



## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-104144]

### **Order Granting Conditional Exemptive Relief, Pursuant to Section 36(a)(1) of the Securities Exchange Act of 1934 (“Exchange Act”) and Rule 608(e) of Regulation NMS Thereunder, from Certain Requirements of the National Market System Plan Governing the Consolidated Audit Trail, Rule 613 of Regulation NMS, and Rule 17a-1 under the Exchange Act**

September 30, 2025.

#### **I. Introduction**

The Securities and Exchange Commission (the “Commission” or the “SEC”) has determined to grant the Participants conditional exemptive relief from certain requirements of the national market system plan governing the consolidated audit trail (the “CAT NMS Plan”), Rule 613 of Regulation NMS, and Rule 17a-1 under the Exchange Act in order to reduce the operating costs of the consolidated audit trail (the “CAT”).<sup>1</sup> These requirements, and the conditional exemptive relief granted, are described in more detail below.

On July 18, 2012, the Commission adopted Rule 613 of Regulation NMS, which required national securities exchanges and national securities associations (the “Participants”)<sup>2</sup> to jointly develop and submit to the Commission the CAT NMS Plan.<sup>3</sup> The goal of Rule 613 was to create a modernized audit trail system that would provide regulators with timely access to a

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<sup>1</sup> 17 CFR 240.17a-1.

<sup>2</sup> The Participants include 24X National Exchange, 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., MEMX LLC, Miami International Securities Exchange LLC, MIAIX Emerald, LLC, MIAIX PEARL, LLC, MIAIX Sapphire, 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 National, Inc., and NYSE Texas, Inc.

<sup>3</sup> See Securities Exchange Act Release No. 67457 (July 18, 2012), 77 FR 45722 (Aug. 1, 2012) (“Rule 613 Adopting Release”); 17 CFR 242.613.

comprehensive set of trading data, thus enabling regulators to more efficiently and effectively analyze and reconstruct market events, monitor market behavior, conduct market analysis to support regulatory decisions, and perform surveillance, investigation, and enforcement activities.<sup>4</sup> On November 15, 2016, the Commission approved the national market system plan required by Rule 613 – the CAT NMS Plan.<sup>5</sup>

In the CAT NMS Plan Approval Order issued in 2016, the Commission estimated that the ongoing annual costs associated with maintaining and operating the Central Repository<sup>6</sup> would be approximately \$55.8 million.<sup>7</sup> But CAT operating costs have far exceeded these estimates<sup>8</sup> due largely to increases in trading activity, which impacts various CAT cost drivers like storage, data processing, and message traffic.<sup>9</sup> These increases have led both the Commission and the Participants to take steps to manage and contain CAT costs in the past.<sup>10</sup> The conditional

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<sup>4</sup> See *id.* at 45730-33.

<sup>5</sup> Securities Exchange Act Release No. 79318 (Nov. 15, 2016), 81 FR 84696, (Nov. 23, 2016) (“CAT NMS Plan Approval Order”). The CAT NMS Plan is Exhibit A to the CAT NMS Plan Approval Order. See CAT NMS Plan Approval Order, at 84943-85034. The CAT NMS Plan functions as the limited liability company agreement of the jointly owned limited liability company formed under Delaware State law through which the Participants conduct the activities of the CAT. Each Participant is a member of the company and jointly owns the company on an equal basis. The Participants submitted to the Commission a proposed amendment to the CAT NMS Plan on Aug. 29, 2019, which they designated as effective on filing. Under the amendment, the limited liability company agreement of a new limited liability company named Consolidated Audit Trail, LLC (the “Company”) serves as the CAT NMS Plan, replacing in its entirety the CAT NMS Plan. See Securities Exchange Act Release No. 87149 (Sept. 27, 2019), 84 FR 52905 (Oct. 3, 2019).

<sup>6</sup> “Central Repository” means “the repository responsible for the receipt, consolidation, and retention of all information reported to the CAT pursuant to SEC Rule 613 and [the CAT NMS Plan].” See CAT NMS Plan, *supra* note 5, at section 1.1.

<sup>7</sup> See, e.g., CAT NMS Plan Approval Order, *supra* note 5, at 84918-20.

