

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-88702)

April 20, 2020

Order Granting Conditional 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, from Sections 6.4, 6.7(a)(v) and 6.7(a)(vi) of the National Market System Plan Governing the Consolidated Audit Trail

I. Introduction

By letter dated February 19, 2020, 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. (collectively, the “Participants”) to the National Market System Plan Governing the Consolidated Audit Trail (“CAT NMS Plan” or “Plan”),<sup>1</sup> requested that the Securities and Exchange Commission (“Commission” or “SEC”) grant exemptive relief from certain requirements in the CAT NMS Plan pursuant to Section 36 of the Securities Exchange

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<sup>1</sup> The CAT NMS Plan was published for comment in the Federal Register on May 17, 2016, and approved by the Commission, as modified, on November 15, 2016. See Securities Exchange Act Release Nos. 77724 (April 27, 2016), 81 FR 30614 (May 17, 2016) (“Notice of Filing of the CAT NMS Plan”); 79318 (November 15, 2016), 81 FR 84696 (November 23, 2016) (“CAT NMS Plan Approval Order”). The CAT NMS Plan is Exhibit A of the CAT NMS Plan Approval Order. See CAT NMS Plan Approval Order, at 84943-85034.

Act of 1934 (“Exchange Act”)<sup>2</sup> and Rule 608(e) of Regulation NMS under the Exchange Act.<sup>3</sup>

Specifically, the Participants seek exemptive relief from requirements in Sections 6.4, 6.7(a)(v) and 6.7(a)(vi) of the CAT NMS Plan related to Industry Member<sup>4</sup> reporting of Industry Member

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<sup>2</sup> 15 U.S.C. 78mm(a)(1).

<sup>3</sup> 17 CFR 242.608(e).

<sup>4</sup> The CAT NMS Plan defines “Industry Member” as a member of a national securities exchange or a member of a national securities association. See CAT NMS Plan Approval Order, supra note 1, at 84946, Ex. A, Section 1.1. The CAT NMS Plan defines “Small Industry Member” as an Industry Member that qualifies as a small broker-dealer as defined in Rule 613. See id. at 84947, Ex. A, Section 1.1. Rule 613(a)(3)(v) uses the definition of “small broker-dealer” contained in Exchange Act Rule 0–10, “Small entities under the Securities Exchange Act for purposes of the Regulatory Flexibility Act.” Exchange Rule 0–10(c) defines a “small broker-dealer” as 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 240.17a5(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. See 17 CFR 242.613(a)(3)(v); see also 17 CFR 240.0–10(c). In a separate order, the Commission granted the Participants’ request for exemptive relief from enforcing compliance with certain provisions of the CAT NMS Plan with respect to broker-dealers that do not qualify as Small Industry Members solely because they satisfy Rule 0-10(i)(2) under the Exchange Act, and as a result, are deemed to be affiliated with an entity that is not a small business or a small organization (“Introducing Industry Member”). See 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, Securities Exchange Act Release No. 34-88703 (dated April 20, 2020). Under that Order, the Participants will be exempted from requiring compliance with the requirements of the CAT NMS Plan that apply to Large Industry Members with respect to Introducing Industry Members that meet the capital standard in Rule 0-10(c)(1) and that are Small Industry Non-OATS Reporters, provided that each Participant requires such Introducing Industry Members, through its Compliance Rule, to comply with the requirements of the CAT NMS Plan applicable to Small Industry Members.

Data<sup>5</sup> to the Central Repository<sup>6</sup> to allow for the implementation of phased reporting for Industry Members to the Consolidated Audit Trail (“CAT”) as described below.

Rule 608(c) of Regulation NMS under the Exchange Act requires that each self-regulatory organization (“SRO”) comply with and, absent reasonable justification or excuse, enforce compliance by its members with, the terms of any effective NMS plan of which it is a sponsor or a participant.<sup>7</sup> Section 6.4 of the CAT NMS Plan, which governs data reporting and recording by Industry Members, provides that the requirements for Industry Members under that section shall become effective on the second anniversary of the Effective Date in the case of Industry Members other than Small Industry Members, or the third anniversary of the Effective Date in the case of Small Industry Members.<sup>8</sup> Section 6.7(a)(v) of the CAT NMS Plan provides that each Participant, through its Compliance Rule,<sup>9</sup> shall require its Industry Members (other

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<sup>5</sup> Industry Member Data is the data specified in Sections 6.4(d)(i)-(ii) of the CAT NMS Plan, which includes customer information. See CAT NMS Plan Approval Order, supra note 1, at 84961, Ex. A, Sections 6.4(d)(i)-(ii).

<sup>6</sup> See Letter from Michael Simon, Chair, CAT NMS Plan Operating Committee, to Vanessa Countryman, Secretary, Securities and Exchange Commission, dated February 19, 2020 (“February 19, 2020 Exemption Request”). Unless otherwise noted, capitalized terms are used as defined in Rule 613 or in the CAT NMS Plan. The Participants state that this letter amends and replaces in its entirety the original exemptive request letter submitted to the Commission on September 26, 2019. See Letter from Michael Simon, Chair, CAT NMS Plan Operating Committee, to Vanessa Countryman, Secretary, Securities and Exchange Commission, dated September 26, 2019.

<sup>7</sup> 17 CFR 242.608(c).

<sup>8</sup> See CAT NMS Plan Approval Order, supra note 1, at 84960, Ex. A, Section 6.4. The Effective Date of the CAT NMS Plan was November 15, 2016. See supra note 1. Therefore, two years after the Effective Date is November 15, 2018, and three years after the Effective Date is November 15, 2019.

<sup>9</sup> The CAT NMS Plan defines “Compliance Rule” as, with respect to a Participant, the rule(s) promulgated by such Participant as contemplated by Section 3.11 of the CAT NMS Plan. See CAT NMS Plan, supra note 1, at Section 1.1. Section 3.11, “Compliance Undertaking,” requires each Participant to promulgate consistent rules requiring compliance by their respective Industry Members with the provisions of Rule 613 and the CAT NMS Plan. See CAT NMS Plan Approval Order, supra note 1, at 84945, 84950,

than Small Industry Members) to report Industry Member Data to the Central Repository within two years after the Effective Date.<sup>10</sup> Section 6.7(a)(vi) of the CAT NMS Plan provides that each Participant, through its Compliance Rule, shall require its Small Industry Members to report Industry Member Data to the Central Repository within three years after the Effective Date.<sup>11</sup>

For the reasons set forth below, this Order grants the Participants' request for exemptions from specified provisions of the CAT NMS Plan as set forth in the February 19, 2020 Exemption Request, subject to certain conditions.

## II. Description

The Participants state that under the CAT NMS Plan, the Participants are required, through their Compliance Rules, to require their Industry Members (other than Small Industry Members) ("Large Industry Members") to commence reporting Industry Member Data to the Central Repository by November 15, 2018, and to require their Small Industry Members to

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Ex. A, Section 3.11. Between January 17, 2017 and February 2, 2017, each Participant filed a Compliance Rule reflecting the requirements in Section 6.7(a)(v) of the CAT NMS Plan that each Participant require its Industry Members (other than Small Industry Members) to report Industry Member Data to the Central Repository by November 15, 2018, and in Section 6.7(a)(vi) of the CAT NMS Plan that each Participant require its Small Industry Members to report Industry Member Data to the Central Repository by November 15, 2019. See Securities Exchange Act Release Nos. 80256 (March 15, 2017), 82 FR 14526 (March 21, 2017) ("CAT Compliance Rule Joint Approval Order"); 80255 (March 15, 2017), 82 FR 14563, (March 21, 2017) ("FINRA CAT Compliance Rule Approval Order").

