

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-88608)

April 8, 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 to Rule 608(e) of Regulation NMS Under the Exchange Act, Relating to Granularity of Timestamps Specified in Section 6.8(b) and Appendix D, Section 3 of the National Market System Plan Governing the Consolidated Audit Trail

I. Introduction

By letter dated February 3, 2020, 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. (“FINRA”), Investors Exchange LLC, Miami International Securities Exchange LLC, MIAX Emerald, LLC, MIAX PEARL, LLC, NASDAQ BX, LLC, 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., NYSE National, Inc., and Long Term Stock Exchange, Inc. (collectively, the “Participants”) to the National Market System Plan Governing the Consolidated Audit Trail (“CAT NMS Plan”),¹ requested that the Securities and Exchange Commission (“Commission” or “SEC”) grant limited exemptive relief to the Participants, pursuant to its authority under Section 36 of the Securities Exchange Act of 1934 (“Exchange Act”)² and Rule 608(e) of Regulation NMS under the

¹ The CAT NMS Plan was approved by the Commission, as modified, on November 15, 2016. See Securities Exchange Act Release No79318 (November 15, 2016), 81 FR 84696 (November 23, 2016) (“CAT NMS Plan Approval Order”).

² 15 U.S.C. 78mm(a)(1).

Exchange Act, from the timestamp granularity requirements of Section 6.8(b) and Section 3 of Appendix D of the CAT NMS Plan.³

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.”⁴ Under Rule 608(e) of Regulation NMS, the Commission may “exempt from [Rule 608], either unconditionally or on specified terms and conditions, any self-regulatory organization, member thereof, or specified security, 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 mechanism of, a national market system.”⁵

For the reasons set forth below, this Order grants the Participants’ request for an exemption from Section 6.8(b) and Appendix D, Section 3 of the CAT NMS Plan as set forth in the February 3, 2020 Exemption Request, subject to certain conditions.⁶

³ See letter from the Participants to Vanessa Countryman, Secretary, Commission, dated February 3, 2020 (the “February 3, 2020 Exemption Request”). Unless otherwise noted, capitalized terms are used as defined in the CAT NMS Plan.

⁴ 15 U.S.C. 78mm(a)(1).

⁵ 17 CFR 242.608(e).

⁶ The February 3, 2020 Exemption Request also includes a separate request for exemptive relief from Section 6.4(d)(ii)(C) of the CAT NMS Plan. Specifically, in circumstances in which an Industry Member uses an established trading relationship for an individual Customer (rather than an account) on the order reported to the CAT, the Participants request an exemption from the requirement in Section 6.4(d)(ii)(C) of the CAT NMS Plan for each Participant to require, through its Compliance Rules, its Industry Members to record and report to the Central Repository the account number, the date account opened and account type for the relevant individual customer, subject to certain conditions. The Commission is not addressing that request at this time.

II. Description

The CAT NMS Plan sets forth certain requirements regarding the granularity of timestamps accepted by the CAT system. Specifically, Section 6.8(b) of the CAT NMS Plan states “[e]ach Participant shall, and through its Compliance Rule shall require its Industry Members to, report information required by SEC Rule 613 and this Agreement to the Central Repository in milliseconds,” but that “[t]o the extent that any Participant's order handling or execution systems utilize timestamps in increments finer than the minimum required in this Agreement, such Participant shall utilize such finer increment when reporting CAT Data to the Central Repository so that all Reportable Events reported to the Central Repository can be adequately sequenced.”⁷ Section 6.8(b) further states that “each Participant shall, through its Compliance Rule: (i) require that, to the extent that its Industry Members utilize timestamps in increments finer than the minimum required in this Agreement in their order handling or execution systems, such Industry Members shall utilize such finer increment when reporting CAT Data to the Central Repository.”⁸ In addition, Section 3 of Appendix D of the CAT NMS Plan states that the Central Repository must be able to “[a]ccept time stamps on order events handled electronically to the finest level of granularity captured by CAT Reporters.”

