

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Release No. 34-95235 / July 8, 2022

In the Matter of the:

Order Granting Temporary 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, Relating to Certain Requirements of the National Market System Plan Governing the Consolidated Audit Trail

ORDER DENYING STAY

In the Matter of the:

Order Granting Temporary Conditional Exemptive Relief Pursuant to Section 36 of the Exchange Act and Rule 608(e) of Regulation NMS Under the Exchange Act, From Section 8.1.1 and Section 8.1.2 of Appendix D of the National Market System Plan Governing the Consolidated Audit Trail

On December 16, 2020, the Commission issued two orders pursuant to Section 36 of the Exchange Act and Rule 608(e) of Regulation NMS under the Exchange Act: (1) an Order Granting Temporary Conditional Exemptive Relief Pursuant to Section 36 of the Exchange Act and Rule 608(e) of Regulation NMS Under the Exchange Act Relating to Certain Requirements of the National Market System Plan Governing the Consolidated Audit Trail, Release No. 34-90688 (Dec. 16, 2020) (the “First Order”); and (2) an Order Granting Temporary Conditional Exemptive Relief Pursuant to Section 36 of the Exchange Act and Rule 608(e) of Regulation NMS Under the Exchange Act From Section 8.1.1 and Section 8.1.2 of Appendix D of the National Market System Plan Governing the Consolidated Audit Trail, Release No. 34-90689 (Dec. 16, 2020) (the “Second Order”) (together, the “prior Orders”). On February 14, 2021, Petitioner Consolidated Audit Trail, LLC (“Petitioner” or “CAT LLC”), on behalf of itself and a majority of the Participants in the National Market System Plan Governing the

Consolidated Audit Trail (“CAT NMS Plan” or “Plan”) (together, “Petitioners”)¹ filed with the Commission the pending motions for partial stays of the prior Orders. That same day, Petitioners² filed petitions in the U.S. Court of Appeals for the District of Columbia Circuit seeking review of the Orders. *See* Case Nos. 21-1065, 21-1066. Petitioners sought a partial stay of the prior Orders until the Commission “had an opportunity to consider all the Participants’ arguments and supporting evidence” and “reevaluate whether the Order[s] [are] appropriate in light of that information,” or, in the alternative, pending resolution of the petitions for judicial review. Since that time, the Participants and Commission staff have been engaged in ongoing discussions with the goal of resolving or narrowing their differences with respect to the issues raised in the Participants’ stay motions. On January 12, 2022, the Participants requested that the Commission supplement the record to include certain additional materials prepared in connection with those discussions.³

On July 8, 2022, after careful review of the arguments and evidence proffered by the Participants, the Commission issued an Order Granting Temporary Conditional Exemptive Relief, Pursuant to Section 36 of the Exchange Act and Rule 608(e) of Regulation NMS under the Exchange Act, from Certain Requirements of the National Market System Plan Governing the Consolidated Audit Trail (the “Third Order”), which supersedes the prior Orders. The Third Order clarifies certain aspects of the prior Orders and modifies other aspects of the prior Orders in light of subsequent developments and/or additional information provided by the Participants. It also gives the Participants until July 31, 2024 to either come into compliance with the relevant provisions of the CAT NMS Plan or to develop alternative solutions that achieve the regulatory goals of Rule 613 and the CAT NMS Plan in a more cost-effective manner. Because the terms of the

¹ The Participants joining the motion include BOX Exchange LLC; Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe C2 Exchange, Inc. and Cboe Exchange, Inc.; Investors Exchange LLC; MEMX LLC; 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; and New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc. Participants FINRA and Long-Term Stock Exchange, Inc. did not approve the stay motions.

² The following Participants joined in the stay motions but did not approve the filing of a petition for judicial review: Investors Exchange LLC, MEMX LLC, Miami International Securities Exchange LLC, MIAX Emerald, LLC, and MIAX PEARL, LLC. Participants FINRA and Long-Term Stock Exchange, Inc. did not approve the stay motions or the filing of a petition for judicial review.

³ See Letter from K. King, Counsel for Consolidated Audit Trail, LLC, Covington & Burling LLP, to Vanessa Countryman, Secretary, Commission (January 12, 2022).

Third Order now govern, the terms of the prior Orders are no longer in force, and the pending motions are moot.⁴

Accordingly, it is ORDERED that the motions for a stay of the prior Orders be denied as moot.

By the Commission.

J. Matthew DeLesDernier,

Assistant Secretary.

⁴ On February 14, 2021, the Participants also filed a motion for a protective order shielding from public disclosure certain documents submitted in connection with their stay motions as well as portions of the motions that refer to those documents, pursuant to SEC Rule of Practice 322. Finding that the harm resulting from disclosure of that material would outweigh the benefits of disclosure, we grant the motion for a protective order.