<sup>10</sup> See CAT NMS Plan Approval Order, supra note 1, at 84963, Ex. A, Section 6.7(a)(v). Section 1.1 of the CAT NMS Plan defines "Effective Date" as "the date of approval of this Agreement by the Commission." Id. at 84946, Ex. A, Section 1.1. The Effective Date of the CAT NMS Plan was November 15, 2016. Therefore, two years after the Effective Date is November 15, 2018.

<sup>11</sup> See CAT NMS Plan Approval Order, supra note 1, at 84963, Ex. A, Section 6.7(a)(vi). The Effective Date of the CAT NMS Plan was November 15, 2016. See id. at 84946, Ex. A, Section 1.1. Therefore, three years after the Effective Date is November 15, 2019.

commence reporting Industry Member Data to the Central Repository by November 15, 2019.<sup>12</sup> As set forth in the February 19, 2020 Exemption Request, the Participants propose to implement phased reporting for Industry Member reporting to the CAT (“Phased Reporting”) in place of the CAT reporting schedule for Industry Members set forth in the CAT NMS Plan.<sup>13</sup> The Participants state that Phased Reporting would have five phases, Phases 2a through 2e, and further represent that the full scope of CAT Data<sup>14</sup> required under the CAT NMS Plan will be available when all five phases of Phased Reporting are complete, subject to any applicable exemptive relief or amendments to the CAT NMS Plan.<sup>15</sup> The Participants state that each phase of Phased Reporting is described in the Technical Specifications for Industry Members, which provide detailed guidance regarding the data to be reported for each phase.<sup>16</sup> The Participants

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<sup>12</sup> See February 19, 2020 Exemption Request at 2. The Participants state that Section 3.1.1 of the CAT NMS Plan requires the Participants to “endeavor to promulgate consistent rules . . . requiring compliance by their respective Industry Members with the provisions of SEC Rule 613” and the CAT NMS Plan. See *id.* at n.7

<sup>13</sup> See February 19, 2020 Exemption Request at 2. The Participants represent that they engaged in in-depth discussions with the industry and FINRA CAT, LLC, the Plan Processor, regarding the scope and timing of Industry Member reporting, prior to the exemption request. See *id.* The Participants plan to file revisions to their Compliance Rules consistent with the exemptive relief requested in the February 19, 2020 Exemption Request, including revisions to testing and related dates associated with Industry Member CAT reporting. See *id.*

<sup>14</sup> “CAT Data” means data derived from Participant Data, Industry Member Data, SIP Data, and such other data as the Operating Committee may designate as “CAT Data” from time to time. See Section 1.1 of the CAT NMS Plan.

<sup>15</sup> See February 19, 2020 Exemption Request at 2.

<sup>16</sup> See February 19, 2020 Exemption Request at 2 n.10. Specifically, the Participants state that Phases 2a-2e of the Phased Reporting are described in Table 1: Industry Specifications Phased Approach in the CAT Reporting Technical Specifications for Industry Members (version 2.2.1 r3) (Jan. 31, 2020); Table 1: Industry Specifications Phased Approach, CAT Reporting Technical Specifications for Industry Member (version 3.0.0) (Jan. 31, 2020); and Table 1: Industry Customer & Account Specifications Phased Approach, CAT Reporting Customer & Account Technical Specifications for Industry Members (Version 1.0) (Jan. 23, 2020) (collectively with amendments,

believe that Phased Reporting “would facilitate significant Industry Member reporting as quickly as possible by leaving certain complex reporting requirements to later phases.”<sup>17</sup>

A. Phase 2a Scope

The Participants state that in the first phase of Phased Reporting (“Phase 2a”), Large Industry Members and Small Industry OATS Reporters<sup>18</sup> would be required to report “Phase 2a Industry Member Data” to the Central Repository by April 20, 2020.<sup>19</sup> The Participants state that Large Industry Members and Small Industry OATS Reporters would be required to submit data to the CAT for the same events and scenarios during Phase 2a.<sup>20</sup>

The Participants state that “Phase 2a Industry Member Data” would be Industry Member Data that is required to be reported to the Central Repository commencing in Phase 2a as set forth in the Industry Member Technical Specifications, and that Phase 2a Industry Member Data would include Industry Member Data solely related to Eligible Securities that are equities.<sup>21</sup>

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“Industry Member Technical Specifications”), each of which is available at [www.catnmsplan.com](http://www.catnmsplan.com).

<sup>17</sup> February 19, 2020 Exemption Request at 2.

<sup>18</sup> “Small Industry OATS Reporters” are Industry Members that are currently required to record and report information to FINRA’s Order Audit Trail System pursuant to applicable self-regulatory organization (“SRO”) rules. See February 19, 2020 Exemption Request at 3.

<sup>19</sup> See February 19, 2020 Exemption Request at 3. The Participants state that 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”) would not be required to report Phase 2a Industry Member Data to the Central Repository until December 13, 2021, which is twenty months after Large Industry Members and Small Industry OATS Reporters would begin reporting. See February 19, 2020 Exemption Request at 3.

<sup>20</sup> See February 19, 2020 Exemption Request at 3.

<sup>21</sup> See February 19, 2020 Exemption Request at 3. The Participants state that the items required to be reported commencing in Phase 2a do not include the items required to be reported in Phase 2c or Phase 2d. While the following summarizes the categories of Industry Member Data to be reported for Phase 2a, the Participants state that the Industry

Specifically, the Participants state that Phase 2a Industry Member Data would include all events and scenarios covered by OATS,<sup>22</sup> which includes information related to the receipt or origination of orders, order transmittal, and order modifications, cancellations and executions.<sup>23</sup>

The Participants also state that Phase 2a Industry Member Data would include Reportable Events for:

- proprietary orders, including market maker orders, for Eligible Securities that are equities;
- electronic quotes in listed equity Eligible Securities (i.e., NMS stocks) sent to a national securities exchange or FINRA’s Alternative Display Facility (“ADF”);
- electronic quotes in unlisted Eligible Securities (i.e., OTC Equity Securities) received by an Industry Member operating an interdealer quotation system (“IDQS”); and
- electronic quotes in unlisted Eligible Securities sent to an IDQS or other quotation system not operated by a Participant or Industry Member.<sup>24</sup>

According to the Participants, Phase 2a Industry Member Data would include Firm Designated IDs (“FDIDs”), which Industry Members must report to the CAT as required by Sections 6.3(d)(i)(A) and 6.4(d)(ii)(C) of the CAT NMS Plan.<sup>25</sup> The Participants state that in

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Member Technical Specifications provide detailed guidance regarding the data to be reported for each Phase. See id. at 2-3. In addition, the Participants state that they plan to file revisions to their Compliance Rules consistent with the exemptive relief requested in the February 19, 2020 Exemption Request. See id.

<sup>22</sup> See FINRA Rule 7440.

<sup>23</sup> See February 19, 2020 Exemption Request at 3.

<sup>24</sup> See February 19, 2020 Exemption Request at 3-4.

