SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-98848)

November 2, 2023

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

I.   Introduction

In July 2012, the Securities and Exchange Commission (the "Commission" or the "SEC") adopted Rule 613 of Regulation NMS, which required national securities exchanges and national securities associations (the "Participants")[1] to jointly develop and submit to the Commission a national market system plan to create, implement, and maintain a consolidated audit trail (the "CAT").[2] 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 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").[3]

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[1]   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, 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.

[2]   See Securities Exchange Act Release No. 67457 (July 18, 2012), 77 FR 45722 (Aug. 1, 2012) ("Rule 613 Adopting Release").

[3]   Securities Exchange Act Release No. 78318 (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 CAT NMS Plan Approval Order, 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

On December 16, 2020, the Commission issued two exemptive orders regarding the implementation of the CAT NMS Plan (collectively, the "2020 Orders"). The first order, in response to a request from the Participants, granted temporary conditional relief from certain performance requirements related to the online targeted query tool ("OTQT").[4] The second order granted temporary conditional relief from the following requirements: (1) requirements for lifecycle linkages timeframes; (2) requirements for re-processing of corrected data received after T+5; (3) linkage requirements for Securities Information Processor data ("SIP Data"); (4) reporting requirements for port-level settings; (5) requirements for lifecycle linkages between customer orders and "representative" orders; and (6) requirements for Participant reporting of rejected orders.[5]

On February 14, 2021, several of the Participants filed motions requesting that the Commission stay the 2020 Orders, based on their concern that portions of the orders "interpret and apply the Plan in ways that will produce unintended adverse consequences, present implementation challenges, or both."[6] That same day, several of those same Participants filed

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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).

[4] See Securities Exchange Act Release No. 90689 (Dec. 16, 2020), 85 FR 83667 (Dec. 22, 2020); see also Letter from Michael Simon, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission, dated Dec. 1, 2020, available at https://catnmsplan.com/sites/default/files/2020-12/12.01.20-CAT-Exemption-Request-OTQT.pdf.

[5] See Securities Exchange Act Release No. 90688 (Dec. 16, 2020), 85 FR 83634 (Dec. 22, 2020).

[6] See Motion for Partial Stay of Order 34-90689, at 2; Motion for Partial Stay of Order 34-90688, at 2. Financial Industry Regulatory Authority, Inc. and Long-Term Stock Exchange, Inc. did not join these motions.

corresponding petitions for judicial review with the U.S. Court of Appeals for the District of Columbia Circuit (the "D.C. Circuit") seeking review of the 2020 Orders.[7]

On July 8, 2022, the Commission issued a new order granting temporary exemptive relief (the "2022 Order").[8] The 2022 Order, which superseded the 2020 Orders, modified and/or clarified certain aspects of the 2020 Orders and gave the Participants until July 31, 2024 to either implement the functionality the Commission required for compliance with the relevant provisions of the CAT NMS Plan or to obtain Commission approval of alternative solutions that achieve the relevant regulatory objectives of Rule 613 and the CAT NMS Plan in a more cost-effective manner, including CAT NMS Plan amendments or exemptive relief. In addition, the Commission issued an order denying the Participants' stay motions, concluding that the administrative petitions to stay the 2020 Orders were "moot" because those orders were "no longer in force."[9] On August 3, 2022, the Commission and the Participants submitted a stipulation of voluntary dismissal to the D.C. Circuit, and, on August 5, 2022, the D.C. Circuit issued an order formally dismissing the lawsuits.[10]

On September 6, 2022, in order to reserve their rights, a subset of the Participants filed a petition for review with the D.C. Circuit seeking review of the 2022 Order.[11] The Commission understood that the Participants' concerns remained generally the same as expressed with respect to the 2020 Orders. The Commission subsequently issued an order, on May 18, 2023, extending

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[7]   See Petition for Review, USCA Case No. 21-1065; Petition for Review, USCA Case No. 21-1066. Financial Industry Regulatory Authority, Inc., Investors Exchange LLC, Long-Term Stock Exchange, Inc., MEMX LLC, Miami International Securities Exchange LLC, MIAX Emerald, LLC, and MIAX PEARL, LLC did not join these petitions.

