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All submissions should refer to File Number SR–OCC–2020–003 and should be submitted on or before May 15, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰⁶

J. Matthew DeLesDernier,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88703]

Order Granting Limited Exemptive Relief, Pursuant to Section 36 of the Securities Exchange Act of 1934 (“Exchange Act”) and Rule 608(e) of Regulation NMS Under the Exchange Act, Related to Certain Introducing Brokers, From the Requirements of the National Market System Plan Governing the Consolidated Audit Trail

April 20, 2020.

By letter dated February 3, 2020, BOX Exchange LLC; Cboe BYX Exchange, Inc.; Cboe BZX Exchange, Inc.; Cboe EDGA Exchange, Inc.; Cboe EDGX Exchange, Inc.; Cboe C2 Exchange, Inc.; Cboe Exchange, Inc.; Financial Industry Regulatory Authority, Inc. (“FINRA”); 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 American LLC; NYSE Arca, Inc.; NYSE Chicago, Inc.; and NYSE National, Inc. (collectively, the “Participants” to the National Market System (“NMS”) Plan Governing the Consolidated Audit Trail (“CAT NMS Plan”))¹ requested that the Securities and Exchange Commission

(“Commission” or “SEC”), pursuant to its authority under Section 36 of the Securities Exchange Act of 1934 (“Exchange Act”)² and Rule 608(e) of Regulation NMS under the Exchange Act,³ grant exemptive relief from certain provisions of the CAT NMS Plan related to broker-dealers that do not qualify as Small Industry Members solely because such broker-dealers satisfy Rule 0–10(i)(2) under the Exchange Act⁴ in that they introduce transactions on a fully disclosed basis to clearing firms that are not small businesses or small organizations (for purposes of this order, such broker-dealers are referred to as “Introducing Brokers” or “Introducing Industry Members”).⁵ Specifically, the Participants request that the Commission provide exemptive relief from requiring Introducing Industry Members to comply with the requirements of the CAT NMS Plan that apply to Industry Members other than Small Industry Members (“Large Industry Members”), provided that the Participants require such Introducing Industry Members to comply with the requirements of the CAT NMS Plan that apply to Small Industry Members.⁶ The Participants state that the CAT NMS Plan permits Small Industry Members to begin reporting to the CAT later than Large Industry Members.⁷

Under the CAT NMS Plan, a Small Industry Member is an Industry Member that qualifies as a small broker-dealer as defined in Rule 613 under the Exchange Act.⁸ Rule 613 incorporates the definition of small broker-dealer in Rule 0–10(c) under the Exchange Act.⁹ Exchange Act Rule 0–10(c) defines a small broker or dealer to mean a broker or dealer that:

(1) Had total capital (net worth plus subordinated liabilities) of less than \$500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to § 240.17a–5(d) or, if not required to file such statements, a broker or

dealer that had total capital (net worth plus subordinated liabilities) of less than \$500,000 on the last business day of the preceding fiscal year (or in the time that it has been in business, if shorter); and

(2) Is not affiliated with any person (other than a natural person) that is not a small business or small organization as defined in this section.

Under Exchange Act Rule 0–10(i),¹⁰ a broker or dealer is affiliated with another person for purposes of Exchange Act Rule 0–10(c) if:

(1) Such broker or dealer controls, is controlled by, or is under common control with such other person; a person shall be deemed to control another person if that person has the right to vote 25 percent or more of the voting securities of such other person or is entitled to receive 25 percent or more of the net profits of such other person or is otherwise able to direct or cause the direction of the management or policies of such other person; or

(2) Such broker or dealer introduces transactions in securities, other than registered investment company securities or interests or participations in insurance company separate accounts, to such other person, or introduces accounts of customers or other brokers or dealers, other than accounts that hold only registered investment company securities or interests or participations in insurance company separate accounts, to such other person that carries such accounts on a fully disclosed basis.

In the CAT NMS Plan Approval Order, the Commission stated that the CAT NMS Plan provides a capital level-based definition of Small Industry Members for purposes of the CAT NMS Plan implementation schedule.¹¹ The Commission further stated that the definition is derived from Exchange Act Rule 0–10, which defines small entities under the Exchange Act for purposes of the Regulatory Flexibility Act, and reflects an “existing regulatory standard that is an indication of small entities for which regulators should be sensitive when imposing regulatory burdens.”¹² The Commission stated that the definition of Small Industry Member is a reasonable means to identify market participants for which it would be appropriate to provide, and that would benefit from, an additional year to prepare for CAT reporting due to their relatively limited resources.¹³

Under Exchange Act Rule 0–10(i)(2), an Introducing Broker would not be a small broker-dealer as defined in Exchange Act Rule 0–10(c) if the

² 15 U.S.C. 78mm(a)(1).

³ 17 CFR 242.608(e).

