imc

May 20, 2021

Vanessa Countryman, Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-0609

Re: Joint Industry Plan; Notice of Filing of Amendment to the National Market System Plan Governing the Consolidated Audit Trail by BOX Exchange LLC; Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe C2 Exchange, Inc. and Cboe Exchange, Inc., Financial Industry Regulatory Authority, Inc., Investors Exchange LLC, Long-Term Stock Exchange, Inc., Miami International Securities Exchange LLC, MEMX, LLC, MIAX Emerald, LLC, MIAX PEARL, LLC, Nasdaq BX, Inc., Nasdaq GEMX, LLC, Nasdaq ISE, LLC, Nasdaq MRX, LLC, Nasdaq PHLX LLC, The NASDAQ Stock Market LLC; and New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc.

(Release No. 34–91555; File No. 4–698)

Dear Ms. Countryman,

IMC Chicago, LLC d/b/a IMC Financial Markets ("IMC") appreciates the opportunity to submit comments to the Securities & Exchange Commission ("Commission") regarding the above-captioned amendment (the "Amendment" or "Proposal")[1] to the National Market System Plan Governing the Consolidated Audit Trail ("CAT") filed by the Self-Regulatory Organizations ("SROs") that are the Plan Participants to the CAT. For the reasons identified below, we write in support of letters recently submitted by the FIA Principal Traders Group ("FIA PTG")[2] and the Securities Industry and Financial Markets Association ("SIFMA")[3] and to express our concerns relating to the arbitrary cost sharing model proposed in the Amendment, which is the direct result of a lack of transparency and no meaningful input by the broker-dealer community who are now asked to shoulder the majority of costs associated with the CAT.

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[1] https://www.govinfo.gov/content/pkg/FR-2021-04-21/pdf/2021-08049.pdf.

[2] *See* Letter from Joanna Mallers, Secretary, FIA PTG, to Vanessa Countryman, Secretary, Commission re File No. 4-698 dated May 12, 2021 ("FIA PTG Letter").

[3] *See* Letter from Ellen Greene, Managing Director, Equity and Options Market Structure, SIFMA, to Vanessa Countryman, Secretary, Commission re File No. 4-698 dated May 12, 2021 ("SIFMA Letter").

Background

IMC is part of a global firm with approximately 875 employees worldwide and affiliates trading in Chicago, Amsterdam and Sydney. IMC operates as a proprietary trading firm and registered broker-dealer, engaging in the U.S. financial markets as a registered and bona-fide market maker providing liquidity on nearly every listed equities and derivatives market in the United States. IMC is a Lead Market Maker in over 500 option classes and over 150 ETFs. As such, IMC is aware of the complexities associated with the design and implementation of the CAT, having devoted considerable resources to understand and comply with our obligations thereunder. It is with that background in mind that we write in support of the letters submitted by FIA PTG and SIFMA, which correctly identify significant concerns regarding "the lack of transparency regarding the proposed fees, the magnitude of the fees incurred to date and the disproportionate allocation of those fees amongst exchanges and industry members."[4] We urge the Commission to not approve the Amendment and instead encourage the exchanges and FINRA to productively engage with the wider broker-dealer community to arrive at a transparent, workable and equitable alternative.

Material Concerns Warranting a Re-design Consistent with the Exchange Act

FIA PTG and SIFMA each identify several critical concerns with the Proposal, including:

- The Amendment lacks the level of transparency needed to thoroughly analyze and respond;
- Industry Member input was not considered in the analysis used to support the Proposal;
- The use of inconsistent metrics between Industry Members and Plan Participants is discriminatory and unsupportable.

In addition, the FIA PTG correctly notes that the newly proposed market maker discount is a welcome addition to the funding metrics. We particularly agree with FIA PTG's observation that absent an adjustment for market makers, because of their continuous quoting obligations, "many Market Makers would find themselves incurring a disproportionate percentage of the CAT costs, which could impact the liquidity they are willing to provide, and thus negatively impact overall market quality." Indeed, any funding plan should not only consider including this concept, but we believe should also carefully consider whether additional product specific market maker discounts are appropriate, as well.

We also note that as of this writing at least two Plan Participants, the NYSE[5] and FINRA[6], each write in opposition to the Proposal—an unmistakable red flag, if there ever was one, requiring a pause to review and re-design a more equitable approach consistent with the Exchange Act. IMC welcomes in particular the suggestion by the NYSE that the Commission encourage the SRO's to "engage with the industry more directly to establish a workable allocation methodology that is simple, predictable and aligns responsibility for funding regulatory infrastructure with receiving

[4] *See* FIA PTG Letter at 2.

[5] *See* Letter from Michael Blaugrund, Chief Operating Officer, NYSE, to Vanessa Countryman, Secretary, Commission re File No. 4-698 dated May 12, 2021 ("NYSE Letter").

[6] *See* Letter from Marcia E. Asquith, Executive Vice President, FINRA, to Vanessa Countryman, Secretary, Commission re File No. 4-698 dated May 12, 2021.

economic benefits of the marketplace."[7] Indeed, we believe that the NYSE's alternative structure, which proposes to base fees on executed volume rather than message traffic, administered like Section 31 fees, merits further review.

Conclusion

For the foregoing reasons, IMC supports the letters submitted by FIA PTG and SIFMA and we respectfully urge the Commission to not approve the Amendment. The process to date has lacked transparency or any meaningful attempt to gather industry input. The result is a Proposal that appears to be inequitable, unreasonable and unworkable. It is time to go back to the drawing board. We respectfully ask the Commission to encourage the exchanges and FINRA to productively engage with the wider broker-dealer community to arrive at a transparent, workable and equitable alternative. Should you have any questions in connection with our comments, please feel free to contact me at [redacted]

Sincerely,

Andrew Stevens
General Counsel

[7] *See* NYSE Letter at 5.