Phase 2b, Large Industry Members would be required to report to the Central Repository “Phase 2b Industry Member Data” by May 18, 2020. Small Industry Members would be required to report to the Central Repository “Phase 2b Industry Member Data” by December 13, 2021, which is nineteen months after Large Industry Members begin reporting such data to the Central Repository.

“Phase 2b Industry Member Data” would be Industry Member Data required to be reported to the Central Repository commencing in Phase 2b as set forth in the Industry Member Technical Specifications. Phase 2b Industry Member Data is described in detail in the Industry Member Technical Specifications for Phase 2b. The following summarizes the categories of Industry Member Data required for Phase 2b; the full requirements are set forth in the Industry Member Technical Specifications.

Phase 2b Industry Member Data would include Industry Member Data related to Eligible Securities that are options and related to simple electronic option orders, excluding electronic paired option orders.²¹ A simple electronic option order is an order to buy or sell a single option

²⁰ When the Customer information reporting begins, the Firm Designated ID will be used to link accounts to specific customers.

²¹ The items required to be reported in Phase 2b do not include the items required to be reported in Phase 2d, as discussed below.

that is not related to or dependent on any other transaction for pricing and timing of execution that is either received or routed electronically by an Industry Member. Electronic receipt of an order is defined as the initial receipt of an order by an Industry Member in electronic form in standard format directly into an order handling or execution system. Electronic routing of an order is the routing of an order via electronic medium in standard format from one Industry Member's order handling or execution system to an exchange or another Industry Member. An electronic paired option order is an electronic option order that contains both the buy and sell side that is routed to another Industry Member or exchange for crossing and/or price improvement as a single transaction on an exchange. Responses to auctions of simple orders and paired simple orders are reportable in Phase 2b.

Furthermore, combined orders in options would be treated in Phase 2b in the same way as equity representative orders are treated in Phase 2a. A combined order would mean, as permitted by SRO rules, a single, simple order in Listed Options created by combining individual, simple orders in Listed Options from a customer with the same exchange origin code before routing to an exchange. During Phase 2b, the single combined order sent to an exchange must be reported and marked as a combined order, but the linkage to the underlying orders is not required to be reported until Phase 2d.

3. Phase 2c

In the third phase of the Phased Reporting, referred to as Phase 2c, Large Industry Members would be required to report to the Central Repository "Phase 2c Industry Member Data" by April 26, 2021. Small Industry Members would be required to report to the Central Repository "Phase 2c Industry Member Data" by December 13, 2021, which is seven months after Large Industry Members begin reporting such data to the Central Repository.

"Phase 2c Industry Member Data" would be Industry Member Data related to Eligible Securities that are equities other than Phase 2a Industry Member Data, Phased 2d Industry Member Data or Phase 2e Industry Member Data. Phase 2c Industry Member Data is described in detail in the Industry Member Technical Specifications for Phase 2c. The following summarizes the categories of Industry Member Data required for Phase 2c; the full requirements are set forth in the Industry Member Technical Specifications.

Phase 2c Industry Member Data would include Industry Member Data that is related to Eligible Securities that are equities and that is related to: (1) Allocation Reports as required to be recorded and reported to the Central Repository pursuant to Section 6.4(d)(ii)(A)(1) of the CAT NMS Plan; (2) quotes in unlisted Eligible Securities sent to an IDQS operated by a CAT Reporter (reportable by the Industry Member sending the quotes) (except for quotes reportable in Phase 2d, as discussed below); (3) electronic quotes in listed equity Eligible Securities (*i.e.*, NMS stocks) that are not sent to a national securities exchange or FINRA's Alternative Display Facility; (4) reporting changes to client instructions regarding modifications to algorithms; (5) marking as a representative order any order originated to work a customer order in price guarantee scenarios, such as a guaranteed VWAP; (6) flagging rejected external routes to indicate a route was not accepted by the receiving destination; (7) linkage of duplicate electronic messages related to a Manual Order Event between the electronic event and the original manual

