

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In The Matter of:

The Application of SECURITIES INDUSTRY AND
FINANCIAL MARKETS ASSOCIATION,

For Review of Action Taken by CAT LLC and Certain
Self-Regulatory Organizations in Violation of Exchange
Act Sections 19(d) and 19(f)

Admin. Proc. File No. 3-19766

APPLICATION FOR REVIEW OF SRO ACTION THAT VIOLATES
EXCHANGE ACT SECTIONS 19(d) AND 19(f)

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Dated: New York, New York
April 22, 2020

*Attorneys for Securities Industry and
Financial Markets Association*

1. Securities Industry and Financial Markets Association (“SIFMA”) submits this application pursuant to Sections 19(d) and 19(f) of the Securities Exchange Act of 1934 requesting that the Securities and Exchange Commission (the “Commission”) set aside action taken by the self-regulatory organizations in Exhibit A (the “SROs”) that prohibits and limits access of SIFMA members (“Industry Members”) to the Consolidated Audit Trail (“CAT”) System, which is operated and managed by the SROs through Consolidated Audit Trail, LLC (“CAT LLC”).¹

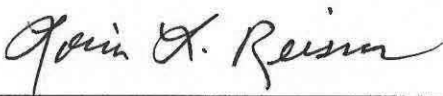
2. The SROs have prohibited and limited access by Industry Members to the CAT System by requiring that Industry Members execute a proposed CAT Reporter Agreement (the “CRA”) as a condition of submitting order and trade data to the CAT. The CRA contains terms that are unfair, inappropriate and bad policy. For example, the proposed CRA improperly purports to impose a limitation of liability for CAT LLC, its participant SROs, and their officers, employees and agents in the event of a CAT data breach, misuse of CAT data or other activities relating to the CAT System. The CRA also purports to require a CAT Reporter to indemnify CAT LLC, its participant SROs, and their officers, employees and agents against various third-party claims relating to the misuse of CAT data. These purported limitations on SRO liability and indemnification requirements relating to a potential CAT data breach are inappropriate where, as here, the SROs maintain and control the CAT System, the data in the CAT System and the transmission of data from the CAT System. As a matter of fairness and good policy, the SROs should not be permitted to impose these additional risks and responsibilities relating to a potential CAT data breach on Industry Members when the SROs control the CAT System.

¹ The “CAT System” is defined as: “all data processing equipment, communications facilities, and other facilities, including equipment, utilized . . . in connection with operation of the CAT and any related information or relevant systems pursuant to this Agreement.” Amended CAT NMS Plan, § 1.1.

3. In any event, the CRA is not the appropriate method for addressing these important policy issues, and the unilateral action of the SROs to deny access to the CAT System absent execution of the CRA should be set aside by the Commission. Section 19(d) of the Exchange Act expressly provides that if any SRO “prohibits or limits any person in respect to access to services offered by such” SRO, the Commission shall review such action “upon application by any person aggrieved” by such action. 15 U.S.C. § 78s(d)(1), (2). The Industry Members on whose behalf SIFMA files this application are aggrieved by the challenged SRO conduct because it limits their access to the CAT System, imposes unfair and unreasonable conditions, and improperly seeks to establish practices, policies and standards pursuant to the CRA that can only be developed through a rule-making process. The CRA and its terms were never filed or approved pursuant to Section 19(b) of the Exchange Act and, accordingly, Exchange Act Section 19(f) requires that the SRO action be set aside. In fact, the Commission has not hesitated to set aside SRO action that limited access to SRO services without engaging in the required rule-making process. *See In re Bloomberg L.P.*, 2004 WL 67566 (Jan. 14, 2004). Accordingly, for these reasons and those set forth in the accompanying Declaration of Lorin L. Reisner, the Commission should set aside the actions of the SROs in accordance with Sections 19(d) and 19(f) of the Exchange Act.

Dated: New York, New York
April 22, 2020

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EXHIBIT A

1. BOX Exchange, LLC
2. Cboe BYX Exchange, Inc.
3. Cboe BZX Exchange, Inc.
4. Cboe C2 Exchange, Inc.
5. Cboe EDGA Exchange, Inc.
6. Cboe EDGX Exchange, Inc.
7. Cboe Exchange, Inc.
8. Financial Industry Regulatory Authority, Inc.
9. Investors' Exchange, LLC
10. Long-Term Stock Exchange, LLC
11. Miami International Securities Exchange, LLC
12. MIAX Emerald, LLC
13. MIAX PEARL, LLC
14. NASDAQ BX, Inc.
15. NASDAQ GEMX, LLC
16. NASDAQ ISE, LLC
17. NASDAQ MRX, LLC
18. NASDAQ PHLX, LLC
19. New York Stock Exchange, LLC
20. NYSE American, LLC
21. NYSE Arca, Inc.
22. NYSE Chicago, Inc.
23. NYSE National, Inc.
24. The NASDAQ Stock Market, LLC