<sup>8</sup> The CAT budget initially approved by the Participants for 2025 exceeded \$248 million. See [https://catnmsplan.com/sites/default/files/2024-11/11.20.24-CAT-LLC-2025-Financial\\_and\\_Operating-Budget.pdf](https://catnmsplan.com/sites/default/files/2024-11/11.20.24-CAT-LLC-2025-Financial_and_Operating-Budget.pdf). In May 2025, the Participants revised the CAT budget to approximately \$228 million to account for cost savings realized through the implementation of the cost savings measures approved by the Commission in 2024 (the “2024 Cost Savings Amendment”) and other optimizations. See [https://catnmsplan.com/sites/default/files/2025-05/05.19.25-CAT-LLC-2025-Financial\\_and\\_Operating-Budget.pdf](https://catnmsplan.com/sites/default/files/2025-05/05.19.25-CAT-LLC-2025-Financial_and_Operating-Budget.pdf); see also Securities Exchange Act Release No. 101901 (Dec. 12, 2024), 89 FR 103033 (Dec. 18, 2024). The Commission now understands, through communications with the Participants, that the CAT budget, prior to the issuance of this conditional exemptive relief, is projected to be approximately \$196 million due to further implementation of the 2024 Cost Savings Amendment and other optimizations.

<sup>9</sup> See, e.g., Securities Exchange Act Release No. 98290 (Sept. 6, 2023), 88 FR 62628, 62641 (Sept. 12, 2023).

<sup>10</sup> See, e.g., 2024 Cost Savings Amendment, *supra* note 8.

exemptive relief granted herein further responds to these increases in CAT costs, as well as to other regulatory and judicial developments.

For instance, there have been changes to CAT funding since the CAT NMS Plan was approved in 2016. On September 6, 2023, the Commission approved a proposal that amended the method by which CAT fees would be calculated and implemented a funding model to allocate costs between Participants and Industry Members<sup>11</sup> (the “Funding Model Order”).<sup>12</sup> On July 25, 2025, however, the United States Court of Appeals for the Eleventh Circuit issued an opinion vacating the Funding Model Order and remanding the matter to the Commission for further proceedings consistent with its opinion.<sup>13</sup> The Court stayed the effect of its judgment for sixty days from the issuance of its mandate.<sup>14</sup> Moreover, while this case was pending, the Chairman of the Commission instructed the staff to undertake a comprehensive review of the CAT that includes consideration of mechanisms to address CAT costs.<sup>15</sup> The Participants have also recently proposed amendments to the CAT NMS Plan designed to further reduce CAT costs,<sup>16</sup> and various Industry Members have submitted rule-making proposals.<sup>17</sup>

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<sup>11</sup> “Industry Member” is defined in section 1.1 of the CAT NMS Plan as “a member of a national securities exchange or a member of a national securities association.”

<sup>12</sup> See note 9 *supra*.

<sup>13</sup> See Opinion, *ASA v. Commission*, No. 23-113396 (11th Cir. July 25, 2025).

<sup>14</sup> *Id.* On September 5, 2025, the Participants filed a new proposed amendment to the CAT NMS Plan to implement a revised funding model. See Letter from Robert Walley, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission (Sept. 5, 2025), available at [https://catnmsplan.com/sites/default/files/2025-09/09.05.25\\_Plan\\_Amendment-2025\\_CAT\\_Funding\\_Model.pdf](https://catnmsplan.com/sites/default/files/2025-09/09.05.25_Plan_Amendment-2025_CAT_Funding_Model.pdf). The Company then sought an extension of the Court’s stay for an additional 90 days to give the Commission, the Company, and the Participants additional time to address the Court’s ruling. See Intervenor Consolidated Audit Trail, LLC’s Petition for Panel Rehearing, *ASA v. Commission*, No. 23-113396 (11th Cir. Sept. 8, 2025).

<sup>15</sup> See Prepared Remarks Before SEC Speaks, Chairman Paul S. Atkins, May 19, 2025, available at <https://www.sec.gov/newsroom/speeches-statements/atkins-prepared-remarks-sec-speaks-051925>.

<sup>16</sup> See, e.g., Securities Exchange Act Release No. 103288 (June 17, 2025), 90 FR 26637 (June 23, 2025) (the “CAIS Amendment”).

<sup>17</sup> See, e.g., Letter from Joanna Mallers, Secretary, FIA Principal Traders Group (June 26, 2025), available at <https://www.sec.gov/comments/4-853/4853-618547-1815754.pdf>; Letter from James Toes, President and CEO, Security Traders Association (June 25, 2025), available at <https://www.sec.gov/comments/4-853/4853-616887-1809874.pdf>; Letter from Joseph Corcoran, Managing Director and Associate General Counsel, and Gerald O’Hara, Vice President and Assistant General Counsel, Securities Industry and Financial Markets Association (June 6, 2025), available at <https://www.sec.gov/comments/4-698/4698-610487-1785814.pdf>.

