

March 17, 2021

**VIA EMAIL (tradingandmarkets@sec.gov)**

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

Re: Request for Exemption from Certain Provisions of the National Market System Plan Governing the Consolidated Audit Trail Related to Resubmission of Corrected Data

Dear Ms. Countryman:

The Participants<sup>1</sup> in the National Market System Plan Governing the Consolidated Audit Trail (“CAT NMS Plan” or “Plan”)<sup>2</sup> respectfully request that the Securities and Exchange Commission (“Commission” or “SEC”) provide exemptive relief pursuant to the Commission’s authority under Section 36 of the Securities Exchange Act of 1934 (“Exchange Act”)<sup>3</sup> and Rule 608(e) of Regulation NMS under the Exchange Act<sup>4</sup> from certain requirements in the CAT NMS Plan related to the resubmission of corrected data as set forth in Section 6.1 of Appendix D of the CAT NMS Plan. This request amends and replaces in its entirety the request previously submitted by the Participants on December 4, 2020 regarding the same issue.<sup>5</sup>

Specifically, the Participants request that the Commission exempt CAT Reporters from the requirement to resubmit corrected data to CAT by T+3<sup>6</sup> at 8 am ET, and instead, CAT Reporters would be required to resubmit such corrected data to CAT by T+4 at 8 am ET, as discussed further herein. The Participants believe that the requested relief is “necessary or appropriate in the public interest, and is consistent with the protection of investors,” and is

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<sup>1</sup> The twenty-five Participants of the CAT NMS Plan are: BOX Exchange LLC; Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe C2 Exchange, Inc. and Cboe Exchange, Inc.; Financial Industry Regulatory Authority, Inc.; Investors Exchange LLC; Long-Term Stock Exchange, Inc.; MEMX LLC; Miami International Securities Exchange LLC, MIAX Emerald, LLC, MIAX PEARL, LLC; NASDAQ BX, Inc., Nasdaq GEMX, LLC, Nasdaq ISE, LLC, Nasdaq MRX, LLC, NASDAQ PHLX LLC, The NASDAQ Stock Market LLC; and New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc.

<sup>2</sup> The Limited Liability Company Agreement of Consolidated Audit Trail, LLC is the CAT NMS Plan. Unless otherwise noted, capitalized terms are used as defined in Rule 613, in the CAT NMS Plan, or in this letter.

<sup>3</sup> See 15 U.S.C. § 78mm(a)(1), which provides, in relevant part, that the “Commission, by rule, regulation, or order, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of this title or of any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.”

<sup>4</sup> 17 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.”

<sup>5</sup> See Letter from Michael Simon, Chair, CAT NMS Plan Operating Committee, to Vanessa Countryman, Secretary, SEC (Dec. 4, 2020).

<sup>6</sup> “T” is the transaction date and “T+3” is the transaction date plus three days.

“consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets and the removal of impediments to, and perfection of the mechanisms of, a national market system.”<sup>7</sup> In connection with the requested exemptions, the Participants plan to file amendments to their Compliance Rules consistent with the exemptive relief requested in this letter, as necessary.<sup>8</sup>

## I. Background

The CAT NMS Plan sets forth certain timeframes for data processing and availability, including timeframes for CAT Reporters to resubmit corrected data to the CAT. Specifically, Section 6.1 of Appendix D of the CAT NMS Plan provides the following timeframes:

- T+1 at 8 am ET: CAT Reporters must provide initial data submissions to the CAT
- T+1 at noon ET: initial data validation, lifecycle linkages and communication of errors to CAT Reporters by the Plan Processor
- T+3 at 8 am ET: resubmission of corrected data by CAT Reporters
- T+5 at 8 am ET: corrected data available to Participant regulatory staff and the SEC