<sup>25</sup> See February 19, 2020 Exemption Request at 4. Section 6.3(d)(i)(A) of the CAT NMS Plan, as applied by Section 6.4(d)(i), requires Industry Members to submit the Firm Designated ID for the original receipt or origination of an order. Section 6.4(d)(ii)(C) of

Phase 2a, Industry Members would be required to report all street side representative orders,<sup>26</sup> including both agency and proprietary orders and mark such orders as representative orders, except in certain limited exceptions as described in the Industry Member Technical Specifications.<sup>27</sup> The Participants state that in Phase 2a, Industry Members would be required to report the link between the street side representative order and the order being represented when: (1) the representative order was originated specifically to represent a single order received either from a customer or another broker-dealer; and (2) there is (a) an existing direct electronic link in the Industry Member's system between the order being represented and the representative order and (b) any resulting executions are immediately and automatically applied to the represented order in the Industry Member's system.<sup>28</sup>

The Participants state that Phase 2a Industry Member Data also would include the manual and Electronic Capture Time for Manual Order Events.<sup>29</sup> The Participants state that specifically, for each Reportable Event in Section 6.3(d) of the CAT NMS Plan, Industry Members would be required to provide a timestamp pursuant to Section 6.8(b) of the CAT NMS Plan.<sup>30</sup> The

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the CAT NMS Plan requires Industry Members to record and report to the Central Repository, for original receipt and origination of an order, the Firm Designated ID.

<sup>26</sup> See February 19, 2020 Exemption Request at 4. The Participants state that a representative order is an order originated in a firm owned or controlled account, including principal, agency average price and omnibus accounts, by an Industry Member for the purpose of working one or more customer or client orders. See *id.*

<sup>27</sup> See February 19, 2020 Exemption Request at 4.

<sup>28</sup> See February 19, 2020 Exemption Request at 4.

<sup>29</sup> See February 19, 2020 Exemption Request at 4.

<sup>30</sup> See February 19, 2020 Exemption Request at 4. The Participants state that Section 6.8(b) of the CAT NMS Plan states that Industry Members shall be permitted to record and report: (i) Manual Order Events to the Central Repository in increments up to and including one second, provided that . . . Industry Members shall be required to record and report the time when a Manual Order Event has been captured electronically in an order



Participants explain that accordingly, for Phase 2a, Industry Members would be required to provide both the manual and Electronic Capture Time for Manual Order Events.<sup>31</sup> The Participants state that Industry Members would be required to report special handling instructions for the original receipt or origination of an order during Phase 2a.<sup>32</sup> In addition, during Phase 2a, the Participants state that Industry Members will be required to report, when routing an order, whether the order was routed as an intermarket sweep order (“ISO”).<sup>33</sup>

The Participants state that in Phase 2a, Industry Members would not be required to report modifications of a previously routed order in certain limited instances.<sup>34</sup> The Participants explain that specifically, if a trader or trading software modifies a previously routed order, the routing firm is not required to report the modification of an order route if the destination to which the order was routed is a CAT Reporter that is required to report the corresponding order activity.<sup>35</sup> The Participants state that if, however, the order was modified by a Customer or other non-CAT Reporter, and subsequently the routing Industry Member sends a modification to the destination to which the order was originally routed, then the routing Industry Member must

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handling and execution system of such . . . Industry Member (“Electronic Capture Time”) in milliseconds.

<sup>31</sup> See February 19, 2020 Exemption Request at 5. The Participants state that Industry Members would be required to provide an Electronic Capture Time following the manual capture time only for new orders that are Manual Order Events and, in certain instances, routes that are Manual Order Events. The Participants state that the Electronic Capture Time would not be required for other Manual Order Events. See id. at n.14.

<sup>32</sup> See February 19, 2020 Exemption Request at 5.

<sup>33</sup> See February 19, 2020 Exemption Request at 5. The Participants state that Industry Members would be required to report special handling instructions on routes other than ISOs in Phase 2c, rather than Phase 2a. See id.

<sup>34</sup> See February 19, 2020 Exemption Request at 5.

<sup>35</sup> See February 19, 2020 Exemption Request at 5.

report the modification of the order route.<sup>36</sup> In addition, the Participants state that in Phase 2a, Industry Members would not be required to report a cancellation of an order received from a Customer after the order has been executed.<sup>37</sup>

For Phase 2a, Participants would require Small Industry OATS Reporters to begin reporting to the Central Repository at the same time as Large Industry Members.<sup>38</sup> The Participants state that aligning the start of CAT reporting for Small Industry OATS Reporters with that of Large Industry Members under the Phased Reporting approach is designed to accelerate the retirement of OATS, and that having data from the Small Industry Members currently reporting to OATS available when Large Industry Members begin reporting would substantially facilitate a more expeditious retirement of OATS.<sup>39</sup> The Participants further state that the retirement of OATS would lead to a significant cost savings for the industry by eliminating the need to maintain two duplicative reporting systems, as described in the CAT NMS Plan and as noted by the industry.<sup>40</sup>

In addition, the Participants state that commencing Phase 2a CAT reporting for Small Industry OATS Reporters and Large Industry Members simultaneously should not create significant burdens for Small Industry OATS Reporters because the additional year allotted to Small Industry Members under the CAT NMS Plan was intended to give Small Industry

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<sup>36</sup> See February 19, 2020 Exemption Request at 5. The Participants represent that this approach is comparable to the approach set forth in OATS Compliance FAQ 35. See id. at n.15.

<sup>37</sup> See February 19, 2020 Exemption Request at 5.

<sup>38</sup> See February 19, 2020 Exemption Request at 5.

<sup>39</sup> See February 19, 2020 Exemption Request at 5.

<sup>40</sup> See February 19, 2020 Exemption Request at 6.

Members additional time to comply with the new reporting requirements.<sup>41</sup> The Participants believe this contention is supported by language in the Rule 613 Adopting Release indicating that small broker-dealers were provided with an additional year to begin reporting because “small broker-dealers, particularly those that operate manual systems, might be particularly impacted because of their more modest financial resources and may need additional time to upgrade to an electronic method of reporting audit trail data to the central repository.”<sup>42</sup>

However, the Participants state that they do not believe that this concern applies to small broker-dealers that are OATS Reporters.<sup>43</sup> The Participants explain that while their proposed exemption would accelerate CAT reporting obligations for approximately 230 Small Industry Members, 220 of those firms already report to OATS through clearing firms or other third-party providers, all of which will begin reporting to the CAT at the same time as Large Industry Members.<sup>44</sup> As a result, the Participants believe that (1) additional technical requirements or costs to accelerate reporting requirements for these firms should be limited, and (2) that this change would allow introducing and clearing firms to avoid the costs associated with maintaining two systems during the additional transition year otherwise provided to Small Industry Members.<sup>45</sup> Of the ten Small Industry Members that report to OATS on their own behalf, the Participants state that eight have very few reportable events and, consequently, the Participants believe that these Industry

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<sup>41</sup> See February 19, 2020 Exemption Request at 6.

<sup>42</sup> See February 19, 2020 Exemption Request at 6; see also Securities Exchange Act Rel. No. 67457 (July 18, 2012), 77 FR 45722, 45749 (August 1, 2012) (“Rule 613 Adopting Release”).

<sup>43</sup> See February 19, 2020 Exemption Request at 6.

<sup>44</sup> See February 19, 2020 Exemption Request at 6.

<sup>45</sup> See February 19, 2020 Exemption Request at 6.