route; (8) special handling instructions on order route reports (other than the ISO, which is required to be reported in Phase 2a); (9) quote identifier on trade events; (10) reporting of large trader identifiers²² (“LTID”) (if applicable) for accounts with Reportable Events that are reportable to CAT as of and including Phase 2c; (11) reporting of date account opened or Account Effective Date²³ (as applicable) for accounts and flag indicating the Firm Designated ID type as account or relationship; (12) order effective time for orders that are received by an Industry Member and do not become effective until a later time; (13) the modification or cancellation of an internal route of an order; and (14) linkages to the customer orders(s) being represented for representative order scenarios, including agency average price trades, net trades, aggregated orders, and disconnected Order Management System (“OMS”) – Execution Management System (“EMS”) scenarios, as required in the Industry Member Technical Specifications.²⁴

Phase 2c Industry Member Data also includes electronic quotes that are provided by or received in a CAT Reporter’s order/quote handling or execution systems in Eligible Securities that are equities and are provided by an Industry Member to other market participants off a national securities exchange under the following conditions: (1) an equity bid or offer is displayed publicly or has been communicated (a) for listed securities to the Alternative Display Facility (ADF) operated by FINRA; or (b) for unlisted equity securities to an “inter-dealer quotation system” as defined in FINRA Rule 6420(c); or (2) an equity bid or offer which is accessible electronically by customers or other market participants and is immediately actionable for execution or routing; i.e., no further manual or electronic action is required by the responder providing the quote in order to execute or cause a trade to be executed). With respect to OTC Equity Securities, OTC Equity Securities quotes sent by an Industry Member to an IDQS operated by an Industry Member CAT Reporter (other than such an IDQS that does not match and execute orders) are reportable by the Industry Member sending them in Phase 2c. Accordingly, any response to a request for quote or other form of solicitation response provided in a standard electronic format (e.g., FIX) that meets this quote definition (i.e., an equity bid or offer which is accessible electronically by customers or other market participants and is immediately actionable for execution or routing) would be reportable in Phase 2c.

4. Phase 2d

In the fourth phase of the Phased Reporting, referred to as Phase 2d, Large Industry Members and Small Industry Members would be required to report to the Central Repository “Phase 2d Industry Member Data” by December 13, 2021. “Phase 2d Industry Member Data” is Industry Member Data that is related to Eligible Securities that are options other than Phase 2b Industry Member Data, Industry Member Data that is related to Eligible Securities that are

²² See definition of “Customer Account Information” in Section 1.1 of the CAT NMS Plan. See also Rule 13h-1 under the Exchange Act.

²³ See definition of “Customer Account Information” and “Account Effective Date” in Section 1.1 of the CAT NMS Plan.

²⁴ In Phase 2c, for any scenarios that involve orders originated in different systems that are not directly linked, such as a customer order originated in an OMS and represented by a principal order originated in an EMS that is not linked to the OMS, marking and linkages must be reported as required in the Industry Member Technical Specifications.

equities other than Phase 2a Industry Member Data or Phase 2c Industry Member Data, and Industry Member Data other than Phase 2e Industry Member Data.²⁵ Phase 2d Industry Member Data is described in detail in the Industry Member Technical Specifications for Phase 2d. The following summarizes the categories of Industry Member Data required for Phase 2d; the full requirements are set forth in the Industry Member Technical Specifications. The full scope of CAT Data other than Phase 2e Industry Member Data will be required to be reported to the CAT when Phase 2d has been implemented, subject to any applicable exemptive relief or amendments to the CAT NMS Plan.

Phase 2d Industry Member Data includes with respect to the Eligible Securities that are options: (1) simple manual orders; (2) electronic and manual paired orders; (3) all complex orders with linkages to all CAT-reportable legs; (4) LTIDs (if applicable) for accounts with Reportable Events for Phase 2d; (5) date account opened or Account Effective Date (as applicable) for accounts with an LTID and flag indicating the Firm Designated ID type as account or relationship for such accounts; (6) Allocation Reports as required to be recorded and reported to the Central Repository pursuant to Section 6.4(d)(ii)(A)(1) of the CAT NMS Plan; (7) the modification or cancellation of an internal route of an order; and (8) linkage between a combined order and the original customer orders.

