

SECURITIES AND EXCHANGE COMMISSION  
[Release No. 34-102234]

January 17, 2025

Order Granting Temporary Conditional Exemptive Relief, pursuant to Section 36(a)(1) of the Securities Exchange Act of 1934 and Rule 608(e) of Regulation NMS thereunder, from Certain Requirements of Appendix D, Section 3 of the National Market System Plan Governing the Consolidated Audit Trail

## I. Introduction

On December 9, 2024,<sup>1</sup> Financial Information Forum (“FIF”) requested that the Securities and Exchange Commission (“Commission” or “SEC”) extend temporary conditional exemptive relief, pursuant to its authority under section 36(a)(1) of the Securities Exchange Act of 1934 (“Exchange Act”)<sup>2</sup> and Rule 608(e) of Regulation NMS under the Exchange Act,<sup>3</sup> related to the requirement set forth in Appendix D, section 3 of the national market system plan governing the consolidated audit trail (“CAT NMS Plan”)<sup>4</sup> that the consolidated audit trail (“CAT”) “must be able to create the lifecycle between . . . [c]ustomer orders to ‘representative’ orders created in firm accounts for the purpose of facilitating a customer order (e.g., linking a

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<sup>1</sup> See Letter from Howard Meyerson, Managing Director, Financial Information Forum, to Commission, dated Dec. 9, 2024, available at <https://fif.com/index.php/working-groups/category/271-comment-letters?download=3057:fif-request-to-the-commission-for-a-six-month-extension-of-the-current-exemption-relating-to-cat-representative-order-linkage&view=category> (“Request”).

<sup>2</sup> 15 U.S.C. 78mm(a)(1).

<sup>3</sup> 17 CFR 242.608(e).

<sup>4</sup> See Securities Exchange Act Release No. 79318 (Nov. 15, 2016), 81 FR 84696 (Nov. 23, 2016) (“CAT NMS Plan Approval Order”). The CAT NMS Plan is Exhibit A to the CAT NMS Plan Approval Order. See *id.* at 84943–85034. The CAT NMS Plan functions as the limited liability company agreement of the jointly owned limited liability company formed under Delaware State law through which the Participants conduct the activities of the CAT (the “Company”). Each Participant is a member of the Company and jointly owns the Company on an equal basis. The Participants submitted to the Commission a proposed amendment to the CAT NMS Plan on Aug. 29, 2019, which they designated as effective on filing. Under the amendment, the limited liability company agreement of a new limited liability company named Consolidated Audit Trail, LLC serves as the CAT NMS Plan, replacing in its entirety the CAT NMS Plan. See Securities Exchange Act Release No. 87149 (Sept. 27, 2019), 84 FR 52905 (Oct. 3, 2019).

customer order handled on a riskless principal basis to the street-side proprietary order).”<sup>5</sup> For the reasons set forth below, the Commission has determined to grant FIF’s request for a six-month extension of the temporary conditional exemptive relief previously provided by the Commission with respect to the above-described requirement set forth in Appendix D, section 3 of the CAT NMS Plan for representative order scenarios in which Industry Members do not have a systematic or direct link between their order management systems and execution management systems.

## **II. Discussion of the Request for Relief**

On July 18, 2012, the Commission adopted Rule 613 of Regulation NMS, which required national securities exchanges and national securities associations (“Participants”)<sup>6</sup> to jointly develop and submit to the Commission a national market system plan to create, implement, and maintain the CAT.<sup>7</sup> The goal of Rule 613 was to create a modernized audit trail system that would provide regulators with timely access to a comprehensive set of trading data, thus enabling regulators to more efficiently and effectively analyze and reconstruct market events, monitor market behavior, conduct market analysis to support regulatory decisions, and perform

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<sup>5</sup> See *id.* at Appendix D, section 3. A representative order is an order originated in a firm-owned or -controlled account, including principal, agency average price and omnibus accounts, by an industry member for the purpose of working one or more customer or client orders. See, e.g., Securities Exchange Act Release No. 88702 (Apr. 20, 2020), 85 FR 23075, 23076 n.26 (Apr. 24, 2020). FIF states in the Request that “the term ‘representative order’ is a concept created by CAT (it is not a concept that exists in actual trading), and that all of the linkage requirements covered in [the] July 2024 FIF exemption request involve linkage either from or to a representative order.” See Request, *supra* note 1.

<sup>6</sup> The Participants include BOX Exchange LLC, Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., 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, MIAX Sapphire, LLC, Nasdaq BX, Inc., Nasdaq GEMX, LLC, Nasdaq ISE, LLC, Nasdaq MRX, LLC, Nasdaq PHLX LLC, The Nasdaq Stock Market LLC, New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc.