Members would not have significant burdens reporting to the CAT rather than continuing to report to OATS.<sup>46</sup>

The Participants also believe that Phase 2a will serve as a substantial step forward for CAT reporting because it will cover not only all OATS events and scenarios from all OATS reporters, but will also include a variety of data not covered by OATS or other SRO systems.<sup>47</sup>

In addition, the Participants state that Large Industry Members and Small Industry OATS Reporters would be required to report the FDID during Phase 2a, and that the FDID will allow regulators to identify that the same account is trading within a single broker-dealer.<sup>48</sup>

Furthermore, the Participants state that during Phase 2a, certain linkages between street side representative orders and the related customer order will be enabled, which will provide significant benefits to regulators using the data, and that these linkages are not required under the OATS rules.<sup>49</sup>

In regard to Small Industry Non-OATS Reporters, the Participants do not propose to require these reporters to commence CAT reporting at the same time as Large Industry Members on April 20, 2020.<sup>50</sup> Instead, the Participants propose to require Small Industry Non-OATS

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<sup>46</sup> See February 19, 2020 Exemption Request at 6. The Participants state that in one recent month, five of the ten firms submitted fewer than 100 reports during the month, with four submitting fewer than 50. See *id.* at n.19.

<sup>47</sup> See February 19, 2020 Exemption Request at 6. For example, the Participants state that during Phase 2a, Large Industry Members and Small Industry OATS Reporters will be required to report all proprietary orders, including market maker orders, whereas market making and representative proprietary orders are not required to be captured under the OATS rules. See *id.*

<sup>48</sup> See February 19, 2020 Exemption Request at 7. The Participants state that when the Customer information reporting begins, the Firm Designated ID will be used to link accounts to specific customers. See *id.* at n.20.

<sup>49</sup> See February 19, 2020 Exemption Request at 7.

<sup>50</sup> See February 19, 2020 Exemption Request at 7.

Reporters to begin reporting Phase 2a Industry Member Data by December 13, 2021, twenty months after Large Industry Members and Small Industry OATS Reporters begin reporting Phase 2a Industry Member Data to the Central Repository.<sup>51</sup> The Participants determined not to accelerate Phase 2a CAT reporting for Small Industry Non-OATS Reporters because unlike Small Industry OATS Reporters, the burdens of CAT reporting are significantly greater for those firms that are not currently reporting to OATS.<sup>52</sup> In addition, because Small Industry Non-OATS Reporters do not report to OATS, the Participants state that accelerating their reporting would not have any effect on the retirement of OATS.<sup>53</sup>

B. Phase 2b Scope

The Participants state that in the second phase of Phased Reporting (“Phase 2b”), Large Industry Members would be required to report to the Central Repository “Phase 2b Industry Member Data” by May 18, 2020.<sup>54</sup> Small Industry Members, however, would not be required to report Phase 2b Industry Member Data to the Central Repository until December 13, 2021, which is nineteen months after Large Industry Members begin reporting such data to the Central Repository.<sup>55</sup>

The Participants state that “Phase 2b Industry Member Data” would be Industry Member Data required to be reported to the Central Repository commencing in Phase 2b as set forth in the Industry Member Technical Specifications.<sup>56</sup> Specifically, the Participants state that Phase

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<sup>51</sup> See February 19, 2020 Exemption Request at 7.

<sup>52</sup> See February 19, 2020 Exemption Request at 7.

<sup>53</sup> See February 19, 2020 Exemption Request at 7.

<sup>54</sup> See February 19, 2020 Exemption Request at 7.

<sup>55</sup> See February 19, 2020 Exemption Request at 7.

<sup>56</sup> See February 19, 2020 Exemption Request at 7. The Participants state that while the following summarizes the categories of Industry Member Data to be reported for Phase

2b Industry Member Data would include Industry Member Data related to Eligible Securities that are options and related to simple electronic option orders, excluding electronic paired option orders.<sup>57</sup> The Participants explain that a simple electronic option order is an order to buy or sell a single option that is not related to or dependent on any other transaction for pricing and timing of execution that is either received or routed electronically by an Industry Member.<sup>58</sup> The Participants state that electronic receipt of an order is defined as the initial receipt of an order by an Industry Member in electronic form in standard format directly into an order handling or execution system.<sup>59</sup> The Participants state that electronic routing of an order is the routing of an order via electronic medium in standard format from one Industry Member's order handling or execution system to an exchange or another Industry Member.<sup>60</sup> The Participants further explain that an electronic paired option order is an electronic option order that contains both the buy and sell side that is routed to another Industry Member or exchange for crossing and/or price improvement as a single transaction on an exchange.<sup>61</sup> The Participants add that responses to auctions of simple orders and paired simple orders would be reportable in Phase 2b.<sup>62</sup>

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2b, the Industry Member Technical Specifications provide detailed guidance regarding the data to be reported for each Phase. See id. at 7, 2-3.

<sup>57</sup> See February 19, 2020 Exemption Request at 7. The Participants state that the items required to be reported in Phase 2b do not include the items required to be reported in Phase 2d, as discussed below. See id. at n.21.

<sup>58</sup> See February 19, 2020 Exemption Request a 7-8.

<sup>59</sup> See February 19, 2020 Exemption Request at 8.

<sup>60</sup> See February 19, 2020 Exemption Request at 8.

<sup>61</sup> See February 19, 2020 Exemption Request at 8.

<sup>62</sup> See February 19, 2020 Exemption Request at 8.

Furthermore, the Participants state that combined orders in options would be treated in Phase 2b in the same way as equity representative orders are treated in Phase 2a.<sup>63</sup> The Participants state that a combined order would mean, as permitted by SRO rules, a single, simple order in Listed Options created by combining individual, simple orders in Listed Options from a customer with the same exchange origin code before routing to an exchange.<sup>64</sup> The Participants state that during Phase 2b, the single combined order sent to an exchange must be reported and marked as a combined order, but the linkage to the underlying orders is not required to be reported until Phase 2d.<sup>65</sup>

C. Phase 2c Scope

The Participants state that in the third phase of Phased Reporting (“Phase 2c”), Large Industry Members would be required to report to the Central Repository “Phase 2c Industry Member Data” by April 26, 2021.<sup>66</sup> Small Industry Members would be required to report to the Central Repository “Phase 2c Industry Member Data” by December 13, 2021, which is seven months after Large Industry Members begin reporting such data to the Central Repository.<sup>67</sup>

The Participants state that “Phase 2c Industry Member Data” would be Industry Member Data related to Eligible Securities that are equities other than Phase 2a Industry Member Data, Phase 2d Industry Member Data, or Phase 2e Industry Member Data.<sup>68</sup> Specifically, the

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<sup>63</sup> See February 19, 2020 Exemption Request at 8.

<sup>64</sup> See February 19, 2020 Exemption Request at 8.

<sup>65</sup> See February 19, 2020 Exemption Request at 8.

<sup>66</sup> See February 19, 2020 Exemption Request at 8.

<sup>67</sup> See February 19, 2020 Exemption Request at 8.

<sup>68</sup> See February 19, 2020 Exemption Request at 8. The Participants state that while the following summarizes the categories of Industry Member Data to be reported for Phase 2c, the Industry Member Technical Specifications provide detailed guidance regarding the data to be reported for each Phase. See id. at 8, 2-3.