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CERTIFICATE OF SERVICE

I, Jeffrey J. Recher, hereby certify that on April 22, 2020, I caused true and correct copies of the following documents to be delivered to the recipients listed below in the manner indicated: (1) Application for Review of SRO Action That Violates Exchange Act Sections 19(d) and 19(f); (2) Declaration of Lorin L. Reisner In Support of SIFMA's Application Pursuant To Exchange Act Sections 19(d) and 19(f); (3) Appendix of Exhibits to Declaration of Lorin L. Reisner In Support of SIFMA's Application Pursuant To Exchange Act Sections 19(d) and 19(f); (4) SIFMA's Motion to Stay SRO Action Pending Commission Review of SIFMA's Application Pursuant to Exchange Act Sections 19(d) and 19(f) and Incorporated Memorandum of Law; (5) Certificate of Compliance with Word Limit; and (6) Notice of Appearance on Behalf of SIFMA.

By Hand Delivery and Electronic Mail

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Secretary
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Based on limitations relating to the COVID-19 pandemic and the number and locations of the parties, service was effected by FedEx or electronic mail.

Dated: New York, New York
April 22, 2020


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April 22, 2020

By Hand Delivery and Email

Ms. Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

Re: *Application of Securities Industry and Financial Markets Association For Review of Action Taken by CAT LLC and Certain Self-Regulatory Organizations in Violation of Exchange Act Sections 19(d) and 19(f)*

Dear Ms. Countryman:

Our firm represents Securities Industry and Financial Markets Association (“SIFMA”) in the above-captioned proceeding.

Enclosed for filing are the original and three copies of each of the following:

- 1. SIFMA’s Application for Review of SRO Action That Violates Exchange Act Sections 19(d) and 19(f) (the “Application”);

*NOT ADMITTED TO THE NEW YORK BAR

2. Declaration of Lorin L. Reisner In Support of SIFMA's Application Pursuant To Exchange Act Sections 19(d) and 19(f);
3. Appendix of Exhibits to Declaration of Lorin L. Reisner;
4. SIFMA's Motion to Stay SRO Action Pending Commission Review of SIFMA's Application Pursuant to Exchange Act Sections 19(d) and 19(f) and Incorporated Memorandum of Law;
5. Certificate of Compliance with Word Limit;
6. Notice of Appearance on Behalf of SIFMA; and
7. Certificate of Service.

As set forth in the Application, SIFMA respectfully requests that the Commission set aside action taken by the SROs that prohibits and limits access of SIFMA members to the Consolidated Audit Trail ("CAT") System, which is operated and managed by the SROs through Consolidated Audit Trail, LLC ("CAT LLC"). The challenged SRO action prohibits and limits access to services offered by the SROs in violation of Exchange Act Sections 19(d) and 19(f).

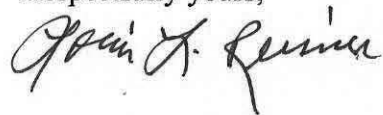
SIFMA further requests, pursuant to Commission Rule of Practice 401, that the challenged SRO action limiting access to the CAT System be stayed until the Commission has an opportunity to consider and rule on SIFMA's Application. A stay will enable Industry Members to submit CAT data and advance the purposes of the CAT without the improper limitations on access to the CAT System imposed by the SROs. In the alternative, SIFMA requests a stay of CAT deadlines that require access to the CAT System.

As described in the Application, the SROs have prohibited and limited access to the CAT System by requiring that Industry Members execute a proposed CAT Reporter Agreement (the "CRA") as a condition of submitting data to the CAT. The CRA purports to limit SRO liability in the event of a CAT data breach and impose unfair risks and responsibilities on Industry Members. The CRA was never filed by the SROs for notice-and-comment and has not been approved by the SEC. It should therefore be set aside by the Commission under Exchange Act Sections 19(d) and 19(f).

SIFMA's guiding principle is "they who hold the data bear the liability." Under the CRA, the contrary is true: firms and clients will have all the risk despite having no control over the data. Although SIFMA and its members fully support the CAT and have invested substantial resources toward implementation of the CAT, the

challenged SRO action has left SIFMA no alternative other than to file this proceeding in order to protect CAT data and ensure that those who maintain the data remain legally responsible for unauthorized exposure of the sensitive information in the CAT System.

Respectfully yours,

A handwritten signature in black ink, appearing to read "Lorin L. Reisner". The signature is written in a cursive style with a large, sweeping initial "L".

Lorin L. Reisner

Enclosures

cc: Service List (by FedEx or Email)

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