<sup>7</sup> See Securities Exchange Act Release No. 67457 (July 18, 2012), 77 FR 45722 (Aug. 1, 2012); 17 CFR 242.613.

surveillance, investigation, and enforcement activities. On November 15, 2016, the Commission approved the national market system plan required by Rule 613 – the CAT NMS Plan.<sup>8</sup>

On December 16, 2020, the Commission issued an exemptive relief order regarding the implementation of the CAT NMS Plan (“First Order”).<sup>9</sup> This order granted temporary conditional exemptive relief from several requirements set forth in the CAT NMS Plan, including the requirement set forth in Appendix D, section 3 of the CAT NMS Plan that the CAT “must be able to create the lifecycle between . . . [c]ustomer orders to ‘representative’ orders created in firm accounts for the purpose of facilitating a customer order (e.g., linking a customer order handled on a riskless principal basis to the street-side proprietary order).”<sup>10</sup> This relief was initially granted until July 31, 2023.<sup>11</sup>

On July 8, 2022, the Commission issued a new exemptive relief order (“Second Order”),<sup>12</sup> which superseded the First Order and modified and/or clarified certain aspects of the First Order. The Second Order granted temporary conditional exemptive relief until July 31, 2024, from the above-described linkage requirement set forth in Appendix D, section 3, “for representative order scenarios in which Industry Members do not have a systematic or direct link between their order management systems and execution management systems.”<sup>13</sup> The Commission subsequently issued an order (“Third Order”), on May 19, 2023, further extending

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<sup>8</sup> See CAT NMS Plan Approval Order, supra note 4.

<sup>9</sup> See Securities Exchange Act Release No. 90688 (Dec. 16, 2020), 85 FR 83634 (Dec. 22, 2020).

<sup>10</sup> See id. at 83636. The Commission stated its understanding that “the Participants do not currently have the ability to create lifecycles in certain representative order scenarios, particularly because of the difficulty of linking representative orders for Industry Members with separate order management systems and execution management systems that do not currently have a systematic or direct link between them.” Id.

<sup>11</sup> Id.

<sup>12</sup> See Securities Exchange Act Release No. 95234 (July 8, 2022), 87 FR 42247 (July 14, 2022).

<sup>13</sup> Id. at 42255-56. The term “Industry Member” is defined as “a member of a national securities exchange or a member of a national securities association.” See CAT NMS Plan, supra note 4, at section 1.1.

such exemptive relief until January 31, 2025.<sup>14</sup> This relief was superseded by a new order issued by the Commission on November 2, 2023 (“Fourth Order”),<sup>15</sup> which was intended to mirror the temporary conditional exemptive relief granted by the Third Order (and the Second Order) with respect to the requirements set forth in Appendix D, section 3 of the CAT NMS Plan regarding lifecycle linkages between customer orders and representative orders for scenarios in which Industry Members do not have a systematic or direct link between their order management systems and execution management systems.<sup>16</sup> The Fourth Order did not extend the temporary conditional exemptive relief beyond the time period provided by the Third Order.<sup>17</sup>

FIF requests that the Commission extend the previously granted temporary conditional exemptive relief until July 31, 2025.<sup>18</sup>

FIF states that the Participants, at the direction of the Commission, will “remove from the CAT system the ability for industry members to report certain flags on Order Fulfillment events (specifically, the ‘YE’ and ‘YP’ flags) in lieu of reporting linkage to specific representative orders” after January 31, 2025.<sup>19</sup> FIF states that FIF and its members have demonstrated the “ongoing focus of industry members in complying with their CAT reporting obligations” and

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<sup>14</sup> See Securities Exchange Act Release No. 97530 (May 19, 2023), 88 FR 33655 (May 24, 2023).

<sup>15</sup> See Securities Exchange Act Release No. 98848 (Nov. 2, 2023), 88 FR 77128 (Nov. 8, 2023).

<sup>16</sup> Id. at 77132.

<sup>17</sup> Id.

<sup>18</sup> See Request, supra note 1, at 1.

<sup>19</sup> See Request, supra note 1, at 1-2 (citing CAT Reporting Technical Specifications for Industry Members, version 4.1.0 r4, dated Oct. 18, 2024, at 367-69, available at [https://catnmsplan.com/sites/default/files/2024-10/10.18.24\\_CAT\\_Reporting\\_Technical\\_Specifications\\_for\\_Industry\\_Members\\_v4.1.0r4\\_CLEAN.pdf](https://catnmsplan.com/sites/default/files/2024-10/10.18.24_CAT_Reporting_Technical_Specifications_for_Industry_Members_v4.1.0r4_CLEAN.pdf)). Contrary to the assertion made by FIF, the Commission has not directed the Participants to remove the “YE” or “YP” flags from the CAT Reporting Technical Specifications for Industry Members by any specific date. Furthermore, and also contrary to the assertion made by FIF in its request, the Commission understands that the “YE” and “YP” flags would continue to be available after Jan. 31, 2025, even in the absence of the temporary conditional exemptive relief granted by the Commission herein.

have devoted “significant resources . . . over many years towards such compliance.”<sup>20</sup>

Nevertheless, FIF suggests that it may be difficult or impossible for Industry Members to comply with the requirement to report linkages for certain scenarios, which it states will be required as of February 1, 2025.<sup>21</sup> “In some scenarios,” FIF states that “no representative order exists, and thus it is not possible for industry members to provide the linkage to specific representative orders that will be required as of February 1, 2025.”<sup>22</sup> In other scenarios, FIF states that “industry members do not maintain this linkage in their books and records.”<sup>23</sup> Finally, FIF states that there are scenarios in which “the CAT system does not provide a method to provide linkage to a specific order.”<sup>24</sup>

If Industry Members cannot use the “YE” and “YP” flags to report certain trading scenarios and/or must report the information necessary for FINRA CAT to create lifecycle linkages between customer orders and representative orders, FIF states that Industry Members “will be faced with the choice of either (i) submitting large numbers of Order Fulfillment events that the CAT system will reject and that will not be repairable, or (ii) abandoning certain common existing trading workflows.”<sup>25</sup> FIF further states its view of the potential harms that could flow from the expiration of the existing exemptive relief:

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<sup>20</sup> See Request, supra note 1, at 3.