Section 6.8(c) of the CAT NMS Plan imposes further requirements on Participants regarding analysis of timestamp granularity. Specifically, Section 6.8(c) of the CAT NMS Plan requires the Chief Compliance Officer to, “[i]n conjunction with Participants’ and other

⁷ Notwithstanding other requirements of Section 6.8(b), the CAT NMS Plan provides that Participants and Industry Members are permitted to record and report Manual Order Events and the time of allocation on Allocation Reports in increments up to and including one second. See CAT NMS Plan Section 6.8(b).

⁸ The CAT NMS Plan defines “Compliance Rule” to mean, “with respect to a Participant, the rule(s) promulgated by such Participant as contemplated by Section 3.11.” See CAT NMS Plan Section 1.1.

appropriate Industry Member advisory groups,” “annually evaluate and make a recommendation to the Operating Committee as to whether industry standards have evolved such that: . . . (ii) the required time stamp in Section 6.8(b) should be in finer increments.”

III. Request for Relief

In the February 3, 2020 Exemption Request, the Participants request that the Commission exempt the Participants from the requirement in Section 6.8(b) of the CAT NMS Plan that Participants reporting CAT Data to the Central Repository utilize timestamps finer than nanoseconds to the extent that the Participant’s order handling or execution systems utilize timestamps in increments finer than nanoseconds. As a condition to this exemption, if a Participant captures timestamps in increments more granular than nanoseconds, such Participant would truncate the timestamp after the nanosecond level for submission to CAT, not round up or down in such circumstances. In addition, the Participants request that the Commission exempt the Participants from the requirement in Section 6.8(b) of the CAT NMS Plan for each Participant, through its Compliance Rule, to require that, to the extent that its Industry Members utilize timestamps in increments finer than nanoseconds in their order handling or execution systems, such Industry Members utilize such finer increment when reporting CAT Data to the Central Repository. As a condition to this exemption, the Participants, through their Compliance Rules, will require Industry Members that capture timestamps in increments more granular than nanoseconds to truncate the timestamps, after the nanosecond level for submission to CAT, not round up or down in such circumstances.⁹ Lastly, the Participants request that the Commission

⁹ Participants would require that electronic timestamps submitted by Participants and Industry Members be truncated by Participants and Industry Members if they capture timestamps in increments more granular than nanoseconds, believing that rounding a timestamp would suggest an event occurred later or earlier than it actually occurred,

exempt the Participants from the requirement in Section 3 of Appendix D of the CAT NMS Plan for the Central Repository to be able to accept timestamps on order events handled electronically to the finest level of granularity captured by CAT Reporters.

As a condition to this exemption, the Participants state that the Central Repository will be required to accept timestamps on order events handled electronically to a nanosecond granularity. In addition, the Participants request that the above timestamp granularity exemptive relief remain in effect for five years from the date that the Commission grants the exemptive relief. After five years, the timestamp granularity exemptive relief would no longer be in effect.

The Participants state that they, in concert with the Plan Processor, have determined that the cost of providing the ability to utilize timestamps in the CAT in a finer granularity than nanoseconds outweighs the benefits. The Participants further state that, based on discussions with the Plan Processor, that Participants understand that expanding the capture of timestamp granularity to picoseconds by the Plan Processor would take at least six months at an estimated cost of approximately \$700,000, and that this effort would include technical specification and database modifications, modifying query tools to support querying and sequencing at a picosecond granularity. The Participants also state that they understand that exchanges currently utilize timestamps only to the nanosecond and do not utilize timestamps to picoseconds or to finer increments.