It will take the Commission and its staff time to appropriately respond to these judicial and regulatory developments. In the meantime, it is appropriate to take immediate steps where possible to attempt to contain the cost burden of the CAT, which may also reduce challenges associated with future funding models.

The Commission has determined that the conditional exemptive relief granted herein is appropriate in the public interest and consistent with the protection of investors under section 36(a)(1) of the Exchange Act,<sup>18</sup> as well as 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 under Rule 608(e) of Regulation NMS,<sup>19</sup> because it allows the Participants to expeditiously and meaningfully reduce CAT operational costs,<sup>20</sup> while retaining its core regulatory functionality and thereby continuing to advance the regulatory goals that Rule 613 and the CAT NMS Plan were intended to promote. In granting this relief, the Commission considered its own experience with the CAT, as well as communications with the Participants and Industry Members regarding potential cost savings measures,<sup>21</sup> to identify areas that could provide immediate cost savings without having an undue impact on regulatory use of the CAT.

The Commission emphasizes that this conditional exemptive relief constitutes an interim step while the staff continues its comprehensive review of the CAT, and while the Commission considers the proposed CAIS Amendment pending before it, which – if approved – would provide more expansive and permanent changes to the CAT. The Commission remains willing to consider alternative solutions that achieve the regulatory goals of Rule 613 and the CAT NMS

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<sup>18</sup> 15 U.S.C. 78mm(a)(1).

<sup>19</sup> 17 CFR 242.608(e).

<sup>20</sup> See Parts II.A.-D infra for further discussion of estimated cost savings.

<sup>21</sup> See, e.g., notes 16-17 supra; see also, e.g., Letter from John A. Zecca, Executive Vice President, Global Chief Legal, Risk & Regulatory Officer, Nasdaq, and J. Patrick Sexton, Executive Vice President, General Counsel & Corporate Secretary, Cboe (Apr. 24, 2025), available at <https://www.sec.gov/comments/4-698/4698-598775-1738922.pdf>; Letter from Jaime Klima, General Counsel, New York Stock Exchange (Apr. 24, 2025), available at <https://www.sec.gov/comments/4-698/4698-598195-1737842.pdf>.

Plan in a more cost-effective manner.

## II. Discussion and Exemptive Relief

There are four areas of conditional exemptive relief addressed by this Order: (A) requirements to create lifecycle linkages by T+1 at noon Eastern Time; (B) requirements for re-processing of late records; (C) requirements to provide an online targeted query tool (“OTQT”); and (D) requirements related to data storage and retention.

### A. Requirements to Create Lifecycle Linkages by T+1 at Noon Eastern Time

Appendix D, section 6.1 of the CAT NMS Plan states that “Noon Eastern Time T+1 (transaction date + one day)” is the deadline for “[i]nitial data validation, lifecycle linkages and communication of errors to CAT Reporters.”<sup>22</sup> The CAT NMS Plan further explains that the Plan Processor<sup>23</sup> must “link and create the order lifecycle” using a “daisy chain approach,” in which “a series of unique order identifiers, assigned to all order events handled by CAT Reporters[,] are linked together by the Central Repository and assigned a single CAT-generated CAT-Order-ID that is associated with each individual order event and used to create the complete lifecycle of an order.”<sup>24</sup> The Plan Processor provides the lifecycle linkages that are required on T+1 by assigning an interim CAT Order ID.<sup>25</sup> A final CAT Order ID is then assigned when corrected and linked data is processed and made available to regulators on T+5 at 8 a.m. Eastern Time.<sup>26</sup>

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<sup>22</sup> See CAT NMS Plan, *supra* note 5, at Appendix D, section 6.1; *see id.* at section 1.1 (defining “CAT Reporter” as “each national securities exchange, national securities association and Industry Member that is required to record and report information to the Central Repository pursuant to SEC Rule 613(c)”).

<sup>23</sup> “Plan Processor” is defined as “the Initial Plan Processor or any other Person selected by the Operating Committee pursuant to SEC Rule 613 and sections 4.3(b)(i) and 6.1, and with regard to the Initial Plan Processor, the Selection Plan, to perform the CAT processing functions required by SEC Rule 613 and set forth in [the CAT NMS Plan].” See CAT NMS Plan, *supra* note 5, at section 1.1.