⁴ 17 CFR 240.0–10(i)(2).

⁵ See letter from Mike Simon, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, U.S. Securities and Exchange Commission, dated February 3, 2020 (“Exemption Request”). Unless otherwise noted, capitalized terms are used as defined in Rule 613 of Regulation NMS, in the CAT NMS Plan, or in this letter. “Industry Member” means “a member of a national securities exchange or a member of a national securities association.” “Small Industry Member” means “an Industry Member that qualifies as a small broker-dealer as defined in SEC Rule 613.” See CAT NMS Plan at Section 1.1.

⁶ See Exemption Request.

⁷ See *id.* at 2.

⁸ 17 CFR 242.613. See CAT NMS Plan at Section 1.1.

⁹ 17 CFR 240.0–10(c).

¹⁰ 17 CFR 240.0–10(i).

¹¹ See CAT NMS Plan Approval Order, 81 FR at 84771.

¹² See *id.* (citing Securities Exchange Act Release No. 67457 (July 18, 2012), 77 FR 45722, 45804 (August 1, 2012) (“Rule 613 Adopting Release”).

¹³ See CAT NMS Plan Approval Order, 81 FR at 84771.

¹⁰⁶ 17 CFR 200.30–3(a)(12).

¹ The Commission approved the CAT NMS Plan, as modified, on November 15, 2016. See Securities Exchange Act Release No. 79318 (November 15, 2016), 81 FR 84696 (November 23, 2016) (“CAT NMS Plan Approval Order”).

Introducing Broker introduced transactions in securities on a fully disclosed basis to a clearing firm that was not a small broker-dealer, regardless of the Introducing Broker's capital level.¹⁴ The Participants believe that excluding Introducing Brokers from the definition of a small broker-dealer based on the introducing relationship described in Exchange Act Rule 0–10(i)(2) is not consistent with the intention to provide small broker-dealers with additional time to comply with the CAT NMS Plan.¹⁵ The Participants state that Introducing Brokers, as defined herein, are excluded from the definition of a small broker-dealer solely because of their introducing relationship with a clearing firm, and that Introducing Brokers otherwise satisfy the capital threshold in Exchange Act Rule 0–10(c)(1) for small broker-dealers.¹⁶ Accordingly, the Participants request exemptive relief for Introducing Industry Members from the requirements in the CAT NMS Plan applicable to Large Industry Members.¹⁷

The Participants state that the CAT NMS Plan permits Small Industry Members to commence reporting to the CAT later than Large Industry Members.¹⁸ As a condition to the exemption, the Participants would require Introducing Industry Members to comply with the provisions of the CAT NMS Plan applicable to Small Industry Members.¹⁹ As a result, Introducing Industry Members would report information pursuant to the CAT NMS Plan when Small Industry Members begin reporting.²⁰ The Participants state that the requested exemptive relief would affect only the timing for when data would be reported, but not the type or amount of data that would be reported.²¹

In a separate order, the Commission granted the Participants' request for exemptive relief from certain requirements in the CAT NMS Plan related to Industry Member reporting of Industry Member Data to the Central

Repository to allow for the implementation of phased reporting for Industry Members to the CAT.²² The reporting schedule in the Phased Reporting Order addresses Large Industry Members, Small Industry Members that are required to record and report information to FINRA's Order Audit Trail System pursuant to applicable self-regulatory organization ("SRO") rules ("Small Industry OATS Reporters"), and Small Industry Members that are not required to record and report information to FINRA's OATS pursuant to applicable SRO rules ("Small Industry Non-OATS Reporters"). Under the relief requested herein, the Participants would be exempt from requiring Introducing Brokers to comply with the requirements of the Plan applicable to Large Industry Members and the Participants would require Introducing Brokers to comply with the requirements of the Plan applicable to Small Industry Members. The implementation schedule that an Introducing Broker would follow would depend upon whether the Introducing Broker was an OATS Reporter or a Non-OATS Reporter. Specifically, by providing this relief, Introducing Brokers who are OATS Reporters would follow the schedule established for Small Industry OATS Reporters and Introducing Brokers who are Non-OATS Reporters would follow the schedule for Small Industry Non-OATS Reporters, as described in more detail in the Phased Reporting Order.²³

Section 36 of the Exchange Act grants the Commission the authority, with certain limitations, 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."²⁴ Rule 608(e) of Regulation NMS under the Exchange Act provides that the Commission may exempt from the provisions of an NMS plan, either unconditionally or on specified terms and conditions, any self-regulatory organization or its members, 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.