[8]   See Securities Exchange Act Release No. 95234 (July 8, 2022), 87 FR 42247 (July 14, 2022).

[9]   See Securities Exchange Act Release No. 95235 (July 8, 2022), 87 FR 42242 (July 14, 2022).

[10]   See Order of Dismissal, USCA Case No. 21-1065 (consolidated with USCA Case No. 21-1066).

[11]   See Petition for Review, USCA Case No. 22-1234. Financial Industry Regulatory Authority, Inc. and Investors' Exchange LLC did not join this petition.

the exemptive relief provided by the 2022 Order (the "2023 Order") from July 31, 2024 to

January 31, 2025, subject to the same conditions set forth in the 2022 Order.[12] Since 2021, the

Participants and Commission staff engaged in discussions with the goal of resolving their

differences with respect to the issues raised by the 2020 Orders, the 2022 Order, and the 2023

Order (the "prior Orders").

In light of further developments throughout this period and in connection with the

parties' settlement of the pending litigation, the Commission has determined to issue a new order

granting the Participants conditional exemptive relief from certain requirements of the CAT

NMS Plan, which are described in more detail below.[13] If and when it takes effect, the relief

granted in this Order will supersede the relief granted in the 2022 Order and the 2023 Order.

This relief is to take effect upon issuance of an order by the D.C. Circuit dismissing with

prejudice the Participants' petition for review of the 2022 Order. Unless and until that occurs,

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[12]   See Securities Exchange Act Release No. 97530 (May 18, 2023), 88 FR 33655 (May 24, 2023).

[13]   In May 2020, the Commission adopted amendments to the CAT NMS Plan that establish four Financial
         Accountability Milestones and set target deadlines by which these milestones must be achieved. These
         amendments also reduce the amount of any fees, costs, and expenses that the Participants may recover from
         Industry Members if the Participants fail to meet the target deadlines. See Securities Exchange Act Release
         No. 88890 (May 15, 2020), 85 FR 31322 (May 22, 2020). The Commission has stated that, to the extent
         that the Participants are availing themselves of exemptive relief from a CAT NMS Plan requirement, such
         requirement shall not be included in the requirements for a Financial Accountability Milestone, provided
         that the conditions of the exemption are satisfied. See, e.g., Securities Exchange Act Release No. 89051
         (June 11, 2020), 85 FR 36631 (June 17, 2020). In connection with issuing this Order, the Commission has
         determined that the Participants have sufficiently complied with the conditions set forth in the prior Orders
         and with the technical requirements for Quarterly Progress Reports set forth in Section 6.6(c) of the CAT
         NMS Plan, including for purposes of determining compliance with any applicable Financial Accountability
         Milestones. The Commission makes no determination as to the veracity of the factual assertions made in
         Quarterly Progress Reports submitted pursuant to Section 6.6(c) or as to whether the Participants have
         complied with the applicable Financial Accountability Milestones in all other respects. Moreover, the
         Commission makes no determinations with respect to the Full Implementation of CAT NMS Plan
         Requirements milestone described in Section 1.1 of the CAT NMS Plan or the potential application of fee
         reduction provisions set forth in Section 11.6 of the CAT NMS Plan with respect to that milestone. Rather,
         the Commission will consider the Participants' compliance with the CAT NMS Plan requirements, and/or
         compliance with the conditions set forth in the prior Orders and the impact of that compliance, in the
         context of fee proposals related to that milestone. Moreover, the Commission makes no determinations
         regarding the Participants' compliance or non-compliance with other provisions or requirements of the
         CAT NMS Plan that are not discussed in the prior Orders or in this Order.

the 2022 Order and the 2023 Order shall continue to govern. Should the Participants file a petition for review of this Order, the relief granted herein will be rescinded by its own terms and the 2022 Order and the 2023 Order will resume governing.

