

April 14, 2020

VIA HAND DELIVERY

Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Notice of Filing of Amendment to the National Market System Plan Governing the Consolidated Audit Trail

Dear Ms. Countryman:

The Participants¹ in the National Market System Plan Governing the Consolidated Audit Trail (the “CAT NMS Plan” or “Plan”)² propose to amend the Plan pursuant to Rule 608 of Regulation NMS (“Rule 608”)³ under the Securities Exchange Act of 1934 (“Exchange Act”).⁴ As described more fully below, the proposed amendment would revise data reporting requirements for the Firm Designated ID. In conjunction with these proposed amendments to the CAT NMS Plan, each Participant intends to file with the Securities and Exchange Commission (“SEC” or “Commission”) corresponding proposed changes to their CAT Compliance Rules. This letter amends and replaces in its entirety the original letter submitted to the SEC on

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., 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 CAT NMS Plan is a national market system plan approved by the Commission pursuant to Section 11A of the Exchange Act and the rules and regulations thereunder. *See* Securities Exchange Act Release No. 79318 (Nov. 15, 2016), 81 Fed. Reg. 84696 (Nov. 23, 2016). The full text of the CAT NMS Plan is available at www.catnmsplan.com.

³ 17 C.F.R. § 242.608.

⁴ Unless otherwise defined herein, capitalized terms are defined as set forth in the CAT NMS Plan.

September 26, 2019,⁵ the second letter submitted to the SEC on November 20, 2019,⁶ and the third letter submitted to the SEC on February 27, 2020.⁷

Requirements Pursuant to Rule 608(a)

A. Description of the Amendments to the CAT NMS Plan

Section 1.1 of the CAT NMS Plan defines the term “Firm Designated ID” to mean “a unique identifier for each trading account designated by Industry Members for purposes of providing data to the Central Repository, where each such identifier is unique among all identifiers from any given Industry Member for each business date.” As discussed in more detail below, the Participants propose to amend the requirements for Firm Designated IDs in four ways: (1) to prohibit the use of account numbers as Firm Designated IDs for trading accounts that are not proprietary accounts; (2) to require that the Firm Designated ID for a trading account be persistent over time for each Industry Member so that a single account may be tracked across time within a single Industry Member; (3) to permit the use of relationship identifiers as Firm Designated IDs in certain circumstances; and (4) to permit the use of entity identifiers as Firm Designated IDs in certain circumstances.

1. Prohibit Use of Account Numbers

The Participants believe that the use of account numbers as the Firm Designated ID could give rise to additional security risks related to CAT Data. By prohibiting the use of account numbers as Firm Designated IDs, the Participants intend to limit the potential capture of sensitive data in the CAT that could be used to effect an unauthorized transaction in an account.

The Participants propose to prohibit the use of account numbers as the Firm Designated ID solely for trading accounts that are not proprietary accounts. After discussions with the industry, the Participants believe that each Industry Member must make its own risk determination as to whether it believes it is necessary to mask the actual account number for any proprietary account of the Industry Member when reporting the Firm Designated ID to CAT.

Accordingly, the Participants propose to amend the definition of a “Firm Designated ID” in Section 1.1 to provide that Industry Members may not use account numbers as the Firm Designated ID for trading accounts that are not proprietary accounts. Specifically, the Participants propose to add the following to the definition of a Firm Designated ID: “provided,

⁵ Letter from Michael Simon, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, SEC re: Notice of Filing of Amendment to the National Market System Plan Governing the Consolidated Audit Trail (Sept. 26, 2019).

⁶ Letter from Michael Simon, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, SEC re: Notice of Filing of Amendment to the National Market System Plan Governing the Consolidated Audit Trail (Nov. 20, 2019).

