

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 the Communication of Errors to CAT Reporters

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 certain requirements in the CAT NMS Plan related to the communication of errors to CAT Reporters as set forth in Section 6.1 of Appendix D of the Plan. This request amends and replaces in its entirety the request previously submitted by the Participants on December 4, 2020 regarding the same issue.⁵

¹ The twenty-five Participants of the CAT NMS Plan are: BOX Exchange LLC; Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe C2 Exchange, Inc. 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.

² The Limited Liability Company Agreement of Consolidated Audit Trail, LLC (“CATLLC”) 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 (Dec. 4, 2020).

Specifically, the Participants request that the Commission grant an exemption from the requirement to communicate errors to CAT Reporters by T+1⁶ at noon ET,⁷ and instead, the Plan Processor would be required to communicate errors to CAT Reporters by T+1 at 4 pm ET. 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 “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.”⁸

I. Background

The CAT NMS Plan sets forth certain timeframes for data processing and availability, including the requirement for the Plan Processor to complete initial data validation, lifecycle linkages and communication of errors to CAT Reporters by T+1 at noon ET. 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 Processor⁹
- 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

As previously described, this request for relief focuses on the requirement related to the Plan Processor communicating errors to CAT Reporters by T+1 at noon ET.¹⁰ This request relates to errors communicated to CAT Reporters via both machine-to-machine interfaces and the Industry Member CAT Reporter Portal.

⁶ “T” is the transaction date and “T+1” is the transaction date plus one day.

⁷ Separately, the Participants are requesting temporary exemptive relief for a narrow four day period, April 26, 2021 through April 29, 2021, to address Industry Members’ concerns related to the initial implementation of equities Phase 2c reporting. If granted, such relief would permit the Plan Processor to communicate errors to CAT Reporters by T+1 at 4 pm ET to give the Plan Processor additional time to convert errors received from Industry Members in the Phase 2a reporting format to the Phase 2c reporting format before it makes error feedback files available to the Industry Members; this would facilitate Industry Members’ resubmission of corrected data in the Phase 2c reporting format. This letter requests broader exemptive relief from the T+1 at noon ET deadline to communicate errors to CAT Reporters in order to address various delays described further herein.

⁸ 17 CFR § 242.608(e).

⁹ With respect to data availability, Section 6.2 of Appendix D of the CAT NMS Plan requires: (1) raw unprocessed data that has been ingested by the Plan Processor must be available to Participant regulatory staff and the SEC prior to 12 pm ET on T+1; and (2) access to all iterations of processed data must be available to Participant regulatory staff and the SEC between 12 pm ET on T+1 and T+5. The Participants do not anticipate that the relief requested in this letter, if granted, would impact these requirements.

¹⁰ 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.

II. Request for Exemption

As CAT reporting has been phased in with additional reporting requirements and complexities, the ability of the Plan Processor to communicate errors to CAT Reporters by T+1 at noon ET has, at times, been delayed. The processing delays are caused by various issues (collectively, the “Linker Delays”). For instance, there are inherent complexities processing extremely large volumes of data that far exceed the volume estimates contemplated when the applicable Plan requirements were adopted. Specifically, the CAT NMS Plan requires that “the Central Repository must be sized to receive process and load more than 58 billion records per day,”¹¹ but recent volumes far exceed this estimate. On average, the CAT received approximately 288 billion records per trading day from January 1 through March 7, 2021, including a peak single day volume of approximately 440 billion records during this period.

Other issues beyond the Plan Processor’s control also have caused processing delays, such as a large number of data files received from CAT Reporters near or at the T+1 at 8 am ET deadline for initial data submissions, unanticipated data conditions that impact data linkage processes, and unforeseen vendor congestions and delays. The Plan Processor continues to analyze the Linker Delays and explore potential short and long term solutions. The Plan Processor provides the Participants and the SEC staff with periodic updates on such analysis and potential solutions in the Technology Working Group, SEC staff status updates and Operating Committee meetings.

In light of the factors discussed above, the Participants request exemptive relief from compliance with the requirement in Section 6.1 of Appendix D of the CAT NMS Plan for the Plan Processor to communicate errors to CAT Reporters by T+1 at noon ET. Instead, the Plan Processor would be required to communicate errors to CAT Reporters by T+1 at 4 pm ET.¹² The Participants are not seeking exemptive relief from the requirements to make available to Participant regulatory staff and the SEC validated data by T+1 at noon ET or final corrected data by T+5 at 8 am ET, as required by the CAT NMS Plan.¹³

Based on extensive discussions with the Plan Processor and analysis of the time at which errors are typically communicated to CAT Reporters, the Participants believe that extending the current T+1 at noon ET deadline for four hours, to T+1 at 4 pm ET, would provide the Plan Processor with sufficient time to communicate errors to CAT Reporters within that timeframe. This extended timeframe would allow the Plan Processor to address issues that have delayed its ability to meet the current T+1 at noon ET deadline for communicating errors while still meeting

¹¹ CAT NMS Plan, Appendix D, Section 1.3 at D-4, n.262.

¹² As noted above, the Participants believe that extending the current T+1 at noon ET deadline to T+1 at 4 pm ET would provide the Plan Processor with sufficient time to communicate errors to CAT Reporters. However, rare and isolated instances in which the Plan Processor may communicate errors to CAT Reporters after T+1 at 4 pm ET (e.g., due to unanticipated data conditions that impact data linkage processes and unforeseen vendor congestions and delays) would not violate the terms of the requested relief.

¹³ In rare situations where issues arise that are not reasonably foreseeable, there may be a delay to making available to Participant regulatory staff and the SEC validated data by T+1 at noon ET or final corrected data by T+5 at 8 am ET. In addition, from time-to-time, the Plan Processor may exceed the requirements of the CAT NMS Plan by providing regulators with access to CAT Data earlier than required under the Plan. While the requested relief could alter the time at which the Plan Processor makes such information available to regulators, with the exception of the rare instances noted above, the Plan Processor will make such data available to regulators in accordance with the timeline set forth in the CAT NMS Plan.

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the requirement of the CAT NMS Plan to make corrected data available to Participant regulatory staff and the SEC by T+5 at 8 am ET, as previously discussed. Additionally, this extended timeframe would provide consistency and certainty to Industry Members, Participants and the Plan Processor, regarding the communication of errors to CAT Reporters. Specifically, Industry Members and Participants will know with certainty the time by which they will receive error feedback files from the Plan Processor. 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.¹⁴

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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

¹⁴ 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.”).