



DIVISION OF
TRADING AND MARKETS

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

March 16, 2020

Michael Simon
CAT NMS Plan Operating Committee Chair
c/o Andre E. Owens, Partner
Wilmer Cutler Pickering Hale and Dorr LLP
1875 Pennsylvania Avenue, NW
Washington, DC 20006

Re: No Action Letter: Consolidated Audit Trail Reporting

Dear Mr. Simon:

The Division of Trading and Markets (the “Staff”) is aware that disruptions as a result of COVID-19 have placed new stresses and competing priorities on the infrastructure and staff required to implement the Consolidated Audit Trail (the “CAT”), as required by the National Market System Plan governing the Consolidated Audit Trail (“CAT NMS Plan”).¹

Background

¹ The CAT NMS Plan was published for comment in the Federal Register on May 17, 2016, and approved by the Commission, as modified, on November 15, 2016. See Securities Exchange Act Release Nos. 77724 (April 27, 2016), 81 FR 30614 (May 17, 2016); 79318 (November 15, 2016), 81 FR 84696 (November 23, 2016) (“CAT NMS Plan Approval Order”). The CAT NMS Plan is Exhibit A to the CAT NMS Plan Approval Order. See CAT NMS Plan Approval Order, at 84943–85034. Capitalized terms not otherwise defined in this letter shall have the meanings ascribed to them in the CAT NMS Plan.

Industry Members² are required to report to the CAT pursuant to Compliance Rules³ adopted by each Participant⁴ under Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)⁵ and Rule 19b-4 thereunder.⁶ The Compliance Rules codify for Industry Members Sections 6.7(a)(v) and 6.7(a)(vi) of the CAT NMS Plan.⁷ Section 6.7(a)(v) of the CAT NMS Plan sets deadlines for each Industry Member (other than a Small Industry Member) to record and report Industry Member Data to the Central Repository, while Section 6.7(a)(vi) of the CAT NMS Plan sets deadlines for each Small

² The CAT NMS Plan defines “Industry Member” as a member of a national securities exchange or a member of a national securities association. See CAT NMS Plan, supra note 1, at Section 1.1.

³ The CAT NMS Plan defines “Compliance Rule” as, with respect to a Participant, the rule(s) promulgated by such Participant as contemplated by Section 3.11 of the CAT NMS Plan. See CAT NMS Plan, supra note 1, at Section 1.1

⁴ The CAT NMS Plan defines “Participant” as each Person identified as such on Exhibit A thereto, and any Person that becomes a Participant as permitted by the CAT NMS Plan, in such Person’s capacity as a Participant in the Company (it being understood that the Participants shall comprise the “members” of the Company (as the term “member” is defined in Section 18-101(11) of the Delaware Act)). See CAT NMS Plan, supra note 1, at Section 1.1. Currently, the Participants of the CAT NMS Plan are: 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.; 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; New York Stock Exchange LLC; NYSE Arca, Inc.; NYSE American LLC; NYSE Chicago, Inc.; and NYSE National, Inc.

⁵ 15 U.S.C. 78s(b)(1).

⁶ 17 CFR 240.19b-4.

⁷ Between January 17, 2017 and February 2, 2017, each Participant filed a Compliance Rule reflecting the requirements in Section 6.7(a)(v) of the CAT NMS Plan that each Participant require its Industry Members (other than Small Industry Members) to report Industry Member Data to the Central Repository by November 15, 2018, and in Section 6.7(a)(vi) of the CAT NMS Plan that each Participant require its Small Industry Members to report Industry Member Data to the Central Repository by November 15, 2019. See Securities Exchange Act Release Nos. 80256 (March 15, 2017), 82 FR 14526 (March 21, 2017) (“Order Approving Consolidated Audit Trail Compliance Rules”); 80255 (March 15, 2017), 82 FR 14563, (March 21, 2017) (“Order Approving FINRA Rule 6800 Series (CAT Compliance Rules)”).

Industry Member⁸ to record and report Industry Member Data to the Central Repository.⁹ Section 3.11 of the CAT NMS Plan provides that each Participant shall comply with and enforce compliance, as required by Rule 608(c) of Regulation NMS, by its Industry Members with the provisions of Rule 613 of Regulation NMS and of the CAT NMS Plan, as applicable.

Furthermore, Section 19(g)(1) of the Act, among other things, requires the Participants, as self-regulatory organization (“SROs”) to enforce compliance by their members and persons associated with their members with the Act, the rules and regulations thereunder, and the SROs’ own rules. Rule 608(c) of Regulation NMS under the Exchange Act requires that each SRO comply with and, absent reasonable justification or excuse, enforce compliance by its members with, the terms of any effective NMS plan of which it is a sponsor or a participant.¹⁰

Discussion

As noted above, we understand that COVID-19’s impact on market participants, including necessitating SROs and Industry Members to implement their business continuity plans, has placed stress on their information technology infrastructure and required the deployment of significant resources, including to implement and adapt business continuity plans. To allow firms to maintain focus on operational readiness and reduce operational risk, we are issuing this no-action letter so that personnel who are working on CAT matters but are important to maintaining critical operations and implementing business continuity plans can focus their attention on those immediate needs.

Specifically, at this time Staff would not recommend that the Securities and Exchange Commission (“Commission”) take enforcement action against the Participants under Section 19(g)(1) of the Act and Rule 608(c) of Regulation NMS should the Participants not enforce the CAT implementation deadlines against Industry Members. The Staff’s position in this letter applies only until May 20, 2020, but could be extended.

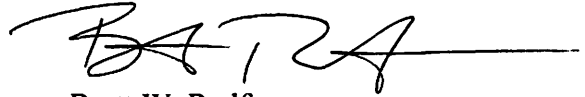
⁸ The CAT NMS Plan defines “Small Industry Member” as an Industry Member that qualifies as a small broker-dealer as defined in SEC Rule 613. See CAT NMS Plan, supra note 1, at Section 1.1

⁹ On February 19, 2020, the Plan Participants filed a request for exemptive relief from certain provisions of the CAT NMS Plan related to Industry Member reporting of Industry Member Data to the CAT in order to allow for the implementation of a phased Industry Member reporting timeline, according to which Industry Member reporting would commence on April 20, 2020. See Letter from Michael Simon, Chair, CAT NMS Plan Operating Committee, to Vanessa Countryman, Secretary, Securities and Exchange Commission, dated February 19, 2020.

¹⁰ 17 CFR 242.608(c).

This letter expresses the Staff's position regarding enforcement action only and does not purport to express any legal conclusions. This position is subject to modification or revocation at any time. If you have any questions regarding this letter, please call me at (202) 551-5500.

Sincerely,

A handwritten signature in black ink, appearing to read "B. Redfearn", with a long horizontal line extending to the right.

Brett W. Redfearn
Director

cc: Andre E. Owens, Partner, Wilmer Cutler Pickering Hale and Dorr LLP
CAT NMS Plan Leadership Team