The timeframes applicable to CAT Reporters are also included in the CAT Reporting Technical Specifications for Industry Members<sup>9</sup> and the Participants’ Compliance Rules.<sup>10</sup> As previously described, this request for relief focuses on the requirement related to CAT Reporters resubmitting corrected data by T+3 at 8 am ET.<sup>11</sup>

## II. Request for Exemption

The Participants received extensive feedback from the Advisory Committee and industry generally, including via industry trade associations, regarding the requirement that CAT Reporters resubmit corrected data to CAT by T+3 at 8 am ET.<sup>12</sup> This feedback relates to various operational issues faced by Industry Members that make it difficult or impracticable for them to consistently meet the deadline for the resubmission of corrected data to CAT. Based on the feedback received, because these difficulties are operational in nature, they will persist

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<sup>7</sup> 17 CFR § 242.608(e).

<sup>8</sup> 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].”

<sup>9</sup> See CAT Reporting Technical Specifications for Industry Members Version 2.2.1 r8, Section 6.4 (Nov. 6, 2020) (discussing “CAT Reporting Hours”), available at [https://catnmsplan.com/sites/default/files/2020-11/11.06.20\\_CAT\\_Reporting\\_Technical\\_Specifications\\_for\\_Industry\\_Members\\_v2.2.1r8\\_CLEAN.pdf](https://catnmsplan.com/sites/default/files/2020-11/11.06.20_CAT_Reporting_Technical_Specifications_for_Industry_Members_v2.2.1r8_CLEAN.pdf).

<sup>10</sup> See, e.g., FINRA Rule 6830(b), (e) (regarding “Timing of Recording and Reporting” and “Error Correction”).

<sup>11</sup> On December 16, 2020, the Commission issued an order of temporary conditional exemptive relief from certain requirements in the CAT NMS Plan regarding, among others, the requirement to complete lifecycle linkages by T+1 at noon ET as set forth in Section 6.1 of Appendix D. See Exchange Act Release No. 90688 (Dec. 16, 2020), 85 Fed. Reg. 83634 (Dec. 22, 2020). The relief requested in this letter relates to a different aspect of Section 6.1 of Appendix D and, if granted, would not conflict with the exemption described in the Commission’s December 16, 2020 order, nor would it impact other aspects of the timeframes set forth in Section 6.1 of Appendix D.

<sup>12</sup> See SIFMA and CAT Advisory Committee, Industry Request for Error Correction Deadline Changes (Nov. 20, 2020); SIFMA and CAT Advisory Committee, Industry Request for Error Correction Deadline Changes Part 2 (Dec. 4, 2020).

indefinitely and cannot be cured by implementing technical or similar changes, or via temporary exemptive relief.

For instance, Industry Members indicated that the CAT NMS Plan's current 44 hour window from T+1 at noon ET to T+3 at 8 am ET is too short to analyze reporting errors, make corrections and resubmit the corrections. Industry Members explained that during this period they must receive error feedback files from the Plan Processor,<sup>13</sup> load the files into their workflow tools, complete an initial analysis and prioritization of errors, contact counterparties (discussed further below), make corrections, stage the correction submission and load the correction file. Because these processes may take over 44 hours to complete, Industry Members typically have, at best, only one opportunity to resubmit corrected data and may not have time in the current correction and resubmission timeframe to resubmit a second set of corrected data, if necessary. Industry Members also conduct these tasks in parallel with other tasks, so on each trading day they run multiple processes regarding the initial submission of data, analysis and correction of errors, and resubmission of corrected data, further compounding operational difficulties.

Industry Members also indicated that correcting interfirm linkage errors is particularly challenging. When these errors occur, Industry Members must identify and contact the counterparty to a trade to determine which Industry Member caused the error and which Industry Member needs to correct the error before corrected data can be resubmitted to the CAT. In these instances, difficulties increase with the number of counterparties involved, not just the overall number of errors. Industry Members are typically unable to complete the steps described above and to resubmit corrected data until after T+3 at 8 am ET, but are able to complete them before T+4 at 8 am ET.

