

SECURITIES AND EXCHANGE COMMISSION
Release No. 34-80142

Order Granting Limited Exemptive Relief, Pursuant to Rule 608(e) of the Securities Exchange Act of 1934, from the Clock Synchronization Compliance Deadline Specified in Section 6.7(a)(ii) of the National Market System Plan Governing the Consolidated Audit Trail

March 2, 2017

By letter dated January 17, 2017, Bats BYZ Exchange, Inc., Bats BZX Exchange, Inc., Bats EDGA Exchange, Inc., Bats EDGX Exchange, Inc., BOX Options Exchange, LLC, C2 Options Exchange, Incorporated, Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., Financial Industry Regulatory Authority, Inc. (“FINRA”), International Securities Exchange, Inc., Investors’ Exchange, LLC, ISE Gemini, LLC, ISE Mercury, LLC, Miami International Securities Exchange LLC, NASDAQ BX, Inc., NASDAQ PHLX LLC, The NASDAQ Stock Market LLC, National Stock Exchange, Inc., New York Stock Exchange LLC, NYSE Arca, Inc., and NYSE MKT, LLC (collectively, the “Participants” to the National Market System (“NMS”) Plan Governing the Consolidated Audit Trail (“CAT NMS Plan”)) requested that the Securities and Exchange Commission (“Commission” or “SEC”) grant limited exemptive relief to the Participants, pursuant to its authority under Rule 608(e) of Regulation NMS under the Securities Exchange Act (“Exchange Act”),¹ from the clock synchronization compliance deadline set forth in Section 6.7(a)(ii) of the CAT NMS Plan.²

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

¹ 17 CFR 242.608(e).

² See letter from the Participants to Brent J. Fields, Secretary, Commission, dated January 17, 2017 (“Exemption Request”). Unless otherwise noted, capitalized terms are used as defined in Rule 613, in the CAT NMS Plan, or in this letter.

sponsor or a participant.³ Section 6.7(a)(ii) of the CAT NMS Plan states that “[u]nless otherwise ordered by the SEC: . . . within four (4) months after the Effective Date, each Participant shall, and through its Compliance Rule shall require its Industry Members to, synchronize its or their Business Clocks as required by Section 6.8 and certify to the Chief Compliance Officer (in the case of Participants) or the applicable Participant (in the case of Industry Members) that such Participant has met this requirement.”⁴

The Participants request that the Commission extend the clock synchronization compliance date set forth in Section 6.7(a)(ii) from within four months after the effective date of CAT NMS Plan, or March 15, 2017, to February 19, 2018 only with respect to Industry Members with Business Clocks that do not capture time in milliseconds as of the date of this order. The Participants note that the existing clock synchronization compliance date under Section 6.7(a)(ii) of March 15, 2017 would remain in effect for those Industry Members with Business Clocks that capture time in milliseconds.⁵ In support of their Exemption Request, the Participants state, generally, that the request is narrowly tailored and would provide significant costs savings to Industry Members with Business Clocks that do not capture time in milliseconds, without having any adverse effect on the consolidated audit trail under the CAT NMS Plan.⁶ The following outlines the Participants claims in support of their exemptive request.

First, the Participants note that their requested alternative compliance date of February

³ 17 CFR 242.608(c).

⁴ Securities Exchange Act Release No. 79318 (Nov. 15, 2016), 81 FR 84696, 84963 (Nov. 23, 2016) (Order Approving CAT NMS Plan) Ex. A, Sec. 6.7(a)(ii).

⁵ See Exemption Request at 1 n.4.

⁶ See Exemption Request at 1.

19, 2018 is consistent with FINRA's compliance date for FINRA Rule 4590, which was approved last year and imposed a new clock synchronization standard of 50 milliseconds applicable to business clocks that are used to record certain events in NMS securities or OTC equity securities.⁷ Among other things, FINRA member firms that do not capture time in milliseconds have until February 19, 2018 to synchronize their business clocks to the new 50 millisecond standard.⁸ The Participants believe that it is appropriate to have the CAT NMS Plan clock synchronization requirements also take effect by February 19, 2018 for those Industry Members that do not capture time in milliseconds as FINRA member firms currently are preparing for the implementation of clock synchronization requirements comparable to those set forth in the CAT NMS Plan by February 19, 2018.⁹

Second, the Participants state that Industry Members are not required to begin reporting information to the Central Repository for at least 20 months after the current March 15, 2017 deadline imposed by the CAT NMS Plan for clock synchronization.¹⁰ Specifically, large Industry Members are required to begin reporting to the Central Repository on November 15,

⁷ See Securities Exchange Act Release No. 77565 (April 8, 2016), 81 FR 22136 (April 14, 2016) (SR-FINRA-2016-005) (order approving FINRA's proposed rule change to reduce the synchronization tolerance for computer clocks that are used to record events in NMS securities and OTC equity securities).

⁸ See FINRA Regulatory Notice 16-23 (July 2016) (establishing for FINRA Rule 4590 a Phase 1 implementation date of February 20, 2017 for systems that capture time in milliseconds and a Phase 2 implementation date of February 19, 2018 systems that do not capture time in milliseconds).