Participants state that Phase 2c Industry Member Data would include Industry Member Data that is related to Eligible Securities that are equities and that is related to: (1) Allocation Reports as required to be recorded and reported to the Central Repository pursuant to Section 6.4(d)(ii)(A)(1) of the CAT NMS Plan; (2) quotes in unlisted Eligible Securities sent to an IDQS operated by a CAT Reporter (reportable by the Industry Member sending the quotes) (except for quotes reportable in Phase 2d, as discussed below); (3) electronic quotes in listed equity Eligible Securities (i.e., NMS stocks) that are not sent to a national securities exchange or FINRA’s Alternative Display Facility; (4) reporting changes to client instructions regarding modifications to algorithms; (5) marking as a representative order any order originated to work a customer order in price guarantee scenarios, such as a guaranteed VWAP; (6) flagging rejected external routes to indicate a route was not accepted by the receiving destination; (7) linkage of duplicate electronic messages related to a Manual Order Event between the electronic event and the original manual route; (8) special handling instructions on order route reports (other than the ISO, which is required to be reported in Phase 2a); (9) quote identifier on trade events; (10) reporting of large trader identifiers<sup>69</sup> (“LTID”) (if applicable) for accounts with Reportable Events that are reportable to CAT as of and including Phase 2c;<sup>70</sup> (11) reporting of date account

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<sup>69</sup> See definition of “Customer Account Information” in Section 1.1 of the CAT NMS Plan. See also Rule 13h-1 under the Exchange Act.

<sup>70</sup> The CAT NMS Plan requires LTID to be reported to the CAT as part of Customer Account Information. As set forth in the February 19, 2020 Exemption Request, the Participants propose to require the reporting of LTID to the CAT in Phases 2c and 2d, instead of with the rest of Customer Account Information in Phase 2e, which potentially could result in an earlier elimination of broker-dealer recordkeeping, reporting and monitoring requirements of the Large Trader Rule. See February 19, 2020 Exemption Request at 9-11.



opened or Account Effective Date<sup>71</sup> (as applicable) for accounts and reporting of a flag indicating the Firm Designated ID type as account or relationship; (12) order effective time for orders that are received by an Industry Member and do not become effective until a later time; (13) the modification or cancellation of an internal route of an order; and (14) linkages to the customer orders(s) being represented for representative order scenarios, including agency average price trades, net trades, aggregated orders, and disconnected Order Management System (“OMS”) – Execution Management System (“EMS”) scenarios, as required in the Industry Member Technical Specifications.<sup>72</sup>

The Participants state that Phase 2c Industry Member Data also includes electronic quotes that are provided by or received in a CAT Reporter’s order/quote handling or execution systems in Eligible Securities that are equities and are provided by an Industry Member to other market participants off a national securities exchange under the following conditions: (1) an equity bid or offer is displayed publicly or has been communicated (a) for listed securities to the Alternative Display Facility (ADF) operated by FINRA; or (b) for unlisted equity securities to an “inter-dealer quotation system” as defined in FINRA Rule 6420(c); or (2) an equity bid or offer which is accessible electronically by customers or other market participants and is immediately actionable for execution or routing; i.e., no further manual or electronic action is required by the responder providing the quote in order to execute or cause a trade to be executed).<sup>73</sup> The

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<sup>71</sup> See definition of “Customer Account Information” and “Account Effective Date” in Section 1.1 of the CAT NMS Plan.

<sup>72</sup> See February 19, 2020 Exemption Request at 8-9. The Participants state that in Phase 2c, for any scenarios that involve orders originated in different systems that are not directly linked, such as a customer order originated in an OMS and represented by a principal order originated in an EMS that is not linked to the OMS, marking and linkages must be reported as required in the Industry Member Technical Specifications. See id. at n.24.

<sup>73</sup> See February 19, 2020 Exemption Request at 9.

Participants state that with respect to OTC Equity Securities, OTC Equity Securities quotes sent by an Industry Member to an IDQS operated by an Industry Member CAT Reporter (other than such an IDQS that does not match and execute orders) are reportable by the Industry Member sending them in Phase 2c.<sup>74</sup> The Participants explain that accordingly, any response to a request for quote or other form of solicitation response provided in a standard electronic format (e.g., FIX) that meets this quote definition (i.e., an equity bid or offer which is accessible electronically by customers or other market participants and is immediately actionable for execution or routing) would be reportable in Phase 2c.<sup>75</sup>

D. Phase 2d Scope

The Participants state that in the fourth phase of Phased Reporting (“Phase 2d”), Large Industry Members and Small Industry Members would be required to report to the Central Repository “Phase 2d Industry Member Data” by December 13, 2021.<sup>76</sup> The Participants state that the full scope of CAT Data other than Phase 2e Industry Member Data will be required to be reported to the CAT when Phase 2d has been implemented, subject to any applicable exemptive relief or amendments to the CAT NMS Plan.<sup>77</sup>

The Participants state that “Phase 2d Industry Member Data” is Industry Member Data that is related to Eligible Securities that are options other than Phase 2b Industry Member Data, Industry Member Data that is related to Eligible Securities that are equities other than Phase 2a

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<sup>74</sup> See February 19, 2020 Exemption Request at 9.

<sup>75</sup> See February 19, 2020 Exemption Request at 9.

<sup>76</sup> See February 19, 2020 Exemption Request at 9.

<sup>77</sup> See February 19, 2020 Exemption Request at 10.

Industry Member Data or Phase 2c Industry Member Data, and Industry Member Data other than Phase 2e Industry Member Data.<sup>78</sup>

The Participants state that Phase 2d Industry Member Data includes with respect to the Eligible Securities that are options: (1) simple manual orders; (2) electronic and manual paired orders; (3) all complex orders with linkages to all CAT-reportable legs; (4) LTIDs (if applicable) for accounts with Reportable Events for Phase 2d; (5) date account opened or Account Effective Date (as applicable) for accounts with an LTID and flag indicating the Firm Designated ID type as account or relationship for such accounts; (6) Allocation Reports as required to be recorded and reported to the Central Repository pursuant to Section 6.4(d)(ii)(A)(1) of the CAT NMS Plan; (7) the modification or cancellation of an internal route of an order; and (8) linkage between a combined order and the original customer orders.<sup>79</sup> The Participants state that Phase 2d Industry Member Data also would include electronic quotes that are provided by or received in a CAT Reporter's order/quote handling or execution systems in Eligible Securities that are options and are provided by an Industry Member to other market participants off a national securities exchange under the following conditions: a listed option bid or offer which is accessible electronically by customers or other market participants and is immediately actionable (i.e., no further action is required by the responder providing the quote in order to execute or

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<sup>78</sup> See February 19, 2020 Exemption Request at 9-10. The Participants state that reporting information regarding the modification or cancellation of a route is necessary to create the full lifecycle of an order. Accordingly, the reporting of information related to the modification or cancellation of a route (similar to the data required for the routing of an order and modification and cancellation of an order) is required pursuant to Sections 6.3(d)(ii) and (iv) of the CAT NMS Plan. See id. at 10 n.25. The Participants state that while the following summarizes the categories of Industry Member Data to be reported for Phase 2d, the Industry Member Technical Specifications provide detailed guidance regarding the data to be reported for each Phase. See id. at 10, 2-3.