<sup>24</sup> *Id.* at Appendix D, section 3.

<sup>25</sup> The “CAT Order ID” is “a unique order identifier or series of unique order identifiers that allows the central repository to efficiently and accurately link all reportable events for an order, and all orders that result from the aggregation or disaggregation of such order.” See 17 CFR 242.613(j)(1); *see also* CAT NMS Plan, *supra* note 5, at section 1.1 (“‘CAT-Order-ID’ has the same meaning provided in SEC Rule 613(j)(1).”). See Securities Exchange Act Release No. 95234 (July 8, 2022), 87 FR 42247, 42250-51 (July 14, 2022), for further discussion of the lifecycle linkage requirements of the CAT NMS Plan.

<sup>26</sup> See CAT NMS Plan, *supra* note 5, at Appendix D, section 6.1.

On November 2, 2023, the Commission issued an order that granted exemptive relief from these requirements (the “November 2023 Order”), subject to certain conditions, including the condition that the Plan Processor maintain or improve the existing performance of functionality providing lifecycle linkages for all order events by T+1 at 9 p.m. Eastern Time, except an interim CAT Order ID was not required for Options Market Maker quotes in Listed Options (“OMM Quotes”).<sup>27</sup> On December 12, 2024, the Commission subsequently approved the 2024 Cost Savings Amendment, which removed the requirement that OMM Quotes be subject to “any requirement to link and create an order lifecycle,” such that OMM Quotes need not “undergo any linkage validation, linkage feedback, or lifecycle enrichment processing, but will undergo ingestion validation.”<sup>28</sup>

To further reduce CAT costs, the Commission has now determined to grant conditional exemptive relief to allow the Participants to further relax requirements related to the provision of lifecycle linkages on T+1. Specifically, the Commission grants conditional exemptive relief from the requirements in Appendix D, sections 3 and 6.1 of the CAT NMS Plan that lifecycle linkages be created by T+1 at noon Eastern Time, subject to the following conditions:

- The Plan Processor must provide lifecycle linkages with a final CAT Order ID for all order events by T+5 at 8 a.m. Eastern Time, except that lifecycle linkages will not be required for OMM Quotes consistent with the provisions approved by the 2024 Cost Savings Amendment.

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<sup>27</sup> See Securities Exchange Act Release No. 98848 (Nov. 2, 2023), 88 FR 77128, 77130 (Nov. 8, 2023) (“November 2023 Order”). An “Options Market Maker” is a “broker-dealer registered with an exchange for the purpose of making markets in options contracts on the exchange.” See CAT NMS Plan, *supra* note 5, at section 1.1. Each Participant has also promulgated rules for its members that generally govern what constitutes a “market maker quote” and/or “market maker quotation” for that Participant. See, e.g., The Nasdaq Stock Market LLC Rules, Options 2, section 5, “Market Maker Quotations”; Cboe Exchange, Inc. Rule 5.52, “Market Maker Quotes”; NYSE Arca, Inc. Rule 6.37AP-O, “Market Maker Quotations.” A “Listed Option” is “any option traded on a registered national securities exchange or automated facility of a national securities association.” See 17 CFR 242.600(b)(52) of Regulation NMS; see also CAT NMS Plan, *supra* note 5, at section 1.1. (defining a “Listed Option” as having “the meaning set forth in Rule 600(b)(35) of Regulation NMS,” which provision has been redesignated as Rule 600(b)(52) without any changes to its terms).

<sup>28</sup> See CAT NMS Plan, *supra* note 5, at Appendix D, section 3.4; see also 2024 Cost Savings Amendment, *supra* note 8, at 103034-38.

- Upon requests made by authorized regulatory users from the Participants or the Commission, the Plan Processor shall create interim CAT Order IDs for a specified trade date or dates and thereby provide linked lifecycles to regulators before T+5 at 8 a.m. Eastern Time.<sup>29</sup>

This conditional exemptive relief granted in this Order is intended to supersede the conditional exemptive relief set forth in the November 2023 Order with respect to lifecycle linkage timeframes.<sup>30</sup>