In light of the feedback provided by, and discussions with, members of the Advisory Committee and industry generally, the Participants believe that it is appropriate to provide CAT Reporters with additional time to resubmit corrected data. Accordingly, the Participants request relief from compliance with the requirement set forth in Section 6.1 of Appendix D of the CAT NMS Plan applicable to CAT Reporters resubmitting corrected data to CAT by T+3 at 8 am ET. Instead, CAT Reporters would resubmit corrected data to CAT by T+4 at 8 am ET. The Participants believe that a deadline of T+4 at 8 am ET would provide CAT Reporters with sufficient time to correct identified errors, including coordinating with counterparties, as necessary, and resubmit corrected data to CAT by that deadline. The Participants believe that the requested exemption would ultimately result in more accurate and complete data being reported to the CAT, while supporting and maintaining data integrity. Corrected data will continue to be provided to Participant regulatory staff and the SEC in accordance with the CAT NMS Plan, so the Participants are not seeking exemptive relief from the requirement to make

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<sup>13</sup> Note that the Participants are separately requesting exemptive relief from the requirement in Section 6.1 of Appendix D to communicate errors to CAT Reporters by T+1 at noon ET; instead, the Plan Processor would communicate errors to CAT Reporters by T+1 at 4 pm ET. The Participants understand that, even if Industry Members receive error feedback files by T+1 at noon ET, Industry Members would still require additional time to process, correct and resubmit corrected data. Thus, the relief requested in this letter would be necessary regardless of whether the separately requested exemptive relief from the requirement to communicate errors to CAT Reporters by T+1 at noon ET is granted.

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available to Participant regulatory staff and the SEC final corrected data by T+5 at 8 am ET.<sup>14</sup> The Participants understand that to the extent that they avail themselves of exemptive relief from a CAT NMS Plan requirement, any exempted requirement shall not be included in the requirements for a particular Financial Accountability Milestone provided that the conditions of the exemption are satisfied.<sup>15</sup>

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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. Allison Herren Lee, Acting Chair  
The Hon. Hester M. Peirce, Commissioner  
The Hon. Elad L. Roisman, Commissioner  
The Hon. Caroline A. Crenshaw, Commissioner  
Hugh Beck, Senior Advisor for Regulatory Reporting to the Acting Chair  
Christian Sabella, Acting Director, Division of Trading and Markets  
David S. Shillman, Associate Director, Division of Trading and Markets  
David Hsu, Assistant Director, Division of Trading and Markets  
Mark Donohue, Senior Policy Advisor, Division of Trading and Markets  
Erika Berg, Special Counsel, Division of Trading and Markets  
CAT NMS Plan Participants

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<sup>14</sup> Pursuant to Section 6.1 of Appendix D of the CAT NMS Plan, the Plan Processor must make corrected data available to Participant regulatory staff and the SEC by T+5 at 8 am ET. Currently, the Plan Processor, though not required to do so by the Plan, performs initial validations on corrected data received by T+3 at 8 am ET and makes this corrected data available to regulators by T+3 at noon ET, with final corrected data and linkages made available to regulators by T+5 at 8 am ET. If the requested exemption is granted, then this corrected data would be made available to regulators on T+4 (versus T+3). However, regulators will continue to be able to view processed, validated data by T+1 at noon ET. As noted, the Participants are not seeking exemptive relief from the requirement to make available to Participant regulatory staff and the SEC final corrected data by T+5 at 8 am ET, as required by the CAT NMS Plan.

<sup>15</sup> See Exchange Act Release No. 88890 (May 5, 2020), 85 Fed. Reg 31322, 31335 (May 22, 2020) (“[T]he Commission has the authority to grant exemptive relief from any requirement associated with a particular Financial Accountability Milestone. The Commission believes that this ability, in particular, should alleviate the Participants’ concerns regarding the potential impact of unforeseeable or reasonable delays.”).