<sup>79</sup> See February 19, 2020 Exemption Request at 10.

cause a trade to be executed).<sup>80</sup> The Participants state that accordingly, any response to a request for quote or other form of solicitation response provided in standard electronic format (e.g., FIX) that meets this definition would be reportable in Phase 2d for options.<sup>81</sup>

The Participants state that Phase 2d Industry Member Data also would include with respect to Eligible Securities that are options or equities (1) receipt time of cancellation and modification instructions through Order Cancel Request and Order Modification Request events; (2) modifications of previously routed orders in certain instances; and (3) OTC Equity Securities quotes sent by an Industry Member to an IDQS operated by an Industry Member CAT Reporter that does not match and execute orders. In addition, the Participants state that subject to any exemptive or other relief, Phase 2d Industry Member Data will include verbal or manual quotes on an exchange floor or in the over-the-counter market, where verbal quotes and manual quotes are defined as bids or offers in Eligible Securities provided verbally or that are provided or received other than via a CAT Reporter's order handling and execution system (e.g., quotations provided via email or instant messaging).<sup>82</sup>

#### E. Phase 2e Scope

The Participants state that in the fifth phase of Phased Reporting ("Phase 2e"), both Large Industry Members and Small Industry Members would be required to report to the Central Repository "Phase 2e Industry Member Data" by July 11, 2022.<sup>83</sup> The Participants state that "Phase 2e Industry Member Data" includes Customer Account Information and Customer Identifying Information, other than LTIDs, date account opened/Account Effective Date and

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<sup>80</sup> See February 19, 2020 Exemption Request at 10.

<sup>81</sup> See February 19, 2020 Exemption Request at 10.

<sup>82</sup> See February 19, 2020 Exemption Request at 10.

<sup>83</sup> See February 19, 2020 Exemption Request at 11; see supra note 16.

Firm Designated ID type flag previously reported to the CAT.<sup>84</sup> The Participants state that LTIDs and Account Effective Date are both provided in Phases 2c and 2d in certain circumstances, as discussed above.<sup>85</sup> The Participants state that the terms “Customer Account Information” and “Customer Identifying Information” are defined in Section 1.1 of the CAT NMS Plan.<sup>86</sup> The Participants represent that the full scope of CAT Data will be required to be reported to the CAT when Phase 2e has been implemented, subject to any applicable exemptive relief or amendments to the CAT NMS Plan.<sup>87</sup>

F. Industry Member Testing Requirements

The Participants state that the CAT NMS Plan sets forth certain timelines for testing for various aspects of the implementation of Industry Member reporting to the CAT.<sup>88</sup> The

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<sup>84</sup> See February 19, 2020 Exemption Request at 11.

<sup>85</sup> See February 19, 2020 Exemption Request at 11.

<sup>86</sup> See February 19, 2020 Exemption Request at 11. The term “Customer Account Information” includes account numbers, and the term “Customer Identifying Information” includes, with respect to individuals, dates of birth and individual tax payer identification numbers and social security numbers (collectively, “SSNs”). See Section 1.1 of the CAT NMS Plan. The Participants state that they requested exemptive relief from the requirements for the Participants to require their members to provide dates of birth, account numbers and social security numbers for individuals to the CAT. See Letter from Michael Simon, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, SEC, Request for Exemptive Relief from Certain Provisions of the CAT NMS Plan related to Social Security Numbers, Dates of Birth and Account Numbers (Jan. 29, 2020). On March 17, 2020, the Commission granted conditional exemptive relief to allow for an alternative approach to generating a CAT Customer ID without requiring Industry Members to report individual social security numbers or tax payer identification numbers and (2) to allow for an alternative approach that exempts the reporting of dates of birth and account numbers associated with natural person retail Customers to the CAT, and instead will require Industry Members to report the year of birth associated with natural person retail Customers and the FDID for each trading account associated with the Customer. See Securities Exchange Act Release No. 88393, 85 FR 16152, 16152 (March 20, 2020).

<sup>87</sup> See February 19, 2020 Exemption Request at 11.

<sup>88</sup> See February 19, 2020 Exemption Request at 11.

Participants elaborate that specifically, Section 10 of Appendix C of the CAT NMS Plan sets forth testing timelines for Large and Small Industry Members involving, in relevant part, the publication and implementation of the methods for providing information to the Customer-ID database, the submission of order and market maker quote data to Central Repository, and the linkage of the lifecycle of order events.<sup>89</sup> Given the Participants' proposal to shift from two specified dates for the commencement of CAT reporting for Large and Small Industry Members to Phased Reporting, which features varying commencement dates according to each Phase for Large Industry Members, Small Industry OATS Reporters, and Small Industry Non-OATS Reporters, as described above, the Participants recognize that the testing milestones set forth in Appendix C of the CAT NMS Plan do not easily correspond to Phased Reporting.<sup>90</sup>

Accordingly, the Participants propose to replace the Industry Member testing milestones in Appendix C with the following testing milestones.<sup>91</sup> The Participants represent that in each case, the proposed testing timeline would provide ample testing time for Industry Members.<sup>92</sup> The proposed testing timeline is as follows:

- Industry Member file submission and data integrity testing for Phases 2a and 2b begins in December 2019;

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<sup>89</sup> See February 19, 2020 Exemption Request at 11.

<sup>90</sup> See February 19, 2020 Exemption Request at 11.

<sup>91</sup> See February 19, 2020 Exemption Request at 11. The Participants state that each of the testing milestones has been set forth in the updated master plan provided to the SEC. See id. The Division of Trading and Markets requested a master plan from the Participants detailing all the material steps necessary to fully implement both Participant and Industry Member reporting as part of completing the CAT, among other items. See Securities Exchange Act Release No. 86901, 84 FR 48458, 48460 (September 13, 2019) (“Proposed Transparency and Financial Accountability Amendments”).

<sup>92</sup> See February 19, 2020 Exemption Request at 11. See Section 10.1, Appendix D of the CAT NMS Plan.

- Industry Member testing of the Reporter Portal, including data integrity error correction tools and data submissions, begins in February 2020;
- The Industry Member test environment will be open with intra-firm linkage validations to Industry Members for both Phases 2a and 2b in April 2020;
- The Industry Member test environment will be open to Industry Members with inter-firm linkage validations for both Phases 2a and 2b in July 2020;
- The Industry Member test environment will be open to Industry Members with Phase 2c functionality (full representative order linkages) in January 2021;
- The Industry Member test environment will be open to Industry Members with Phase 2d functionality (manual options orders, complex options orders, and options allocations) in June 2021;
- Participant exchanges that support options market making quoting will begin accepting Quote Sent Time on quotes from Industry Members no later than April 2020;
- The Industry Member test environment (customer and account information) will be open to Industry Members in January 2022.<sup>93</sup>

### III. Request for Relief

In order to allow for the implementation of Phased Reporting, the Participants request, in the February 19, 2020 Exemption Request, that the Commission grant each Participant exemptive relief from the requirement in Section 6.4 of the CAT NMS Plan that “[t]he requirements for Industry Members under this Section 6.4 shall become effective on the second anniversary of the Effective Date in the case of Industry Members other than Small Industry Members, or the third anniversary of the Effective Date in the case of Small Industry Members”

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<sup>93</sup> See February 19, 2020 Exemption Request at 11-12.

