

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-96102; File No. 4-698)

October 19, 2022

Joint Industry Plan; Notice of Withdrawal of Amendment to the National Market System Plan Governing the Consolidated Audit Trail

I. Introduction

On May 20, 2022, the Operating Committee for Consolidated Audit Trail, LLC (“CAT LLC”), on behalf of the following parties to the National Market System Plan Governing the Consolidated Audit Trail (the “CAT NMS Plan”):¹ 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., 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, New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc. (collectively, the “Participants”) filed with the Securities and Exchange Commission (“Commission”) pursuant to Section 11A(a)(3) of

¹ The CAT NMS Plan is a national market system plan approved by the Commission pursuant to Section 11A of the Securities Exchange Act of 1934 (“Exchange Act”) and the rules and regulations thereunder. See Securities Exchange Act Release No. 79318 (Nov. 15, 2016), 81 FR 84696 (Nov. 23, 2016). The CAT NMS Plan functions as the limited liability company agreement of the jointly owned limited liability company (CAT LLC) formed under Delaware state law through which the Participants conduct the activities of the CAT. On August 29, 2019, the Participants replaced the CAT NMS Plan in its entirety with the limited liability company agreement of a new limited liability company named Consolidated Audit Trail, LLC. The latest version of the CAT NMS Plan is available at <https://catnmsplan.com/about-cat/cat-nms-plan>.

the Exchange Act,² and Rule 608 thereunder,³ a proposed amendment (“Proposed Amendment”) to the CAT NMS Plan that would authorize CAT LLC to revise the Consolidated Audit Trail Reporter Agreement and the Consolidated Audit Trail Reporter Agent Agreement by: (1) removing the arbitration provision from each agreement and replacing it with a forum selection provision, which would require that any dispute regarding CAT reporting be filed in a United States District Court for the Southern District of New York, or, in the absence of federal subject matter jurisdiction, a New York State Supreme Court within the First Judicial Department; (2) adding a jury waiver provision; (3) adding a disclaimer of warranties clause; and (4) revising the existing choice of law clause to provide that any dispute will be governed by federal law (in addition to New York law).⁴ The Proposed Amendment was published for comment in the Federal Register on June 9, 2022.⁵

² 15 U.S.C. 78k-1(a)(3).

³ 17 CFR 242.608.

⁴ See Letter from Michael Simon, Chair, CAT NMS Plan Operating Committee, to Vanessa Countryman, Secretary, Commission, dated May 20, 2022.

⁵ See Notice of Filing of Amendment to the National Market System Plan Governing the Consolidated Audit Trail, Securities Exchange Act Release No. 95031 (June 3, 2022), 87 FR 35273 (June 9, 2022) (“Notice”). Comments received in response to the Notice can be found on the Commission’s website at <https://www.sec.gov/comments/4-698/4-698-b.htm>.

The Commission is publishing this notice to reflect that on September 6, 2022, prior to the end of the 90-day period provided for in Exchange Act Rule 608(b)(2)(i),⁶ the Participants withdrew the Proposed Amendment.⁷

By the Commission.

J. Matthew DeLesDernier,

Deputy Secretary.

⁶ 17 CFR 242.608(b)(2)(i).

⁷ See Letter from Michael Simon, Chair, CAT NMS Plan Operating Committee, to Vanessa Countryman, Secretary, Commission, dated September 6, 2022.