The Commission believes that, pursuant to Exchange Act Section 36, this exemption is appropriate in the public interest and consistent with the protection of investors, and that pursuant to Rule 608(e), this 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 the perfection of the mechanisms of, a national market system. This relief will provide Introducing Industry Members that meet the capital standard in Exchange Act Rule 0–10(c)(1) with additional time to prepare effectively for certain CAT reporting phases depending on whether they are OATS Reporters, as described in more detail in the Phased Reporting Order. The Commission believes that the introducing relationship described in Exchange Act Rule 0–10(i)(2) should not prevent an Introducing Broker that meets the capital standard in Exchange Act Rule 0–10(c)(1) from being considered a Small Industry Member. The Commission understands that despite their clearing relationships, these Introducing Industry Members have the same resource limitations as other small broker-dealers that are similarly capitalized. Additionally, although an Introducing Broker may rely on its clearing firm to meet its regulatory obligations, an Introducing Broker is not obligated to choose its clearing firm as its CAT reporting agent. As the Commission stated in adopting Rule 613, providing small broker-dealers with a longer implementation time would assist small broker-dealers in identifying the most cost-effective and the most efficient manner to comply with Rule 613.²⁵ The Commission believes that this rationale applies equally to all broker-dealers that meet the capital threshold required to be considered a Small Industry Member, including Introducing Brokers. This relief affects only the time when certain Introducing Industry Members begin CAT reporting, but not the type or amount of information that they will be required to report. Accordingly, the Commission believes that the Participants should be exempt from requiring Introducing Industry Members that meet the capital standard in Exchange Act Rule 0–10(c)(1) to comply with the requirements of the CAT NMS Plan applicable to Large Industry

¹⁴ Only broker-dealers that perform their own trading and either self-clear or clear on an omnibus basis, rather than on a fully disclosed basis, would be a small broker-dealer under Exchange Act Rule 0–10(i)(2). See Exemption Request at 3.

¹⁵ See *id.*

¹⁶ See *id.*

¹⁷ See *id.* at 4.

¹⁸ See *id.* at 2.

¹⁹ See *id.* Each Participant would be required to require through its Compliance Rule that an Introducing Industry Member comply with the requirements of the CAT NMS Plan applicable to Small Industry Members. "Compliance Rule" means, "with respect to a Participant, the rule(s) promulgated by such Participant as contemplated by Section 3.11." See CAT NMS Plan at Section 1.1.

²⁰ See *id.*

²¹ See *id.*

²² See Securities Exchange Act Release No. 88702 (April 20, 2020) (Order Granting Conditional Exemptive Relief, Pursuant to Rule 608(e) of the Securities Exchange Act of 1934, from Sections 6.4, 6.7(a)(v) and 6.7(a)(vi) of the National Market System Plan Governing the Consolidated Audit Trail) ("Phased Reporting Order").

²³ See *id.*

²⁴ 15 U.S.C. 78mm(a)(1).

²⁵ See Rule 613 Adopting Release, 77 FR at 45804.

Members, provided that such Introducing Industry Members comply with the requirements of the CAT NMS Plan applicable to Small Industry OATS Reporters and Small Industry Non-OATS Reporters, as applicable.

Accordingly, *it is hereby ordered*, pursuant to Section 36(a)(1) of the Exchange Act,²⁶ and Rule 608(e) of the Exchange Act,²⁷ that the Participants are exempt from requiring Introducing Industry Members to comply with the requirements of the CAT NMS Plan that apply to Large Industry Members, provided that each Participant, through its Compliance Rule, requires such Introducing Industry Members to comply with the requirements of the CAT NMS Plan applicable to Small Industry Members.

By the Commission.

Vanessa A. Countryman,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-88698; File No. SR-NYSECHX-2020-01]

Self-Regulatory Organizations; NYSE Chicago, Inc.; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, To Amend the NYSE Chicago Rule 6.6800 Series, the Exchange's Compliance Rule Regarding the National Market System Plan Governing the Consolidated Audit Trail

April 20, 2020.

I. Introduction

On January 3, 2020, NYSE Chicago, Inc. ("NYSE Chicago" or "the Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend the Exchange's compliance rules regarding the National Market System Plan Governing the Consolidated Audit Trail ("CAT NMS Plan").³ On January 14, 2020, the Exchange filed Amendment

No. 1 to the proposed rule change. The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on January 23, 2020.⁴ On March 5, 2020, the Commission extended the time period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change, to April 22, 2020.⁵ The Commission received no comments on the proposal. This order institutes proceedings pursuant to Exchange Act Section 19(b)(2)(B) to determine whether to approve or disapprove File No. SR-NYSECHX-2020-01.⁶

II. Description of the Proposed Rule Change

The Exchange proposes to amend the NYSE Chicago Rule 6.6800 Series ("Compliance Rule"), which sets forth rules regarding Industry Member⁷ compliance with the CAT NMS Plan. Specifically, the proposed rule change would make the following changes to the Compliance Rule to be consistent with certain proposed amendments to and exemption requests submitted by the Participants⁸ of the CAT NMS Plan: (1) Revise data reporting requirements for the Firm Designated ID⁹ based on a proposed amendment to the CAT NMS Plan filed with the Commission;¹⁰ (2)

⁴ See Securities Exchange Act Release No. 87988 (January 16, 2020), 85 FR 4028 ("Notice").