Timely access to linked data was one of the regulatory goals of Rule 613 and the CAT NMS Plan. Under the conditional exemptive relief granted herein, regulators will be able to access linked and corrected audit trail data by T+5 in the regular course, which should generally continue to be faster than was possible before the CAT existed.<sup>31</sup> Moreover, regulators will be able to request linked data from the Plan Processor before T+5, as well as to access and analyze raw unprocessed data between T+2 at 8 a.m. Eastern Time and T+5 at 8 a.m. Eastern Time, which functionality should continue to enable regulatory users to effectively and expeditiously review data in the case of a major market event, albeit slightly slower than is currently possible. The conditional exemptive relief granted herein should therefore preserve the core regulatory benefits of Rule 613 and the CAT NMS Plan, while enabling the Participants to realize meaningful cost savings.<sup>32</sup> The Commission determines that it therefore satisfies the standards of section 36(a)(1) of the Exchange Act and Rule 608(e) of Regulation NMS.

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<sup>29</sup> While the Commission understands that the timing and cost of creating an interim CAT Order ID ad hoc may vary based on the number of trade dates and data volumes to be processed in the request, the Commission understands that interim CAT Order IDs can generally be created by T+2 at 9 p.m. Eastern Time if the request is received prior to T+2 at 4 a.m. Eastern Time, or within 14 hours of receiving the request if such request is received after T+2 at 4 a.m. Eastern Time.

<sup>30</sup> See November 2023 Order, *supra* note 27, at 77130. The conditional exemptive relief provided by the November 2023 Order continues to be in force for the other areas addressed therein, except as provided in Parts II.C-D.

<sup>31</sup> See CAT NMS Plan Approval Order, *supra* note 5, at 84783 (noting that corrected and linked CAT Data would be accessible on T+5, compared to OATS Data, which was not available until T+8).

<sup>32</sup> The Commission understands from its communications with the Participants that such measures could save approximately \$2-3 million annually.

## B. Requirements for Re-Processing of Late Records

Appendix D, section 3 of the CAT NMS Plan requires that “[a]ll CAT Data reported to the Central Repository must be processed and assembled to create the complete lifecycle of each Reportable Event.”<sup>33</sup> The CAT NMS Plan sets a deadline of T+3 at 8 a.m. Eastern Time for the “[r]esubmission of corrected data” and a deadline of T+5 at 8 a.m. Eastern Time for the Plan Processor to make “[c]orrected data available to Participant regulatory staff and the SEC.”<sup>34</sup> For data corrections received after T+5, the CAT NMS Plan specifies that “Participants’ regulatory staff and the SEC must be notified and informed as to how re-processing will be completed.”<sup>35</sup>

The November 2023 Order granted exemptive relief from these requirements, subject to the following conditions:

- The Plan Processor was required to maintain its implementation of functionality that was approved by the Operating Committee on January 14, 2022 (the “Late to the Lifecycle process”) and on September 20, 2022 (the “Targeted Replay process”) (collectively, the “Enhanced Late to the Lifecycle process”). Prior to the implementation of this functionality, in the limited circumstances in which there was a missing link between two disjointed segments of an order lifecycle, new or corrected data would join only one of the pre-existing segments and would be assigned to only one of the relevant lifecycle CAT Order IDs for the disjointed segment and evaluated for further re-processing. Under the Enhanced Late to the Lifecycle process, all late records (i.e., records received after T+5)<sup>36</sup> include the date of the correction and, if applicable, the record identifier of the record being corrected as part of normal re-processing. In addition, the late record

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<sup>33</sup> “CAT Data” is defined as “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 CAT NMS Plan, supra note 5, at section 1.1.

<sup>34</sup> See CAT NMS Plan, supra note 5, at Appendix D, section 6.1.

<sup>35</sup> See id. at Appendix D, section 6.2.

<sup>36</sup> For the purposes of the November 2023 Order and this Order, references to data received after T+5, or to post-T+5 data, submissions, or reports, are to data received after T+4 at 8 a.m. Eastern Time. See November 2023 Order, supra note 27, at 77130.

became associated with all relevant lifecycles as part of normal re-processing, such that order event lifecycles may be associated with more than one CAT Order ID.