II.   Discussion and Exemptive Relief

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."[14] Rule 608(e) of Regulation NMS similarly grants the Commission the authority to "exempt from [Rule 608], 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."[15]

The Commission recognizes that the Participants have expended, and continue to expend, substantial resources and effort towards the development and implementation of the CAT. However, in the 2022 Order, the Commission stated that the current functionality of the CAT does not yet comply with CAT NMS Plan requirements for the above-described areas.[16] The Participants have disagreed, and have further stated that, in many of these areas, strict compliance with the relevant CAT NMS Plan provisions would not be practical from a cost-

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[14]   15 U.S.C. 78mm(a)(1).

[15]   17 CFR 242.608(e).

[16]   See 2022 Order, supra note 8.

benefit perspective.[17] In light of that disagreement, the Commission stressed in the 2022 Order its willingness to consider alternative solutions that achieve the regulatory goals of Rule 613 and the CAT NMS Plan in a more cost-effective manner.[18]

The Commission has determined that the exemptive relief granted herein – which is the product of multiple years of settlement discussions – 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. The Commission approved the CAT NMS Plan to help to protect investors and maintain fair and orderly markets by providing a sophisticated audit trail that improves regulators' ability to investigate potential misconduct, to reconstruct and to analyze market events, and to support regulatory decisions with detailed and accurate data, among other benefits. The conditional exemptive relief in this Order allows for the implementation of alternative regulatory solutions that continue to advance the regulatory goals that Rule 613 and the CAT NMS Plan were intended to promote, while reducing the implementation and operational costs, burdens, and/or difficulties that would otherwise be incurred by the Participants and Industry Members[19] that must fund the CAT. It also resolves the continued impasse over implementation of these aspects of the CAT, which impeded and distracted from these regulatory goals.

A.   OTQT Performance Requirements

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[17]   See, e.g., id. at 42248.

[18]   Id.

[19]   "Industry Member" is defined in Section 1.1 of the CAT NMS Plan as "a member of a national securities exchange or a member of a national securities association."

The Commission grants conditional exemptive relief from the OTQT performance requirements related to query response times and parallel processing of queries set forth in Appendix D, Section 8.1.2 of the CAT NMS Plan.[20] Such relief is subject to the following conditions:

- The OTQT must maintain or improve current functionality that enables requests for "all related lifecycles" to be made either prior to or after the generation of a parent query.

- The OTQT must further satisfy the performance parameters set forth in Exhibit A.

- The Plan Processor must continue to test the OTQT's performance with benchmark queries and evaluate the response times for actual queries on a monthly basis. Such tests and evaluations should contain at least the same content that is currently provided to Commission staff and should be provided to Commission staff and the Operating Committee within 30 days from the end of each month.

- The Plan Processor must conduct an annual concurrency test by launching 300 simultaneous query requests across the different query categories and measuring the response times against the applicable performance standards. The concurrency test shall be based on historical actual queries, and the mix of queries shall be based on the percentage of actual queries by category. The concurrency test attributes shall be provided in writing and reviewed in advance with Commission staff and the Operating Committee. The Participants must also provide the results of the annual concurrency testing performed by the Plan Processor on the OTQT to Commission staff within 30 days from the date of such testing. If the concurrency test response times do not satisfy

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[20] The OTQT performance requirements set forth in Appendix D, Section 8.1.2 of the CAT NMS Plan are described in the 2022 Order. See 2022 Order, supra note 8, at 42248-50. The Commission understands that the Participants challenge the feasibility of strict compliance with these requirements.

the performance standards set forth in Exhibit A (i.e., measured against a 90%

compliance rate for each category, based on historical actual queries, with the mix of

queries based on the percentage of actual queries by category), the Plan Processor shall

promptly investigate and make recommendations to the Operating Committee for how to

ensure adequate concurrency performance.

- The Plan Processor must establish policies and/or procedures requiring review of the

    OTQT's performance on a regular and ongoing basis and evaluation of opportunities for

    potential improvements to the OTQT's performance. The Participants must provide to

    Commission staff, on an annual basis, a written status update including information

    regarding any potential and actual implementation by the Plan Processor of

    improvements to the OTQT performance. The written status update shall also include an

    evaluation of (1) volume trends and projections; (2) usage patterns and types of queries

    performed; (3) response time statistics and trends; (4) outlier queries; (5) costs and

    benefits; and (6) regulatory need.