Phase 2d Industry Member Data also would include electronic quotes that are provided by or received in a CAT Reporter's order/quote handling or execution systems in Eligible Securities that are options and are provided by an Industry Member to other market participants off a national securities exchange under the following conditions: a listed option bid or offer which is accessible electronically by customers or other market participants and is immediately actionable (i.e., no further action is required by the responder providing the quote in order to execute or cause a trade to be executed). Accordingly, any response to a request for quote or other form of solicitation response provided in standard electronic format (e.g., FIX) that meets this definition would be reportable in Phase 2d for options.

Phase 2d Industry Member Data also would include with respect to Eligible Securities that are options or equities (1) receipt time of cancellation and modification instructions through Order Cancel Request and Order Modification Request events; (2) modifications of previously routed orders in certain instances; and (3) 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. In addition, subject to any exemptive or other relief, Phase 2d Industry Member Data will include verbal or manual quotes on an exchange floor or in the over-the-counter market, where verbal quotes and manual quotes are defined as bids or offers in Eligible Securities provided verbally or that are provided or received other than via a CAT Reporter's order handling and execution system (e.g., quotations provided via email or instant messaging).

²⁵ The Participants have determined that reporting information regarding the modification or cancellation of a route is necessary to create the full lifecycle of an order. Accordingly, the Participants require the reporting of information related to the modification or cancellation of a route similar to the data required for the routing of an order and modification and cancellation of an order pursuant to Sections 6.3(d)(ii) and (iv) of the CAT NMS Plan.

5. Phase 2e

In the fifth phase of Phased Reporting, referred to as Phase 2e, both Large Industry Members and Small Industry Members would be required to report to the Central Repository “Phase 2e Industry Member Data” by July 11, 2022. “Phase 2e Industry Member Data” includes Customer Account Information and Customer Identifying Information, other than LTIDs, date account opened/Account Effective Date and Firm Designated ID type flag previously reported to the CAT. LTIDs and Account Effective Date are both provided in Phases 2c and 2d in certain circumstances, as discussed above. The terms “Customer Account Information” and “Customer Identifying Information” are defined in Section 1.1 of the CAT NMS Plan.²⁶ The full scope of CAT Data will be required to be reported to the CAT when Phase 2e has been implemented, subject to any applicable exemptive relief or amendments to the CAT NMS Plan.

B. Industry Member Testing Requirements

The CAT NMS Plan sets forth certain timelines for testing for various aspects of the implementation of Industry Member reporting to the CAT. Specifically, Section 10 of Appendix C of the CAT NMS Plan sets forth testing timelines for Large and Small Industry Members involving, in relevant part, the Publication and Implementation of the Methods for Providing Information to the Customer-ID Database, Submission of Order and MM Quote Data to Central Repository, and Linkage of Lifecycle of Order Events. Given the proposal to shift from two specified dates for the commencement of Large and Small Industry Members to the proposed Phased Reporting with varying commencement dates for each Phase for Large Industry Members, Small Industry OATS Reporters and Small Industry Non-OATS Reporters as described above, the testing milestones set forth in Appendix C do not easily correspond to the Phased Reporting. Accordingly, the Participants propose to replace the Industry Member testing milestones in Appendix C with the following testing milestones, each of which is set forth in the Updated Master Plan provided to the SEC. In each case, the proposed testing timeline would provide ample testing time for Industry Members.²⁷

- Industry Member file submission and data integrity testing for Phases 2a and 2b begins in December 2019.
- Industry Member testing of the Reporter Portal, including data integrity error correction tools and data submissions, begins in February 2020.

²⁶ The term “Customer Account Information” includes account numbers, and the term “Customer Identifying Information” includes, with respect to individuals, dates of birth and individual tax payer identification numbers and social security numbers (collectively, “SSNs”). See Section 1.1 of the CAT NMS Plan. The Participants have requested exemptive relief from the requirements for the Participants to require their members to provide dates of birth, account numbers and social security numbers for individuals to the CAT. See Letter from Michael Simon, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, SEC, Request for Exemptive Relief from Certain Provisions of the CAT NMS Plan related to Social Security Numbers, Dates of Birth and Account Numbers (Jan. 29, 2020). If this requested relief is granted, Phase 2e Industry Member Data will not include account numbers, dates of birth and SSNs for individuals.