⁷ Letter from Michael Simon, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, SEC re: Notice of Filing of Amendment to the National Market System Plan Governing the Consolidated Audit Trail (Feb. 27, 2020).

however, such identifier may not be the account number for such trading account if the trading account is not a proprietary account.”⁸

2. Persistent Firm Designated ID

The CAT NMS Plan currently requires that the Firm Designated ID assigned by an Industry Member to a trading account be unique for each account for each business date. The Participants believe, however, that the Firm Designated ID assigned by an Industry Member to a trading account should be persistent over time, not for each business day.⁹ With this change, a single account could be tracked across time within a single Industry Member using the Firm Designated ID. Without such a change, such tracking would only be possible using Customer information. Accordingly, the proposed persistence requirement would enhance the regulatory utility of the order and transaction data without accessing Customer information.

To effect this change, the Participants propose to amend the definition of “Firm Designated ID” in Section 1.1 of the CAT NMS Plan to add “and persistent” after “unique” and delete “for each business date” so that the definition of “Firm Designated ID” would read, in relevant part, as follows:

a unique and persistent identifier for each trading account designated by Industry Members for purposes of providing data to the Central Repository . . . where each such identifier is unique among all identifiers from any given Industry Member.

Together with adding a requirement of persistence to the Firm Designated ID definition, deleting “for each business date” would make clear that the same, unique Firm Designated ID must be used by an Industry Member for a trading account over time, which will facilitate the regulatory use of CAT Data by searching with the Firm Designated ID.

3. Relationship Identifiers

The Participants propose to permit an Industry Member to provide a relationship identifier as the Firm Designated ID, rather an identifier that represents a trading account, in

⁸ Appendix C of the CAT NMS Plan noted that broker-dealers would be permitted to use an account number as the Firm Designated ID. Section A, Appendix C, CAT NMS Plan at C-8. The Participants do not propose to amend this statement in Section A of Appendix C of the CAT NMS Plan as it is a one-time report addressing “the requirements set forth in SEC Rule 613(a)(1)(i) through (a)(1)(vi) that the ‘Participants specify and explain the choices they made to meet the requirements specified in [SEC Rule 613] for the [CAT].’” Appendix C of the CAT NMS Plan at C-1.

⁹ If an Industry Member assigns a new account number or entity identifier to a client or customer due to a merger, acquisition or some other corporate action, then the Industry Member should create a new Firm Designated ID to identify the new account identifier/relationship identifier/entity identifier in use at the Industry Member for the entity. In addition, if a previously assigned Firm Designated ID is no longer in use by an Industry Member (e.g., if the trading account associated with the Firm Designated ID has been closed), then an Industry Member may reuse the Firm Designated ID for another trading account. The Plan Processor will maintain a history of the use of each Firm Designated ID, including, for example, the effective dates of the Firm Designated ID with respect to each associated trading account.

certain scenarios in which an Industry Member does not have an account number available to its order handling and/or execution system at the time of order receipt (*e.g.*, certain institutional accounts, managed accounts, accounts for individuals). In such scenarios, the trading account structure may not be available when a new order is first received from a client and, instead, only an identifier representing the client's trading relationship is available. In these limited instances, the Industry Member may provide an identifier used by the Industry Member to represent the client's trading relationship with the Industry Member instead of an account number.

When a trading relationship is established at a broker-dealer for clients, the broker-dealer typically creates a parent account, under which additional subaccounts are created. However, in some cases, the broker-dealer establishes the parent relationship for a client using a relationship identifier as opposed to an actual parent account. The relationship identifier could be any of a variety of identifiers, such as a short name for a relevant individual or institution. This relationship identifier is established prior to any trading for the client. If a relationship identifier has been established rather than a parent account, and an order is placed on behalf of the client, any executed trades will be kept in a firm account (*e.g.*, a facilitation or average price account) until they are allocated to the proper subaccount(s), *i.e.*, the accounts associated with the parent relationship identifier connecting them to the client.