The Commission believes that this conditional exemptive relief reflects a reasonable compromise

approach. The standards set forth in Exhibit A preserve, as a baseline, the OTQT functionality

that is already in place, which should provide a measure of certainty for regulatory users

regarding this query tool's expected performance. The other conditions set forth above enable

better oversight of the OTQT's performance by the Participants and the Commission, which the

Commission believes is in the public interest.

    B.   **Requirements for Lifecycle Linkages Timeframes**

The Commission grants conditional exemptive relief from the requirement set forth in Appendix D, Section 6.1 of the CAT NMS Plan that lifecycle linkages be created by T+1 at noon Eastern Time.[21] Such relief is subject to the following conditions:

- The Plan Processor must maintain or improve the existing performance of functionality currently providing lifecycle linkages for all order events by T+1 at 9 p.m. Eastern Time, except an interim CAT Order ID will not be required for Options Quotes once the functionality described below is implemented.

- The Plan Processor must develop and implement the functionality to provide a final CAT Order ID and lifecycle linkage for Options Quotes by T+2 at 8 a.m. Eastern Time, including all enrichments currently provided for such order events at T+5 at 8 a.m. Eastern Time. The Plan Processor will no longer be required to provide an interim CAT Order ID for Options Quotes once this functionality has been implemented. When late or corrected data is received for Options Quotes between T+1 at 8 a.m. Eastern Time and T+4 at 8 a.m. Eastern Time, the Plan Processor must run, on an ad hoc basis, a second processing cycle such that lifecycle linkage and all enrichments currently provided for such order events are performed by T+5 at 8 a.m. Eastern Time.

The Commission believes that this conditional exemptive relief facilitates settlement of the issues raised in the Participants' challenge to the 2022 order while preserving existing functionality for most types of order events.

> C.   **Requirements for Re-Processing of Corrected Data Received After T+5**[22]

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[21]   The lifecycle linkage performance requirements set forth in Appendix D, Section 6.1 of the CAT NMS Plan are described in the 2022 Order. See 2022 Order, supra note 8, at 42250-52. The Commission understands that the Participants challenge the feasibility of strict compliance with these requirements.

[22]   For the purposes of this document, references to data received "after T+5," or to post-T+5 data, submissions, or reports, are to data received "after T+4 at 8 a.m. Eastern Time."

The Commission grants conditional exemptive relief from the re-processing requirements for corrected data received after T+5 that are set forth in Appendix D, Section 3 and Section 6.2 of the CAT NMS Plan.[23] Such relief is subject to the following conditions:

- The Plan Processor must maintain its implementation of functionality related to late data lifecycle association that was approved by the Operating Committee on January 14, 2022 (the "Late to the Lifecycle process") and on September 20, 2022 (the "Targeted Replay process") (collectively, the "Enhanced Late to the Lifecycle process"). Prior to the implementation of this functionality, in the limited circumstances in which there was a missing link between two disjoined segments of an order lifecycle, new or corrected data would join only one of the pre-existing segments and would be assigned to only one of the relevant lifecycle CAT Order IDs for the disjoined segment and evaluated for further re-processing. Under the Enhanced Late to the Lifecycle process, all late records (i.e., records received after T+5) include the date of the correction and, if applicable, the record identifier of the record being corrected as part of normal re-processing. In addition, the late record is now associated with all relevant lifecycles as part of normal re-processing, such that order event lifecycles may now be associated with more than one CAT Order ID.

- The Participants must approve a change order to adopt the below-described functionality no later than 30 days following the effective date of this Order:

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[23]   The T+5 re-processing requirements set forth in Appendix D, Section 3 and Section 6.2 of the CAT NMS Plan are described in the 2022 Order. See 2022 Order, supra note 8, at 42252-53. The requirements concern how the CAT Order ID and other data elements (e.g., sequence numbers, CAT Customer ID) are created for post-T+5 data, as well as any applicable impacts to those data elements for on-time data within the same lifecycle that were previously delivered to regulatory users on T+5. The Commission understands that the Participants challenge the feasibility of strict compliance with these requirements.