(i.e., November 15, 2018 and November 15, 2019, respectively).<sup>94</sup> The Participants also request that the Commission grant each Participant exemptive relief from the requirement in Section 6.7(a)(v) of the CAT NMS Plan for each Participant, through its Compliance Rule, to require its Industry Members (other than Small Industry Members) to report to the Central Repository Industry Member Data within two 2 years after the Effective Date (i.e., by November 15, 2018); and the requirement in Section 6.7(a)(vi) of the CAT NMS Plan for each Participant, through its Compliance Rule, to require its Small Industry Members to report to the Central Repository Industry Member Data within three 3 years after the Effective Date (i.e., by November 15, 2019).<sup>95</sup>

In support of their request for an exemption, the Participants state that Industry Members have expressed concern about being out of compliance with the reporting deadlines as currently set forth in the Compliance Rules, and have indicated that there is a need for formal guidance as to the revised CAT reporting schedule for Industry Members.<sup>96</sup> The Participants state that such certainty would assist Industry Members in their efforts to ensure compliance with the regulatory requirements related to the CAT.<sup>97</sup> The Participants state that the full scope of CAT Data will be required to be reported when all five phases of Phased Reporting have been implemented, subject to any applicable exemptive relief or amendments to the CAT NMS Plan.<sup>98</sup>

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<sup>94</sup> See February 19, 2020 Exemption Request at 12.

<sup>95</sup> See February 19, 2020 Exemption Request at 12.

<sup>96</sup> See February 19, 2020 Exemption Request at 2. The Participants state that they plan to file revisions to their Compliance Rules consistent with the exemptive relief requested in the February 19, 2020 Exemption Request, including revisions to testing and related dates associated with Industry Member CAT reporting. See id.

<sup>97</sup> See February 19, 2020 Exemption Request at 2.

<sup>98</sup> See February 19, 2020 Exemption Request at 13.



The Participants also state that, as a condition to the exemption, each Participant would implement the Phased Reporting described above through its Compliance Rule by requiring:

- For Phase 2a Industry Member Data: its Large Industry Members and its Small Industry OATS Reporters to commence reporting to the Central Repository Phase 2a Industry Member Data by April 20, 2020, and its Small Industry Non-OATS Reporters to commence reporting to the Central Repository Phase 2a Industry Member Data by December 13, 2021;
- For Phase 2b Industry Member Data: its Large Industry Members to commence reporting to the Central Repository Phase 2b Industry Member Data by May 18, 2020, and its Small Industry Members to commence reporting to the Central Repository Phase 2b Industry Member Data by December 13, 2021;
- For Phase 2c Industry Member Data: its Large Industry Members to commence reporting to the Central Repository Phase 2c Industry Member Data by April 26, 2021, and its Small Industry Members to commence reporting to the Central Repository Phase 2c Industry Member Data by December 13, 2021;
- For Phase 2d Industry Member Data: its Large Industry Members and Small Industry Members to commence reporting to the Central Repository Phase 2d Industry Member Data by December 13, 2021; and
- For Phase 2e Industry Member Data: its Large Industry Members and Small Industry Members to commence reporting to the Central Repository Phase 2e Industry Member Data by July 11, 2022.<sup>99</sup>

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<sup>99</sup> See February 19, 2020 Exemption Request at 12-13.

The Participants also state that, as a further condition to the exemption, each Participant would implement the testing timelines described above through its Compliance Rule by requiring the following:

- Industry Member file submission and data integrity testing for Phases 2a and 2b to begin in December 2019.
- Industry Member testing of the Reporter Portal, including data integrity error correction tools and data submissions, to begin in February 2020.
- The Industry Member test environment will be open with intra-firm linkage validations to Industry Members for both Phases 2a and 2b in April 2020.
- The Industry Member test environment will be open to Industry Members with inter-firm linkage validations for both Phases 2a and 2b in July 2020.
- The Industry Member test environment will be open to Industry Members with Phase 2c functionality (full representative order linkages) in January 2021.
- The Industry Member test environment will be open to Industry Members with Phase 2d functionality (manual options orders, complex options orders, and options allocations) in June 2021.
- Participant exchanges that support options market making quoting will begin accepting Quote Sent Time on quotes from Industry Members no later than April 2020.
- The Industry Member test environment (customer and account information) will be open to Industry Members in January 2022.<sup>100</sup>

#### IV. Discussion

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<sup>100</sup> See February 19, 2020 Exemption Request at 13.

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.”<sup>101</sup> Rule 608(e) of Regulation NMS under the Exchange Act authorizes the Commission to exempt, either unconditionally or on specified terms and conditions, any self-regulatory organization, member thereof, or specified security, from the provisions of the rule 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.<sup>102</sup>

The Commission believes that exemptive relief pursuant to Section 36 of the Exchange Act to allow for the implementation of Phased Reporting for Industry Members is appropriate in the public interest, and is consistent with the protection of investors and that, pursuant to Rule 608(e), such relief 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. In accordance with the CAT NMS Plan, the Participants adopted Compliance Rules to require their Industry Members to commence reporting Industry Member Data by November 15, 2018 for Large Industry Members, and November 15, 2019 for Small Industry Members, respectively.<sup>103</sup> Industry Members, however,

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<sup>101</sup> 15 U.S.C. 78mm(a)(1).

<sup>102</sup> 17 CFR 242.608(e).

<sup>103</sup> See FINRA CAT Compliance Rule Approval Order, supra note 9; CAT Compliance Rule Joint Approval Order, supra note 9.

have not been able to commence reporting Industry Member Data to the CAT because there has not been a system in place capable of accepting the required Industry Member Data.

Allowing the Participants to revise the Industry Member CAT reporting requirements in the Compliance Rules to be consistent with Phased Reporting as described in this Order will facilitate an incremental approach to CAT implementation. Such an approach could contribute to more efficient development of the overall CAT system, which has been subject to delays, and could provide certainty to Industry Members as they implement their regulatory data collection systems and make any necessary adjustments.

Although the Participants proposed in the February 19, 2020 Exemption Request that Phase 2a reporting would commence on April 20, 2020 and Phase 2b reporting would commence on May 18, 2020,<sup>104</sup> in light of COVID-19 and the Participants' subsequent March 19, 2020 No Action Request,<sup>105</sup> the Commission believes that the Participants should be granted an exemption from the CAT NMS Plan so that the Compliance Rules may require Phase 2a

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<sup>104</sup> See February 19, 2020 Exemption Request at 3, 7.

<sup>105</sup> On March 19, 2020 the Participants requested additional time for Industry Members to prepare for the commencement of reporting and stated that Phase 2a and Phase 2b reporting would commence on June 22, 2020 and July 20, 2020, respectively. The Participants stated that industry groups have requested extensions of CAT implementation dates for at least 60 days. See Letter from Michael Simon, Chair, CAT NMS Plan Operating Committee, to Brett Redfean, Director, Division of Trading and Markets, U.S. Securities and Exchange Commission, dated March 19, 2020 ("March 19, 2020 No Action Request") available at <https://www.catnmsplan.com/sites/default/files/2020-03/Plan%20Participant%27s%20Request%20for%20No%20Action%20Relief.pdf>; see also Letter from Christopher Bok, Esq., Director, Financial Information Forum, to Michael Simon, Chair, CAT NMS Plan Operating Committee, dated March 16, 2020 available at <https://fif.com/comment-letters/category/?download=2129:fif-request-for-immediate-phase-2a-and-phase-2b-relief> (requesting an immediate pause of at least 60 days from near term CAT Phase 2a and Phase 2b milestones in response to COVID-19, one of the effects of which would be to shift the Phase 2a and Phase 2b compliance dates to June 22, 2020 and July 20, 2020, respectively).