Relationship identifiers are used in circumstances in which the account structure is not available to the trading system at the time of order placement. The clients have established accounts prior to the trade that satisfy relevant regulatory obligations for opening accounts, such as Know Your Customer and other customer obligations. However, the order receipt workflows operate using relationship identifiers, not accounts.

For Firm Designated ID purposes, as with an identifier for a trading account, the relationship identifier must be persistent over time. The relationship identifier also must be unique among all identifiers from any given Industry Member. With these requirements, a single relationship could be tracked across time within a single Industry Member using the Firm Designated ID. In addition, the relationship identifier must be masked as the relationship identifier could be a name or otherwise provide an indication as to the identity of the relationship. The masking requirement would avoid potentially revealing the identity of the relationship.

An example of the use of a relationship identifier as a Firm Designated ID would be as follows: Suppose that Big Fund Manager is known in Industry Member A's systems as "BFM1." When an order is placed by Big Fund Manager, the order is tagged to BFM1. Industry Member A could use a masked version of BFM1 in place of the Firm Designated ID representing a trading account when reporting a new order from Big Fund Manager instead of the account numbers to which executed shares/contracts will be allocated at a later time via a booking or other system. Similarly, another example of the use of a relationship identifier as a Firm Designated ID would involve an individual in place of the Big Fund Manager in the above example.

To permit the use of relationship identifiers as a Firm Designated ID as described above, the Participants propose to amend the definition of a "Firm Designated ID" in Section 1.1 to state

that a Firm Designated ID means, in part, “a unique and persistent relationship identifier when an Industry Member does not have an account number available to its order handling and/or execution system at the time of order receipt, provided, however, such identifier must be masked.”

4. Entity Identifiers

The Participants propose to permit Industry Members to provide an entity identifier, rather than an identifier that represents a trading account, when an employee of the Industry Member is exercising discretion over multiple client accounts and creates an aggregated order for which a trading account number of the Industry Member is not available at the time of order origination. An entity identifier is an identifier of the Industry Member that represents the firm discretionary relationship with the client rather than a firm trading account.

The scenarios in which a firm uses an entity identifier are comparable to when a firm uses a relationship identifier (as described above) except the entity identifier represents the Industry Member rather than a client. As with relationship identifiers, entity identifiers are used in circumstances in which the account structure is not available to the trading system at the time of order placement. In this workflow, the Industry Member’s order handling and/or execution system does not have an account number at the time of order origination. The relevant clients that will receive an allocation of the execution have established accounts prior to the trade that satisfy relevant regulatory obligations for opening accounts, such as Know Your Customer and other customer obligations. However, the order origination workflows operate using entity identifiers, not accounts.

For Firm Designated ID purposes, as with the identifier for a trading account or a relationship, the entity identifier must be persistent over time. The entity identifier also must be unique among all identifiers from any given Industry Member. The Participants believe that each Industry Member must make its own risk determination as to whether it believes it is necessary to mask the entity identifier when using an entity identifier to report the Firm Designated ID to CAT.

An example of the use of an entity identifier as a Firm Designated ID would be when Industry Member 1 has an employee that is a registered representative that has discretion over several client accounts held at Industry Member 1. The registered representative places an order that he will later allocate to individual client accounts. At the time the order is placed, the trading system only knows it involves a representative of Industry Member 1 and it does not have a specific trading account that could be used for Firm Designated ID reporting. Therefore, Industry Member 1 could report IM1, its entity identifier, as the FDID with the new order.

To permit the use of an entity identifier as a Firm Designated ID as described above, the Participants propose to amend the definition of a “Firm Designated ID” in Section 1.1 to state that a Firm Designated ID means, in part, “a unique and persistent entity identifier when an employee of an Industry Member is exercising discretion over multiple client accounts and creates an aggregated order for which a trading account number of the Industry Member is not available at the time of order origination.”

B. Governing or Constituent Documents

Not applicable.

C. Implementation of Amendment

The Participants propose to implement the Firm Designated ID with the commencement of Industry Member CAT reporting.

