

November 23, 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 temporary 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 requirement to create a unique CAT Customer-ID (“CCID”) for certain non-U.S. Customers who do not have a social security number (“SSN”), individual taxpayer identification number (“ITIN”) or employer identification number (“EIN”), and for which the Plan Processor instead uses a combination of values, including a country code and Foreign Identifier (*e.g.*, Legal Entity Identifier (LEI), the EU Member State National Client Identifier (NCI) in accordance with MIFID II, Country of Domicile and Passport Number, National Identity Card, Permanent Resident Card Number and the value for the identifier) to create the CCID (collectively, “Foreign Customers”). Because Industry Members are not subject to consistent requirements for identifying information for Foreign Customers, the Plan Processor currently cannot guarantee the creation of a *unique* CDID for every Foreign Customer. Accordingly, this relief is requested because, under certain scenarios, the process for creating

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.”

CCIDs for Foreign Customers may result in the creation of *more than one* CCID for a Foreign Customer. This request for exemptive relief amends and replaces in its entirety the request previously submitted to the Commission on October 27, 2021.⁵

The Participants request exemptive relief from July 11, 2022, the date on which the Plan Processor will be required to begin using Customer information to create unique CCIDs, until July 31, 2023. During this time, the Plan Processor will continue to create CCIDs for Foreign Customers as described further herein. In addition, the Plan Processor will conduct a study to assess the number of instances in which multiple CCIDs may be associated with Foreign Customers. The study cannot begin until after July 11, 2022, when Industry Members will begin reporting Phase 2e Customer data to the CAT, 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.”⁶ 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.⁷

I. Background

A. Unique CAT Customer-IDs

The CAT NMS Plan requires Industry Members to submit certain Customer information to the Central Repository. The Plan Processor then correlates such Customer information across all Industry Members, uses it to assign a CCID for each Customer, and uses the CCID to link all Reportable Events associated with an order for a Customer.⁸ The CAT NMS Plan requires that CCIDs be unique for each Customer. Section 1.1 of the CAT NMS Plan defines a “Customer-ID” as having the “same meaning provided in SEC Rule 613(j)(5).” SEC Rule 613(j)(5), in turn, defines a “Customer-ID” as “with respect to a customer, a code that uniquely and consistently identifies such customer for purposes of providing data to the central repository.”⁹

Appendices C and D of the Plan further address the requirement to have a unique CCID for each Customer. Section 9.1 of Appendix D states that “[t]he Plan Processor will use the Customer information submitted by all broker-dealer CAT Reporters to assign a unique Customer-ID for each Customer.” Additionally, Section 9.3 of Appendix D states that “[t]he Plan Processor will determine a unique Customer using information such as SSN and DOB for natural persons or entity identifiers for Customers that are not natural persons and will resolve discrepancies. Once a CAT-Customer-ID is assigned, it will be added to each linked (or unlinked) order record for that Customer.” Section 9.3 of Appendix D further states that

⁵ See Letter from Michael Simon, Chair, CAT NMS Plan Operating Committee to Vanessa Countryman, Secretary, SEC (Oct. 27, 2021).

⁶ 17 CFR § 242.608(e).

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 See Section 6.4(d)(iv) of the CAT NMS Plan.

⁹ Sections 8.1.1 and 8.2 of the Appendix D of the CAT NMS Plan also refer to the Customer-ID as “unique.”

“Participants and the SEC must be able to use the unique CAT-Customer-ID to track orders from any Customer or group of Customers, regardless of what brokerage account was used to enter the order.”

B. Timing of Creation of CAT Customer-IDs

The CAT NMS Plan also 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, 2019.¹⁰ On February 19, 2020, the Participants requested that the Commission provide exemptive relief to allow for the implementation of phased reporting for the CAT.¹¹ 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.¹²

Pursuant to the Phased Reporting Exemption, Phase 2e Industry Member Data must be reported to the Central Repository in Phase 2e 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.” 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. At that time, the Plan Processor will use the Customer information to create the CCIDs.