- o Functionality that creates a lifecycle mapping which indicates all lifecycle associations made during the Enhanced Late to the Lifecycle process;

- o Functionality that presents to regulatory users post-T+5 data in a manner substantially similar to how such data would have been represented if it had been reported prior to T+5, including by replicating and replaying records with enrichments impacted by post-T+5 submissions, creating updated enrichments, and persisting the replicated records within the underlying data (the "Full Replay process"); and

- o Functionality that enhances the OTQT, including the ability to include or exclude any records that were created or replaced as a result of the Full Replay process.

Such functionality must be fully implemented and made available to regulatory users within twelve months of the change order's approval by the Participants.

- The Plan Processor must schedule the Enhanced Late to the Lifecycle process and the Full Replay process to run weekly, such that late reported data received through Friday of the prior week are available for regulatory users on the following business day at 8 a.m. Eastern Time, absent extraordinary circumstances, for data within the prior 18 months. For data outside of this 18-month window, the Participants must schedule the Enhanced Late to the Lifecycle process and the Full Replay process to run no less frequently than quarterly.

The Commission understands that this alternative technological solution, when fully implemented, will meaningfully advance the regulatory goals of Rule 613 and the CAT NMS Plan by enabling regulatory users to view corrected data that is submitted after T+5 as part of an order event lifecycle (which may be represented by more than one CAT Order ID) and in a

manner that does not require such regulatory users to know whether late records were submitted

and/or to perform additional query steps to obtain the most up-to-date records. The Commission

believes this alternative technological solution will help regulatory users to better understand the

impact of post-T+5 reports.

D.   Requirements for SIP Data Linkage

The Commission grants conditional exemptive relief from the SIP Data linkage

requirements that are set forth in Section 6.5(b)(i) and Appendix D, Section 3 of the CAT NMS

Plan.[24] Such relief is subject to the following conditions:

- The Plan Processor must continue to provide regulatory users with the side-by-side view
  of SIP Data and other transactional data in the same format and manner that is currently
  available in the OTQT.[25]

This functionality requires regulatory users to manually match SIP Data with other transactional

data reported to the CAT. However, the Commission believes this is an acceptable alternative

solution that will continue to make available SIP Data to regulatory users while facilitating

settlement of the issues raised in the Participants' challenge to the 2022 Order.

E.   Reporting Requirements for Port-Level Settings

The Commission grants conditional exemptive relief from the requirements as applied to

port-level settings that are set forth in Rule 613(c)(7) and Sections 6.3(d)(i)(F), 6.3(d)(ii)(G),

6.3(d)(iii)(F), 6.3(d)(iv)(E), and 6.4(d)(i) of the CAT NMS Plan for the following special

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[24]   The SIP Data linkage requirements set forth in Section 6.5(b)(i) and Appendix D, Section 3 of the CAT NMS Plan is described in the 2022 Order. See 2022 Order, supra note 8, at 42253-54. The Commission understands that the Participants challenge the feasibility of strict compliance with these requirements.

[25]   This "side-by-side" functionality refers to the ability for users of the OTQT to include SIP Data in multi-object searches that include transactional data from Industry Member and Plan Participant CAT Reporters. For example, a regulatory user may elect to query Exchange Equity Events and SIP Trades simultaneously for trades in a given security; the results will be returned interweaved within a single result set, in a logical sequence.

handling instructions described in the current CAT Industry Member Technical Specifications

that may be set by Industry Members at the various Participant exchanges via exchange ports

(the "Exempted Port-Level Settings")[26]:

ATT Attributable. Order is routed to an exchange or ATS with instructions that the order is attributable.
DNI Do Not Increase.
DNR Do Not Reduce.
DNRT Do Not Route.
RLO Retail Liquidity Order.
STP Self Trade Prevention.

Under the conditional exemptive relief granted herein, the Participants will not be required to

obligate Industry Members to report these six special handling instructions when an Industry

Member routes an order to a national securities exchange over an exchange port that is

configured for one of these special handling instructions.[27]

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[26]   The requirements as applied to port-level settings set forth in in Rule 613(c)(7) and Sections 6.3(d)(i)(F), 6.3(d)(ii)(G), 6.3(d)(iii)(F), 6.3(d)(iv)(E), and 6.4(d)(i) of the CAT NMS Plan are described in the 2022 Order. See 2022 Order, supra note 8, at 42254-55. The Commission understands that, notwithstanding this Order, the Participants continue to disagree with its interpretation of these requirements and challenge the feasibility of strict compliance with these requirements, other than with respect to the Exempted Port-Level Settings. This Order does not resolve (or have any bearing on) the parties' remaining interpretive disagreement on this issue, but instead provides exemptive relief that renders resolution of the issue unnecessary as to all port-level settings other than the Exempted Port-Level Settings.