<sup>21</sup> But see supra note 19.

<sup>22</sup> See Request, supra note 1, at 2.

<sup>23</sup> Id.

<sup>24</sup> Id. FIF states that these scenarios are more fully described in a previous request for exemptive relief submitted to the Commission. See id.; see also Letter from Howard Meyerson, Managing Director, FIF, to Commission, dated July 2, 2024, available at <https://fif.com/index.php/working-groups/category/271-comment-letters?download=2962:fif-exemptive-request-letter-to-the-sec-on-representative-order-linkage&start=10&view=category>.

<sup>25</sup> See Request, supra note 1, at 2. These outcomes could occur even if the “YE” and “YP” flags remain available after Jan. 31, 2025, because Industry Members would be required to report the information necessary for FINRA CAT to create lifecycle linkages between customer orders and representative orders

For example, it is a common workflow for industry members to trade as a principal against customer orders without the industry member creating a firm order. This workflow will no longer be possible if the flags referenced above are removed from CAT because a firm will not be able to report Order Fulfillments to CAT when the firm fulfills its ‘Manning’ obligation for this workflow. Conversely, if industry members submit large numbers of Order Fulfillments that the CAT system will reject, this will present a significant processing and workflow challenge for the CAT system, the regulators and industry members as large numbers of rejected and unsubmitted CAT events pile-up.<sup>26</sup>

FIF states that its members have further identified for Commission staff, the Participants, and FINRA CAT the “significant challenges with implementing certain CAT linkage requirements relating to representative orders and order fulfillments” in presentations<sup>27</sup> and previous exemptive relief requests that were submitted to the Commission in March 2024 and July 2024.<sup>28</sup> FIF therefore requests an extension of the current exemptive relief to identify long-term reporting solutions for the specific trading scenarios set forth in previous exemptive relief requests.<sup>29</sup>

Section 36(a)(1) of the Exchange Act grants the Commission the authority to “conditionally or unconditionally exempt any person, security, or transaction . . . from any provision or provisions of [the Exchange Act] 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>30</sup> Rule 608(e) of Regulation NMS similarly grants the Commission the authority to “exempt from [Rule 608], either unconditionally or on specified

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in the absence of the temporary conditional exemptive relief granted by the Commission in the past and herein. See supra note 19.

<sup>26</sup> See id. at 2-3.

<sup>27</sup> See Request, supra note 1, at 3 n.10-11 and associated text.

<sup>28</sup> See id. at 3-4 n.13-14 and associated text.

<sup>29</sup> Id. at 2, 4.

<sup>30</sup> 15 U.S.C. 78mm(a)(1).

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>31</sup>

The Commission agrees that additional time is needed to identify and evaluate appropriate long-term solutions for certain trading scenarios. In developing those solutions, the Commission emphasizes its willingness to consider alternative solutions that achieve the regulatory goals of Rule 613 and the CAT NMS Plan. The Commission therefore determines that the requested extension of the existing exemptive relief is appropriate in the public interest and consistent with the protection of investors under section 36(a)(1) of the Exchange Act, as well as consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets, and the perfection of the mechanisms of a national market system under Rule 608(e) of Regulation NMS.

Specifically, the Commission grants temporary conditional exemptive relief from the requirements set forth in Appendix D, section 3 of the CAT NMS Plan related to lifecycle linkages between customer orders and representative orders,<sup>32</sup> for representative order scenarios in which Industry Members do not have a systematic or direct link between their order management systems and execution management systems, until July 31, 2025. Such relief is intended to mirror the exemptive relief provided by the Second Order, the Third Order, and the Fourth Order.

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<sup>31</sup> 17 CFR 242.608(e).

<sup>32</sup> The requirements related to lifecycle linkages between customer orders and representative orders set forth in Appendix D, section 3 of the CAT NMS Plan are described in the Second Order. See Second Order, supra note 12, at 42255-56.

### **III. Conclusion**

Accordingly, IT IS HEREBY ORDERED, pursuant to Section 36(a)(1) of the Exchange Act<sup>33</sup> and Rule 608(e) under the Exchange Act,<sup>34</sup> that the above-described temporary conditional exemptive relief be granted.

By the Commission.

**Sherry R. Haywood,**

*Assistant Secretary.*

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<sup>33</sup> 15 U.S.C. 78mm(a)(1).

<sup>34</sup> 17 CFR 242.608(e).