C. Current Process for Creation of CAT Customer-IDs

In general, the Plan Processor creates unique CCIDs for Customers using the unique SSN, ITIN or EIN for the Customer. For Foreign Customers who do not have SSNs, ITINs or EINs, the Plan Processor uses a combination of values, including a country code and Foreign Identifier (*e.g.*, Legal Entity Identifier (LEI), the EU Member State National Client Identifier (NCI) in accordance with MIFID II, Country of Domicile and Passport Number, National Identity Card, Permanent Resident Card Number and the value for the identifier) to create the CCID.¹³ In general, the combination of these inputs will create a unique CCID for Foreign Customers. However, in some cases, this process may create more than one CCID for a Foreign Customer. For example, if the same Foreign Customer provides two valid but different forms of identification from which the CCID is created (*e.g.*, different passports from different countries) to different Industry Members, two different CCIDs will be created by the Plan Processor for the

¹⁰ CAT NMS Plan, Sections 6.7(a)(v) and (vi).

¹¹ Letter from Michael Simon, Chair, CAT NMS Plan Operating Committee, to Vanessa Countryman, Secretary, SEC (Feb. 19, 2020).

¹² See Exchange Act Release No. 88702 (Apr. 20, 2020), 85 Fed. Reg. 23075 (Apr. 24, 2020) (the “Phased Reporting Exemption”).

¹³ Industry Members have indicated that under current know your customer and other obligations, Industry Members are subject to a consistent approach for identifying US Customers. However, Industry Members are not subject to similar consistent requirements for identifying information for Foreign Customers. Accordingly, Industry Members may select different foreign identifiers for their Foreign Customers.

same Foreign Customer. In an effort to limit this potential result, the CAT CAIS CCID Technical Specifications require Industry Members to follow a specified hierarchy of identifiers if more than one identifier type is available for a Foreign Customer.¹⁴

II. Request for Exemption

The Participants request that the Commission exempt the Participants from the requirement set forth in Sections 9.1 and 9.3 of the CAT NMS Plan to create a unique CCID for each Foreign Customer in those instances in which the above-described process for creating CCIDs for Foreign Customers creates more than one CCID for a Foreign Customer until July 31, 2023 to allow the Plan Processor to conduct the study described below and implement any related technical changes to the CAT System. As a condition to this exemptive relief, the Plan Processor will continue to create CCIDs for Foreign Customers pursuant to the process described above.

In addition, the Plan Processor plans to conduct a study, as described further below.¹⁵ By August 15, 2022, approximately one month after Industry Members will begin reporting Phase 2e Industry Member Data to the CAT, the Plan Processor will commence conducting a study to assess the number of instances in which multiple CCIDs may be associated with Foreign Customers. The study will conclude by September 15, 2022, and the Plan Processor will provide a report to the Operating Committee by October 15, 2022 describing the results of the study. The report will be provided to the Commission staff. Depending upon the prevalence of multiple CCIDs found in the study, the report also will discuss, to the extent practicable, potential alternatives for the Plan Processor to attempt to create a single unique CCID based on information available in the CAT. Such a study can only occur after Phase 2e reporting commences and the CAT has collected a sufficient sample set of Phase 2e Industry Member Data.

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.¹⁶

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¹⁴ See CAT Reporting Customer and Account Technical Specifications for Industry Members-CCID v2.0 r5, § 2.2.5 (Oct. 8, 2021) (“The following hierarchy must be followed if more than one identifier type is available for a foreign CAT Customer: 1. National Registration or Tax Identifier – usable for Natural Person and Legal Entity CAT Customers; 2. LEI – usable only for Legal Entity CAT Customers; 3. Country of Domicile and Passport Number – usable only for Natural Person CAT Customers; 4. Permanent Resident Identifier – usable only for Natural Person CAT Customers.”).

¹⁵ While the following description includes a proposed timeframe, the exact dates may be subject to change given competing project and implementation milestones.

¹⁶ 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.”).

Ms. Vanessa Countryman
November 23, 2021
Page 5

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
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