IV. Discussion

The Commission has carefully considered the information provided by the Participants in support of the Participants' exemption request from Section 6.8(b) and Section 3 of Appendix D

while truncation treats all timestamps as if they were provided with the same level of granularity.

of the CAT NMS Plan with respect to timestamp granularity. Based on the information provided by the Participants in the February 3, 2020 Exemption Request, the Commission believes that the exemptive relief would provide cost savings and reduce build time for the Plan Processor while not negatively impacting the ability of regulators to use CAT. As noted above, the Participants state that it would take at least six months and approximately \$700,000 to modify the Plan Processor to accept picosecond timestamps. The Participants state that, as described above, Section 6.8(c) of the CAT NMS Plan will require annual review of timestamp granularity,¹⁰ and the Participants have requested that such exemptive relief expire in five years.

The Commission has previously stated that regulators need sufficiently granular timestamps to sequence events across orders and within order lifecycles, and that a lack of uniform and granular timestamps can limit the ability of regulators to sequence events accurately and link data with information from other data sources.¹¹ Many public data sources report time in seconds or milliseconds, and some, including direct data feeds, report time in microseconds or nanoseconds.¹² The Participants state that the exchanges currently utilize timestamps only to the

¹⁰ In the February 3, 2020 Exemption Request, the Participants state that an analysis of the timestamp granularity would be required as part of the annual evaluation required to be performed by the Chief Compliance Officer pursuant to Section 6.8(c) of the CAT NMS Plan. If the Operating Committee determines that this analysis concludes that the benefit of the CAT Reporters reporting, and the Central Repository providing the ability to accept, timestamps in finer granularity than nanoseconds outweighs the burdens, then the timestamp exemption could be terminated or be revised to reflect more granular timestamps than nanoseconds in accordance with the analysis. See February 3, 2020 Exemption Request, supra note 2, at 4.

¹¹ See CAT NMS Plan Approval Order, supra note 1.

¹² Id. at 84813. For example, Options Price Reporting Authority allows for timestamps in nanoseconds, while other registered Securities Information Processors require timestamps in microseconds for equity trades and quotes. Id. at 84813-14.

nanosecond and do not utilize timestamps to picoseconds or to finer increments.¹³ Nanoseconds are smaller than milliseconds or microseconds and so the Participants' proposal would result in the collection of information that is at least as granular as existing data sources, and more granular than FINRA's Order Audit Trail System which requires timestamps in milliseconds for firms that capture time in milliseconds but does not require members to capture time in milliseconds.¹⁴ The Participants also believe that CAT Reportable Events can be adequately sequenced in the CAT without requiring timestamps in a finer granularity than nanoseconds, and the Participants believe that the requested relief would serve to maintain and enhance the reliability and accuracy of the data reported to the Central Repository.¹⁵

The proposed approach described in the February 3, 2020 Exemption Request would require both Participants and Industry Members to truncate timestamps in increments more granular than nanoseconds to nanoseconds for submission to the CAT, and the Central Repository will be required to accept timestamps on order events handled electronically to a nanosecond granularity. Based on the foregoing, the Commission believes that, pursuant to Section 36 of the Exchange Act, this exemption is appropriate in the public interest and consistent with the protection of investors, and that pursuant to Rule 608(e), 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 to exempt the SROs from Section 6.8(b) and Section 3 of Appendix D of the CAT NMS Plan with respect to timestamp granularity for a period of five years.

¹³ See February 3, 2020 Exemption Request, supra note 3, at 3.

¹⁴ See CAT NMS Plan Approval Order, supra note 1, at 84813-14.

¹⁵ See February 3, 2020 Exemption Request, supra note 3, at 2 and 3.

Accordingly, IT IS HEREBY ORDERED, pursuant to Section 36(a)(1) of the Exchange Act,¹⁶ and Rule 608(e) of the Exchange Act¹⁷ and with respect to the proposed approaches specifically described above, that the Participants are granted a five-year exemption from the timestamp granularity requirement set forth in Section 6.8(b) and Section 3 of Appendix D of the CAT NMS Plan of the CAT NMS Plan, subject to the conditions described above.

By the Commission.

Vanessa A. Countryman
Secretary

¹⁶ 15 U.S.C. 78mm(a)(1).

¹⁷ 17 CFR 242.608(e).