⁵ See Securities Exchange Act Release No. 88335, 85 FR 14256 (March 11, 2020).

⁶ 15 U.S.C. 78(s)(b)(2)(B).

⁷ Industry Member means a member of a national securities exchange or a member of a national securities association. See CAT NMS Plan, *supra* note 3, at Section 1.1. See also proposed NYSE Chicago Rule 6.6810(s).

⁸ 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., 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 American LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc.

⁹ As proposed, "Firm Designated ID" would mean a unique and persistent identifier for each trading account designated by Industry Members for purposes of providing data to the Central Repository, where each such identifier is unique among all identifiers from any given Industry Member; provided, however, such identifier may not be the account number for such trading account if the trading account is not a proprietary account. See proposed NYSE Chicago Rule 6.6810(r).

¹⁰ See Notice, *supra* note 4, at 4029. See also Letter to Vanessa Countryman, Secretary, SEC, from Michael Simon, CAT NMS Plan Operating Committee Chair re: Notice of Filing of Amendment to the National Market System Plan Governing the Consolidated Audit Trail (April 14, 2020). The

amend the dates for required testing and reporting in the Compliance Rule for Industry Member reporting;¹¹ (3) amend the rules to require Industry Members to submit trade reports for executions and cancellations for cancelled trades to the FINRA's Trade Reporting Facilities, FINRA's OTC Reporting Facility or FINRA's Alternative Display Facility;¹² (4) revise the timestamp granularity requirement to require Industry Members with order handling or execution systems that utilize time stamps in increments finer than milliseconds to report timestamps up to nanoseconds when reporting Industry Member data¹³ to the Central Repository;¹⁴ (5) revise the reporting requirements for circumstances in which an Industry Member uses an established trading relationship for an individual Customer, instead of an

Commission has not approved or disapproved the changes proposed in this amendment.

¹¹ See Notice, *supra* note 4, at 4033-37. On February 19, 2020, the Participants submitted a request for exemptive relief from the reporting dates required by the CAT NMS Plan. See Letter to Vanessa Countryman, Secretary, SEC, from Michael Simon, CAT NMS Plan Operating Committee Chair, re: Request for Exemption from Provisions of the National Market System Plan Governing the Consolidated Audit Trail related to Industry Member Reporting Dates (Feb. 19, 2020).

¹² See Notice, *supra* note 4, at 4037. On February 12, 2020, the Participants submitted a request for exemptive relief from the requirement in Sections 6.4(d)(ii)(A)(2) and (B) of the CAT NMS Plan to require Industry Members to record and report, if an order is executed, the SRO-Assigned Market Participant Identifier of the clearing broker, and if a trade is cancelled, the cancelled trade indicator. See Letter to Vanessa Countryman, Secretary, SEC, from Michael Simon, CAT NMS Plan Operating Committee Chair, re: Request for Exemption from Certain Provisions of the National Market System Plan Governing the Consolidated Audit Trail related to FINRA Facility Data Linkage (Feb. 12, 2020). If granted, the exemptive relief would revise CAT reporting requirements regarding cancelled trades and SRO-Assigned Market Participant Identifiers of clearing brokers, if applicable, in connection with order executions, as such information would be available from FINRA's trade reports submitted to CAT.

¹³ See Notice, *supra* note 4, at 4038. On February 3, 2020, the Participants filed a request for exemptive relief from the current CAT NMS Plan requirement to record and report Industry Member Data with time stamps consistent with their system, a requirement from which the Exchange requests an exemption. See Letter to Vanessa Countryman, Secretary, SEC, from Michael Simon, CAT NMS Plan Operating Committee Chair, re: Request for Exemption from Certain Provisions of the National Market System Plan Governing the Consolidated Audit Trail related to Granularity of Timestamps and Relationship Identifiers (Feb. 3, 2020). On April 8, 2020, the Commission granted the exemptive relief for timestamp granularity. See Securities Exchange Act Release No. 88608 (April 8, 2020), 85 FR 20743 (April 14, 2020).

¹⁴ The Central Repository, as defined in the CAT NMS Plan, means "the repository responsible for the receipt, consolidation, and retention of all information reported to the CAT pursuant to SEC Rule 613 and this Agreement." See CAT NMS Plan, *supra* note 3, at Section 1.1.

²⁶ 15 U.S.C. 78mm(a)(1).

²⁷ 17 CFR 242.608(e).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The CAT NMS Plan was approved by the Commission, as modified, on November 15, 2016. See Securities Exchange Act Release No. 79318 (November 15, 2016), 81 FR 84696 (November 23, 2016).