

September 13, 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 Industry Member CAT Reporting Requirements

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 related to Industry Members reporting addresses to the CAT subject to the condition that Industry Members must report account mailing address to the CAT and can optionally report Customer address, if it is available and different than the account mailing address, as described 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 “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 In connection with the requested exemption, the Participants plan to file amendments to their Compliance Rules consistent with the exemptive relief requested in this letter, as necessary.⁶

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 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 17 CFR § 242.608(e).

⁶ Section 3.11 of the CAT NMS Plan requires Participants to “endeavor to promulgate consistent rules . . .

I. Background

The CAT NMS Plan requires the Participants, unless otherwise ordered by the Commission, 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, 2019.⁷ On February 19, 2020, the Participants requested that the Commission provide exemptive relief to allow for the implementation of phased reporting for the CAT.⁸ On April 20, 2020, the Commission granted conditional exemptive relief that permitted the requested implementation of reporting for the CAT across five phases, Phases 2a through 2e, as described further in the Commission’s order and the Industry Member Technical Specifications.⁹

Pursuant to the Phased Reporting Exemption, Industry Members must begin reporting Phase 2e Industry Member Data to the CAT 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.”¹⁰ As of July 11, 2022, all CAT Data will be reported to the CAT, including transaction data, Customer Account Information and Customer Identifying Information, subject to any exemptions or other changes to the CAT requirements.

The reporting of Customer information also is addressed in the CAT NMS Plan. Specifically, Section 6.4(d)(ii)(C) of the Plan requires that for the original receipt or origination of an order, Industry Members must report “in accordance with Section 6.4(d)(iv), . . . Customer Identifying Information for the relevant Customer.” “Customer Identifying Information” includes, among other things, “with respect to individuals: . . . address.”¹¹ Appendix D also discusses, but does not clearly require, the reporting of addresses at both the Customer and account levels to the CAT. Section 9.1 of Appendix D states that certain minimum attributes “must be captured” in the CAT so that the Plan Processor can “maintain information of sufficient detail to uniquely and consistently identify each Customer across all CAT Reporters, and associated accounts from each CAT Reporter.”¹² The minimum attributes that must be captured include, in relevant part, current address and previous address.¹³ Additionally, Section 9.2 of Appendix D requires that, in relevant part, “[a]t a minimum, the following Customer information data attributes must be accepted by the Central Repository . . . Account Owner Mailing Address.”¹⁴ These provisions of Appendix D support that the CAT must be capable of capturing and accepting addresses at both the Customer and account level, but they do not clearly require that Industry Members must report both Customer and account level addresses to the CAT.

requiring compliance by their respective Industry Members with the provisions of SEC Rule 613 and [the Plan].”

⁷ CAT NMS Plan, Sections 6.7(a)(v) and (vi).

⁸ Letter from Michael Simon, Chair, CAT NMS Plan Operating Committee, to Vanessa Countryman, Secretary, SEC (Feb. 19, 2020).

⁹ See Exchange Act Release No. 88702 (Apr. 20, 2020), 85 Fed. Reg. 23075 (Apr. 24, 2020) (the “Phased Reporting Exemption”).

¹⁰ *Id.* at 23080.

¹¹ CAT NMS Plan, Section 1.1.

¹² CAT NMS Plan, Appendix D, Section 9.1.

¹³ *Id.*

¹⁴ CAT NMS Plan, Appendix D, Section 9.2.

II. Request for Exemption

Industry Members have indicated that they generally do not retain an address for each Customer on an account. Instead, Industry Members typically retain customer records, including address, at the account level that is then applied to all Customers associated with the account. Industry Members have also expressed their view that they are not currently required to separately obtain and retain addresses at both the Customer level and account level under existing recordkeeping rules, and that doing so would be both impracticable and require significant changes to current market practices and operations.

The CAT System and the Industry Member Technical Specifications provide that Industry Members must report account mailing address to the CAT and can optionally report Customer address, if it is available and different than the account mailing address, once Phase 2e reporting commences. If an Industry Member reports only an address at the account level, then the address will be linked by the CAT System to all Customers associated with the account.

Because Industry Members generally do not have address information at the Customer level, the Participants request exemptive relief from the requirement in Section 6.4(d)(ii)(C) of the Plan and the Phased Reporting Exemption for Industry Members to report Customer addresses at the Customer level to the CAT beginning in Phase 2e. As a condition to this relief, the Participants would require Industry Members to report account mailing address to the CAT and to optionally report Customer address, if it is available and different than the account mailing address. This would be detailed in the Industry Member Technical Specifications. To the extent that an Industry Member reports only addresses at the account level, the CAT System will link those addresses to all Customers associated with an account, as previously described.

The condition to the proposed relief also would satisfy the system performance requirements described in Appendix D of the Plan to “capture” and “accept” addresses at both the Customer and account levels. The CAT System will have the capability to capture and accept addresses at both the Customer and account levels to accommodate Industry Members reporting addresses at both the Customer and account levels.

Moreover, the Participants do not believe that this approach will impact the use of the CAT for regulatory and surveillance purposes. In particular, the CAT System will be able to associate all addresses reported for an FDID (up to four account addresses and four Customer addresses) to allow regulators to find related activity that might otherwise be missed if addresses are too narrowly limited to only accounts or a single Customer.

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.¹⁵

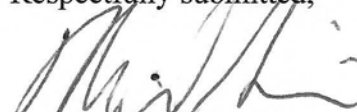
¹⁵ See Exchange Act Release No. 88890 (May 5, 2020), 85 Fed. Reg 31322, 31335 (May 22, 2020) (“[T]he Commission has the authority to grant exemptive relief from any requirement associated with a particular Financial Accountability Milestone. The Commission believes that this ability, in particular, should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

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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. Gary Gensler, Chair
The Hon. Hester M. Peirce, Commissioner
The Hon. Elad L. Roisman, Commissioner
The Hon. Allison Herren Lee, Commissioner
The Hon. Caroline A. Crenshaw, Commissioner
Hugh Beck, Senior Advisor for Regulatory Reporting
David Saltiel, 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
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