²⁷ See Section 10.1, Appendix D of the CAT NMS Plan.

- The Industry Member test environment will be open with intra-firm linkage validations to Industry Members for both Phases 2a and 2b in April 2020.
- The Industry Member test environment will be open to Industry Members with inter-firm linkage validations for both Phases 2a and 2b in July 2020.
- The Industry Member test environment will be open to Industry Members with Phase 2c functionality (full representative order linkages) in January 2021.
- The Industry Member test environment will be open to Industry Members with Phase 2d functionality (manual options orders, complex options orders, and options allocations) in June 2021.
- Participant exchanges that support options market making quoting will begin accepting Quote Sent Time on quotes from Industry Members no later than April 2020.
- The Industry Member test environment (customer and account information) will be open to Industry Members in January 2022.

C. Request for Exemption

To implement the Phased Reporting as described above, the Participants request exemptive relief from Sections 6.4 and 6.7(a)(v) and (vi) of the CAT NMS Plan. Specifically, the Participants request that the SEC exempt 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 Participants request that the SEC exempt 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). Correspondingly, the Participants request that the SEC provide 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.”

As a condition to these exemptions, each Participant would implement the Phased Reporting described above through its Compliance Rule by requiring:

- (1) its Large Industry Members and its Small Industry OATS Reporters to commence reporting to the Central Repository Phase 2a Industry Member Data by April 20, 2020, and its Small Industry Non-OATS Reporters to commence reporting to the Central Repository Phase 2a Industry Member Data by December 13, 2021;

(2) its Large Industry Members to commence reporting to the Central Repository Phase 2b Industry Member Data by May 18, 2020, and its Small Industry Members to commence reporting to the Central Repository Phase 2b Industry Member Data by December 13, 2021;

(3) its Large Industry Members to commence reporting to the Central Repository Phase 2c Industry Member Data by April 26, 2021, and its Small Industry Members to commence reporting to the Central Repository Phase 2c Industry Member Data by December 13, 2021;

(4) its Large Industry Members and Small Industry Members to commence reporting to the Central Repository Phase 2d Industry Member Data by December 13, 2021; and

(5) its Large Industry Members and Small Industry Members to commence reporting to the Central Repository Phase 2e Industry Member Data by July 11, 2022.

The full scope of CAT Data will be required to be reported when all five phases of the Phased Reporting have been implemented, subject to any applicable exemptive relief or amendments to the CAT NMS Plan.

As a further condition to these exemptions, each Participant would implement the testing timelines described above through its Compliance Rule by requiring the following:

(1) Industry Member file submission and data integrity testing for Phases 2a and 2b begins in December 2019.

(2) Industry Member testing of the Reporter Portal, including data integrity error correction tools and data submissions, begins in February 2020.

(3) The Industry Member test environment will be open with intra-firm linkage validations to Industry Members for both Phases 2a and 2b in April 2020.

(4) The Industry Member test environment will be open to Industry Members with inter-firm linkage validations for both Phases 2a and 2b in July 2020.

(5) The Industry Member test environment will be open to Industry Members with Phase 2c functionality (full representative order linkages) in January 2021.

(6) The Industry Member test environment will be open to Industry Members with Phase 2d functionality (manual options orders, complex options orders, and options allocations) in June 2021.

(7) Participant exchanges that support options market making quoting will begin accepting Quote Sent Time on quotes from Industry Members no later than April 2020.

Ms. Vanessa Countryman

February 19, 2020

Page 14

(8) The Industry Member test environment (customer and account information) will be open to Industry Members in January 2022.

Ms. Vanessa Countryman

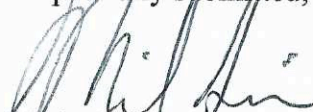
February 19, 2020

Page 15

* * * * *

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. Jay Clayton, Chairman
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