D. Development and Implementation Phases

The Participants propose to implement the Firm Designated ID with the commencement of Industry Member CAT reporting.

E. Analysis of Impact on Competition

The Participants believe the proposed amendments will have a positive impact on competition, efficiency and capital formation. The Participants believe that the use of account numbers as the Firm Designated ID could give rise to additional security risks related to CAT Data. By proposing to revise the CAT NMS Plan to prohibit the use of account numbers as Firm Designated IDs, the Participants intend to limit the potential capture of sensitive data in the CAT that could be used to effect an unauthorized transaction in an account. By enhancing the security of the CAT, this proposed change to the CAT NMS Plan would further the goals of efficiency and capital formation.

In addition, the Participants believe that the proposed persistence requirement would enhance the regulatory utility of the order and transaction data without accessing Customer information. With this change, a single account could be tracked across time within a single Industry Member using the Firm Designated ID. Without such a change, such tracking would only be possible using Customer information. By enhancing the regulatory utility of the CAT while reducing the need to access Customer information, the proposed amendment would enhance the efficiency and capital formation of our markets.

Furthermore, the proposed amendments to permit the use of relationship identifiers and entity identifiers as Firm Designated IDs will enhance the efficiency of CAT reporting. These changes will permit Industry Members to continue to maintain existing order workflows, rather than employing resources to alter those workflows solely for CAT reporting purposes.

Finally, the Participants do not believe that the proposed amendments would impact competition among Industry Members. The proposed amendments would revise the data reporting requirements for Firm Designated IDs, and, as such, are applicable to all Industry Members. In addition, given that the proposed amendments rely on existing workflows, the proposed amendments would not cause certain Industry Members to incur additional expenses to alter their existing workflows.

F. Written Understanding or Agreements Relating to Interpretation of, or Participation in, Plan

Not applicable.

G. Approval by Plan Sponsors in Accordance with Plan

Section 12.3 of the CAT NMS Plan states that, subject to certain exceptions, the Plan may be amended from time to time only by a written amendment, authorized by the affirmative vote of not less than two-thirds of all of the Participants, that has been approved by the SEC pursuant to Rule 608 or has otherwise become effective under Rule 608. The Participants, by a vote of the Operating Committee taken on April 14, 2020, have authorized the filing of this proposed amendment with the SEC in accordance with the Plan.

H. Description of Operation of Facility Contemplated by the Proposed Amendment

Not applicable.

I. Terms and Conditions of Access

Not applicable.

J. Method and Frequency of Processor Evaluation

Not applicable.

K. Dispute Resolution

Not applicable.

Ms. Vanessa Countryman

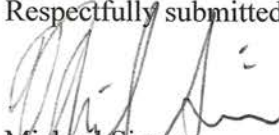
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Thank you for your attention to this matter. Please contact me at (212) 229-2455 if you have any questions or comments.

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

APPENDIX

[additions underlined; deletions bracketed]

LIMITED LIABILITY COMPANY AGREEMENT OF CONSOLIDATED AUDIT TRAIL, LLC

* * * * *

ARTICLE I

Section 1.1. Definitions. As used throughout this Agreement (including, for the avoidance of doubt, the Exhibits, Appendices, Attachments, Recitals and Schedules identified in this Agreement):

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“Firm Designated ID” means (1) a unique and persistent identifier for each trading account designated by Industry Members for purposes of providing data to the Central Repository provided, however, such identifier may not be the account number for such trading account if the trading account is not a proprietary account; (2) a unique and persistent relationship identifier when an Industry Member does not have an account number available to its order handling and/or execution system at the time of order receipt, provided, however, such identifier must be masked; or (3) a unique and persistent entity identifier when an employee of an Industry Member is exercising discretion over multiple client accounts and creates an aggregated order for which a trading account number of the Industry Member is not available at the time of order origination, where each such identifier is unique among all identifiers from any given Industry Member [for each business date].

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