[27]   As explained in the 2022 Order, the CAT NMS Plan does not require all port-level settings to be reported to the CAT. Rule 613 and the CAT NMS Plan only require Participants and Industry Members to report port-level settings that are used by a sender or a receiver of an order to communicate the Material Terms of the Order, including "any special handling instructions." Furthermore, Rule 613 and the CAT NMS Plan only obligate the sender of an order to report the Material Terms of the Order that it communicated to and/or agreed upon with the receiver of the order, including default or implicit special handling instructions communicated through a port-level setting. If the receiver of an order subsequently attaches "any special handling instructions" to an order without informing the sender, including special handling instructions communicated through a port-level setting, only the receiver would be obligated to report those Material Terms of the Order.

This conditional exemptive relief applies only when the Exempted Port-Level Settings are set at the port-level at a national securities exchange. Aside from the Exempted Port-Level Settings, this Order does not provide exemptive relief from the reporting requirements set forth in the CAT NMS Plan for any existing and/or new special handling instructions that may be set at the port-level at a national securities exchange and that may constitute Material Terms of the Order; likewise, this Order does not provide exemptive relief for any Material Terms of the Order that are set at the port-level on Industry Member alternative trading systems or broker-dealer port-level settings. To the extent that the Participants and/or Industry Members wish to receive similar exemptive relief related to other Material Terms of the Order set at the port-level, they must submit an exemptive relief request to the Commission for its consideration.

Such relief is subject to the following conditions:

- The Participants must report the Exempted Port-Level Settings in the order receipt record, regardless of whether such Exempted Port-Level Settings are "triggered" or "applied."[28]

- The Participants must maintain and communicate to Industry Members via a CAT Alert a mapping of each exchange-specific port-level setting related to the Exempted Port-Level Settings, substantially in the form of the draft mapping the Participants have provided to the Commission.[29]

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[28]   The Commission understands that the Participants disagree with its interpretation that special handling instructions that are never "triggered" or "applied" to an order qualify as Material Terms of the Order with respect to any other existing and/or new special handling instructions that may be set at the port-level at a national securities exchange.

[29]   There are differences between the technical specifications utilized by Industry Members and Participants, as well as differences in reporting among the Participants. While the Participants may update this mapping for the Exempted Port-Level Settings as needed, new Material Terms of the Order that are set at the port-level and that are not specifically addressed this Order may not be added to this mapping without additional exemptive relief from the Commission.

The Commission believes that this alternative technological solution, when fully implemented, reflects a reasonable compromise approach with respect to a limited set of data.[30]

F. Requirements for Lifecycle Linkages Between Customer Orders and "Representative" Orders

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 until January 31, 2025.[31] Such relief is intended to mirror the exemptive relief provided by the 2023 Order and is subject to the following condition:

- The Participants must require Industry Members to report "representative" orders as currently described in FAQs F5-F7 and as described in other exemptive relief issued by the Commission by January 31, 2025.[32]

The Commission believes that the relief provided in the 2023 Order gives Industry Members sufficient time to make any necessary systems changes to implement the required functionality, especially because the technical specifications and/or scenarios documents relating to the reporting and linkage of all "representative" orders have already been promulgated by the Participants. Therefore, the Commission does not believe it is necessary to issue any additional extension of exemptive relief in connection with these requirements.

G. Requirements for Participant Reporting of Rejected Orders

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[30]   The Commission notes that its analysis is specific to the Exempted Port-Level Settings and reserves judgment as to whether the above-described alternative technological solution would be appropriate for any other Material Terms of the Order that are communicated via a port-level setting.

[31]   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 2022 Order. See 2022 Order, supra note 8, at 42255-56.