⁹ See Exemption Request at 2. Because FINRA's compliance date for those firms that capture time in milliseconds (February 20, 2017) is one month prior to the CAT clock synchronization compliance date (March 15, 2017), the Participants are not requesting exemptive relief with regard to Industry Members that capture time in milliseconds.

¹⁰ See Exemption Request at 2-3.

2018 (20 months after the CAT NMS Plan clock synchronization deadline),¹¹ and Small Industry Members are required to begin reporting on November 15, 2019 (32 months after the CAT NMS Plan deadline).¹² The Participants believe that allowing Industry Members that do not capture time in milliseconds until February 19, 2018 to synchronize their Business Clocks will result in significant cost savings for such firms.¹³ The Participants state that during these 20 and 32 month periods they would not be required to incur the substantial costs of complying with the more rigorous clock synchronization requirements, such as updating and testing their clock technology, documenting and following clock synchronization procedures that would include performing regular clock synchronizations and preparing a log that documents each clock synchronization event, far in advance of the start of reporting obligations.¹⁴

Third, the Participants also believe that a compliance date of February 19, 2018 for Industry Members that do not capture time in milliseconds will provide Industry Members with sufficient preparation time to ensure the required level of clock synchronization is achieved prior to the commencement of their obligations to report to the Central Repository.¹⁵ The Participants note that a compliance date of February 19, 2018 provides a comparable clock synchronization deadline to that imposed by Rule 613 on the Participants themselves, who are required to synchronize their own Business Clocks eight months before they commence reporting data to the

¹¹ See Order Approving CAT NMS Plan, Ex. A, Sec. 6.7(a)(v), 81 FR at 84963.

¹² See Order Approving CAT NMS Plan, Ex. A, Sec. 6.6(a)(v), 81 FR at 84962.

¹³ See Exemption Request at 2–3.

¹⁴ See id. at 3.

¹⁵ See id.

Central Repository.¹⁶ Under the requested exemption, large Industry Members that do not capture time in milliseconds would be required to synchronize their Business Clocks nine months before reporting to the Central Repository, and Small Industry Members would be required to do so 21 months before reporting.¹⁷

Rule 608(e) of Regulation NMS provides that the Commission may exempt from the provisions of an NMS plan, either unconditionally or on specified terms and conditions, any SRO or its members, 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.¹⁸

The Commission finds that the requested exemption is consistent with the requirements set forth in Rule 608(e). The Commission notes that the Participants have narrowly tailored their exemptive request to seek such relief for a limited period of time and only with respect to those Industry Members with Business Clocks that do not capture time in milliseconds. Given that these Industry Members' obligations to report to the Central Repository do not commence until November 2018 or November 2019 (depending on the size of the firm), the Commission believes that the requested exemption should not result in any adverse effect on the implementation or operation of the consolidated audit trail. In addition, because any changes to these Industry Members' current Business Clocks would require modifications to their firm's systems and processes, this exemption will allow those Industry Members with Business Clocks that do not already capture time in milliseconds additional time to identify and implement the most cost

¹⁶ See id. (citing 17 CFR 242.613(a)(3)(ii)).

¹⁷ See Exemption Request at 3.

¹⁸ 17 CFR 242.608(e).

effective clock synchronization solution to achieve compliance with the new standard. Further, the Commission believes that allowing less automated Industry Members to synchronize their clocks by February 19, 2018 is also consistent with the phased implementation approach set forth by FINRA in its Rule 4590.¹⁹ Thus, the exemption would serve the Participants' stated goal of achieving significant cost savings (from not incurring ongoing costs from March 15, 2017 to February 19, 2018 as well as a potential reduction in eventual costs if the delay allows for identification of lower costs solutions) for certain Industry Members. Accordingly, the Commission believes that imposing the more aggressive deadline required by Section 6.7(a)(ii) of CAT NMS Plan on those Industry Members with Business Clocks that do not capture time in milliseconds would not otherwise facilitate implementation of the consolidated audit trail.

Therefore, the Commission believes that this 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 the perfection of a national market system because it is narrowly tailored, may provide cost savings to those Industry Members that do not capture time in milliseconds, allows such Industry Members additional time to develop cost efficient ways to achieve clock synchronization and will not adversely affect the implementation of the consolidated audit trail.

Accordingly, IT IS HEREBY ORDERED, pursuant to Rule 608(e) of the Exchange Act,²⁰ that the Participants are granted a limited exemption extending the clock synchronization compliance date set forth in Section 6.7(a)(ii) of CAT NMS Plan from within four months after

¹⁹ See Securities Exchange Act Release No. 77196 (Feb. 19, 2016), 81 FR 9550, 9553 n.35 (Feb. 25, 2016) (SR-FINRA-2016-005) (noting that, in FINRA's view, "a phased implementation could allow firms, particularly smaller or less automated firms, a greater time period over which they can identify and implement the most cost effective clock synchronization solution that meets the standard required by this proposal").

²⁰ 17 CFR 242.608(e).

the effective date of CAT NMS Plan, or March 15, 2017, to February 19, 2018 with respect to Industry Members with Business Clocks that do not capture time in milliseconds as of the date of this order.

By the Commission.

Eduardo A. Aleman
Assistant Secretary