reporting to commence on June 22, 2020 and Phase 2b reporting to commence on July 20, 2020, provided that Industry Members who elect to report to the CAT prior to such dates be permitted to report to the CAT as early as April 20, 2020 for Phase 2a reporting and as early as May 18, 2020 for Phase 2b reporting. The Participants represented in their March 19, 2020 No Action Request that the CAT will be ready to accept CAT reports from Industry Members as of April 20, 2020<sup>106</sup> and that the Participants understand that the Plan Processor for the CAT will be able to meet its upcoming system build and production dates.<sup>107</sup>

The Commission believes that separating the reporting dates for OATS reporting firms from those that have no OATS reporting obligations is appropriate because firms that do not currently report to OATS will face a different range of costs and tasks to implement and maintain CAT reporting, since these firms are likely to have little to no regulatory data reporting infrastructure in place.<sup>108</sup> Unlike these firms, Small Industry OATS Reporters already have regulatory data reporting infrastructure in place to support OATS reporting, and because Phase 2a reporting would include all events and scenarios covered by OATS,<sup>109</sup> the Commission believes that it should be less costly for Small Industry OATS Reporters to comply with the Large Industry Member reporting deadline than it would be for Small Industry Non-OATS Reporters. In addition, Small Industry OATS Reporters, as Small Industry Members, have had notice that they were going to be required to start reporting to the CAT on November 15, 2019 since the CAT NMS Plan was approved on November 15, 2016.<sup>110</sup> Therefore, the Phase 2a start

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<sup>106</sup> See March 19, 2020 No Action Request at 1.

<sup>107</sup> See id. at 2.

<sup>108</sup> See CAT NMS Plan Approval Order, supra note 1, at 84860.

<sup>109</sup> See February 19, 2020 Exemption Request at 3.

<sup>110</sup> The Effective Date of the CAT NMS Plan was November 15, 2016. See supra note 1. Section 6.4 of the CAT NMS Plan, which governs data reporting and recording by

date associated with accelerating the CAT reporting obligations for Small Industry OATS Reporters so that they report on the same date as Large Industry Members would still serve to extend their reporting deadline by seven months beyond the compliance date in the CAT NMS Plan. Moreover, while this exemption allows the Participants' Compliance Rules to require the CAT reporting date for Small Industry OATS Reporters to be the same as that for Large Industry Members in Phase 2a, the reporting deadline for Small Industry OATS Reporters would remain the same as for Small Industry Non-OATS Reporters for Phases 2b, 2c, and 2d—i.e., Small Industry Members would not be required to report Industry Member Data associated with Phases 2b, 2c, and 2d until December 13, 2021. Thus, all Small Industry Members could gain an additional 24 months beyond the compliance date in the CAT NMS Plan to prepare for CAT Reporting for Phases 2b, 2c, and 2d via the Phased Reporting schedule.

The Commission's exemption is limited to Sections 6.4, 6.7(a)(v) and 6.7(a)(vi) of the CAT NMS Plan related to Industry Member reporting of Industry Member Data to the Central Repository. The Commission's exemption does not extend to any other dates or obligations in the CAT NMS Plan. In addition, even though the Commission is permitting the start dates for Phase 2a and Phase 2b Industry Member reporting to be extended compared to what was in the February 19, 2020 Exemption Request as discussed above,<sup>111</sup> the exemption is conditioned upon the Participants complying with all other dates that are a part of Phased Reporting, as announced in the published timeline that has already been communicated to broker-dealers, given that

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Industry Members, provides that the requirements for Industry Members under that section shall become effective on the third anniversary of the Effective Date in the case of Small Industry Members. See id. Therefore, November 15, 2019 is three years after the Effective Date of the CAT NMS Plan.

<sup>111</sup> See supra note 104.

Industry Member reporting was required to begin over a year ago per the CAT NMS Plan.<sup>112</sup>

The Commission believes it is appropriate to impose such a condition because the Participants have stated that FINRA CAT has been very clear that it will be prepared to accept data from any Industry Member that has completed onboarding and certification testing by April 20, 2020 for Phase 2a reporting, and will similarly be ready by May 18, 2020 for Phase 2b reporting as described on [www.catnmsplan.com](http://www.catnmsplan.com).<sup>113</sup>

Based on the foregoing, the Commission is granting this conditional exemptive relief from Sections 6.4, 6.7(a)(v) and 6.7(a)(vi) of the CAT NMS Plan related to Industry Member reporting of Industry Member Data to the Central Repository to allow for the implementation of

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<sup>112</sup> See CAT NMS Plan website, Timeline, <https://catnmsplan.com/timelines/> (last visited March 26, 2020). For example, for Phases 2a and 2b, Industry Members must comply with the full functionality associated with Production Environment Go-Live for intrafirm linkage validations (Release 2 – Intrafirm Linkage) on July 27, 2020, and August 24, 2020, respectively, and Industry Members must comply with the full functionality associated with Production Environment Go-Live for firm-to-firm linkage validations (Release 3 – Interfirm Linkage) on October 26, 2020, and January 4, 2021, respectively. See id.

Industry Members were required to start reporting to the CAT on November 15, 2018, according to Section 6.4 of the CAT NMS Plan, which governs data reporting and recording by Industry Members. See supra note 8.

<sup>113</sup> On March 27, 2020, the Participants submitted a letter to further the discussion regarding the timeline for Industry Member reporting. See Letter from Michael Simon, Chair, CAT NMS Plan Operating Committee, to Brett Redfearn, Director, Division of Trading and Markets, U.S. Securities and Exchange Commission, dated March 27, 2020 available at <https://www.catnmsplan.com/sites/default/files/2020-03/03.27.20-%20Participant%27s%20Relief%20Request.pdf>. The Participants stated that the reporting dates included in the February 19, 2020 Exemption Request remain operable from the Participants' and Plan Processor's perspective and provide a clear path for Industry Members that have completed certification testing and are prepared to meet those deadlines. See id. at 1-2. The Participants also stated that the Participants and FINRA CAT have been communicating to the industry since last fall that the CAT system will be ready to receive Industry Member Data on April 20, 2020, and that this date remains operative from the perspective of both FINRA CAT and the Participants. See id. at 1.

Phased Reporting for Industry Members to the CAT. This order granting exemptive relief is conditioned upon each Participant implementing the Phased Reporting described above, in a manner consistent with the February 19, 2020 Exemption Request, including each of the representations made in the February 19, 2020 Exemption Request, as modified by the discussion in Section IV of this Order. As noted above, the Participants have represented in their February 19, 2020 Exemption Request that the full scope of CAT Data required under the CAT NMS Plan will be available when all five phases of Phased Reporting are complete, subject to any applicable exemptive relief or amendments to the CAT NMS Plan.<sup>114</sup>

Accordingly, IT IS HEREBY ORDERED, pursuant to Section 36 of the Exchange Act<sup>115</sup> and Rule 608(e) of Regulation NMS,<sup>116</sup> that the Commission grants the Participants' request for exemptive relief, as set forth in the February 19, 2020 Exemption Request from the requirements in Sections 6.4, 6.7(a)(v) and 6.7(a)(vi) of 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, subject to the conditions described above.

By the Commission.

Vanessa A. Countryman  
Secretary

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<sup>114</sup> See February 19, 2020 Exemption Request at 2.

<sup>115</sup> 15 U.S.C. 78mm(a)(1).

<sup>116</sup> 17 CFR 242.608(e).