[32]   See, e.g., Securities Exchange Act Release No. 88702 (Apr. 20, 2020), 85 FR 23075 (Apr. 24, 2020); 2022 Order, supra note 8, at 42255-56. See also FAQ F5-F7, available at https://catnmsplan.com/faq.

The Commission grants conditional exemptive relief from the requirements set forth in Rule 613(c)(7) and Section 6.3(d)(i) and Appendix D, Section 3 of the CAT NMS Plan relating to Participant reporting of rejected orders and subsequent linkage of such orders.[33] Such relief is subject to the following conditions:

- The Participants must maintain or improve their existing reporting of orders that are received and subsequently rejected, including maintenance by Participants of any existing reporting or linkage of the keys necessary for the linkage processing specified below. The Plan Processor must maintain its existing validations of such orders.

- The Participants must approve a change order to adopt the below-described functionality no later than 60 days following the effective date of this Order:

  o Functionality that will attempt "forward lifecycle linkage" processing, including all enrichments currently provided for other order events, of Industry Member MEOR, MOOR, and MEMR Order Route events containing a routeRejectedFlag populated as "true" with their corresponding Participant Reject Message events described in the Participant Technical Specifications in instances where the keys necessary for such linkage are available (i.e., Symbol (or Option ID), RoutingParty, RoutedOrderID, Session).[34]

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[33] The requirements related to Participant reporting of rejected orders set forth in Rule 613(c)(7) and Section 6.3(d)(i) and Appendix D, Section 3 of the CAT NMS Plan are described in the 2022 Order. See 2022 Order, supra note 8, at 42256-57. The Commission understands that, notwithstanding this Order, the Participants continue to disagree with its interpretation of these requirements and challenge the feasibility of strict compliance with that interpretation. This Order does not resolve the parties' interpretive disagreement on this issue, but instead provides exemptive relief that renders resolution of the issue unnecessary.

[34] The "forward lifecycle linkage" processing referred to above is intended to capture functionality that the Participants believe may be feasible in light of a study of recent data. Based on that study and based on current trading volume market share among the various Participant exchanges, the Plan Processor currently estimates that approximately 90% of Industry Member MEOR, MOOR, and MEMR Order Route events containing a routeRejectedFlag populated as "true" may be programmatically linked with their

Such functionality must be fully implemented and made available to regulatory users within twelve months of the change order's approval by the Participants. The Commission understands that this alternative technological solution, when fully implemented, will meaningfully advance the regulatory goals of Rule 613 and the CAT NMS Plan by providing regulatory users with additional information about rejected orders.

III.   Conclusion

Accordingly, IT IS HEREBY ORDERED, pursuant to Section 36(a)(1) of the Exchange Act[35] and Rule 608(e) under the Exchange Act,[36] that the above-described conditional exemptive relief be granted, effective immediately upon the date of issuance of an order by the D.C. Circuit dismissing the Participants' petition for review of the 2022 Order.

By the Commission.

Sherry R. Haywood,

Assistant Secretary.

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corresponding Participant Reject Message events. For the avoidance of doubt, for purposes of satisfying the conditions of this Order, the Participants will not be required to modify their existing architectures or reporting and will not be required to provide "reverse linkage" of Participant Reject Message events to Industry Member Order Route events. Moreover, this Order does not impose any required minimum linkage rate as a condition to exemptive relief. Linkage errors relating to rejected orders will not be required to be included in compliance error rates.

[35]   15 U.S.C. 78mm(a)(1).

[36]   17 CFR 242.608(e).

Exhibit A
Online Targeted Query Tool Performance Parameters

1. General: Subject to the specific conditions described in this Exhibit A, OTQT performance must satisfy both (i) an operational completion rate (measuring the successful completion of all attempted queries), and (ii) a query compliance rate (measuring the response time performance of all successfully completed queries).

2. Operational Completion Rate: Queries will be subject to a 95% operational completion rate measured quarterly against all attempted queries in the aggregate. The operational completion rate will measure the successful completion of all attempted queries, excluding failed queries resulting from a service interruption experienced by the Plan Processor's cloud service provider.

3. Query Compliance Rate. Queries will be subject to a 90% query compliance rate measured monthly against all actual query results based on the categories and response times set forth below. The query compliance rate will measure the response time performance of all successfully completed queries for each category. Response times shall be measured from the time of query submission by the regulatory user to the time that the results are available to the regulatory user (i.e., including the time required to formulate a data mart).

Category		Response Time	Description
OLA Viewer		2 minutes	
Standard Queries	Small	10 minutes	See data objects below
	Medium	30 minutes	See data objects below
	Large	60 minutes	See data objects below
	Complex	240 minutes	• More than one trade date or object, or • Returns more than 1M rows
All Related Lifecycles[37]	Simple	20 minutes	• Fewer than 10,000 lifecycles, and • Single-day lifecycle count
	Complex	720 minutes	• Fewer than 50,000 lifecycles, and • Fewer than 60 lifecycle dates

Standard Query Data Objects[38]

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[37]   For an all related lifecycles request made prior to the generation of a parent query, the time of query submission will not commence until completion of the parent query.

[38]   If a new data object is created in the future, the Plan Processor will undertake a six-month assessment period (commencing once the data object is populated with actual data) to understand volumes and regulatory usage and, based on these observations, will slot the new data object into one of these existing categories.

Small (10 minutes)	Medium (30 minutes)	Large (60 minutes)
Corporate Actions	Equity Exchange Events	IM Equity Events
Equity Member Dictionary	Exchange Orders	Options Exchange Events
Equity Off Exchange Events	IM Options Events	Options NBBO
Equity Symbol Master	Market Participant Quotes	Options Orders/Trades
Equity Trade Events	Options Quotes	OPRA RAW
FDID CCID Map	SIP Quotes	
IDQS BBO		
Market Maker Dictionary		
OCC Options Product		
OCC Options Series		
Off Exchange Trade Events		
Off Exchange Trades		
Options Dictionary		
Options Member Dictionary		
Options Trade Events		
OTC Halt Events		
Self Help Declaration Events		
SIP Admin		
SIP CTA Admin Messages		
SIP CTS Trade Summary		
SIP CTS Trades		
SIP Issue Status		
SIP MWCB Status		
SIP OTC Halts		
SIP Quote Events		
SIP Summary		
SIP Trades		
SIP UTP Admin Messages		
SIP UTP LULD Price Band		
SIP UTP Trade Prior Day As-Of		
SIP UTP Trade Summary		
SIP UTP Trades		

4.   Reporting Requirements. The Plan Processor shall provide a monthly report noting (i) the operational completion rate for all attempted queries in the aggregate, and (ii) the query compliance rate for each category described above, to Commission staff within 30 days from the end of each month.

5.   Reasonable Adjustment Period. In order to permit the Plan Processor to promptly scale up the OTQT to ensure adequate system capacity in the event of significant, unanticipated, or rapid changes in data volumes and/or user behavior that require application coding changes and/or changes to how historical data is stored, response times shall be subject to a reasonable adjustment period, (i) not to exceed 60 days for items requiring application coding changes,[39] and (ii) not to exceed 120 days for items requiring changes to how a data object is stored and that may include changes impacting historical data in the object. These 60-day and 120-day periods shall be measured from the date on which the monthly compliance report is provided to Commission staff. For purposes of this condition:

- A significant, unanticipated, or rapid change in data volume shall be deemed to have occurred in the event of an average daily data volume increase of 30% in the applicable data object(s) from the lesser of: (i) the peak daily data volume observed in the prior month, or (ii) the peak daily data volume observed in the same month in the prior year.

- A significant, unanticipated, or rapid change in user behavior shall be deemed to have occurred in the event of an average daily OTQT query count increase of 30% from the lesser of: (i) the peak daily OTQT query count observed in the prior month, or (ii) the peak daily OTQT query count observed in the same month in the prior year.

Written notification of these determinations will be provided to and reviewed with Commission staff.

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[39]   Application coding changes are changes requiring a software release and deployment. For the avoidance of doubt, adding/removing system capacity or the incremental size of capacity changes (e.g., autoscaling compute node step size) within the limits of the OTQT system are configuration changes and are not considered application coding changes.