- The Participants were required to approve a change order to adopt:
  - Functionality to create a lifecycle mapping which indicates all lifecycle associations made during the Enhanced Late to the Lifecycle process;
  - Functionality to present to regulatory users post-T+5 data in a manner substantially similar to how such data would have been represented if it had been reported prior to T+5, including by replicating and replaying records with enrichments impacted by post-T+5 submissions, creating updated enrichments, and persisting the replicated records within the underlying data (the “Full Replay process”); and
  - Functionality to enhance the OTQT, including the ability to include or exclude any records that were created or replaced as a result of the Full Replay process.
- The Plan Processor was required to schedule the Enhanced Late to the Lifecycle process and the Full Replay process to run weekly, such that late reported data received through Friday of the prior week are available for regulatory users on the following business day at 8 a.m. Eastern Time, absent extraordinary circumstances, for data within the prior 18 months. For data outside of this 18-month window, the Participants were required to schedule the Enhanced Late to the Lifecycle process and the Full Replay process to run no less frequently than quarterly.<sup>37</sup>

However, the Commission now understands from communications with the Participants that these relaxed requirements were extremely costly to implement even for a relatively limited amount of CAT Data.

Accordingly, the Commission has now determined to grant conditional exemptive relief

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<sup>37</sup> See November 2023 Order, supra note 27, at 77130-31.

to allow the Participants to further reduce requirements related to the re-processing of late records. Specifically, the Commission grants conditional exemptive relief from the re-processing requirements for late records in Appendix D, sections 3, 6.1, and 6.2 of the CAT NMS Plan, subject to the following conditions:

- The Plan Processor must maintain its implementation of the above-described Enhanced Late to the Lifecycle process for late records from trade dates within the prior 3 years. For data outside of this 3-year window, no re-processing is required.
- For all late records, the Plan Processor must run the above-described Enhanced Late to the Lifecycle process no less frequently than quarterly.
- The Plan Processor must maintain the above-described functionality that creates a lifecycle mapping which indicates all lifecycle associations made during the Enhanced Late to the Lifecycle process.
- Upon requests made by authorized regulatory users from the Participants or the Commission, the Plan Processor must perform the Full Replay process on specified data, such that late records received through Friday of the prior week are available for regulatory users on the following business day at 8 a.m. Eastern Time, absent extraordinary circumstances.<sup>38</sup>
- For late records received after T+5 at 8 a.m. Eastern Time, the Plan Processor must continue to notify regulatory users how re-processing will be completed.

This conditional exemptive relief granted in this Order is intended to supersede the conditional exemptive relief set forth in the November 2023 Order with respect to re-processing of data received after T+5.<sup>39</sup>

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<sup>38</sup> The Commission expects that the timing and cost of performing the Full Replay process would likely vary based on the number of trade dates and data volumes to be processed in the request, as well as on the availability of compute resources. Although the Commission does not expect regulatory users to utilize the Full Replay process frequently, it may be appropriate for the Participants to budget for its potential use.

<sup>39</sup> See November 2023 Order, *supra* note 27, at 77130-31. The conditional exemptive relief provided by the November 2023 Order continues to be in force for the other areas addressed therein, except as provided in Parts II.A and II.C.

Even though the conditional exemptive relief granted herein will allow the Participants to relax existing requirements related to the processing of order event lifecycles that include late records, the Commission believes that the core lifecycle linkage functionality envisioned by Rule 613 and the CAT NMS Plan will be preserved.<sup>40</sup> The Commission understands from communications with the Participants that most order event lifecycles would be unaffected by the conditional exemptive relief granted herein – the vast majority of order event lifecycles are currently completed on time, and the vast majority of late-reported data does not impact lifecycle linkages. For the less than 1% of late-reported data that does require additional re-processing to construct an order event lifecycle, requiring the Participants to run the Enhanced Late to the Lifecycle process quarterly for trade dates within the prior 3 years should still provide regulatory users with the ability to quickly and reliably identify and link all relevant lifecycles associated with the late-reported data that is most frequently needed and accessed by regulatory users. Although this approach requires some manual intervention by regulatory users, the Commission believes this is a reasonable trade-off for the millions of dollars of cost savings the Commission expects will likely flow from significantly reducing the usage of the Full Replay process and any additional costs savings that may be realized from requiring the Plan Processor to perform the Enhanced Late to the Lifecycle process quarterly instead of weekly.<sup>41</sup> Moreover, under the conditional exemptive relief granted herein, regulatory users will be able to request that the Plan Processor perform the Full Replay process on specified data, which should continue to enable

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<sup>40</sup> See, e.g., Securities Exchange Act Release No. 77724 (Apr. 27, 2016), 81 FR 30614, 30693 (May 17, 2016) (“Currently regulators can spend days and up to months processing data they receive into a useful format. Part of this delay is due to the need to combine data across sources that could have non-uniform formats and to link data about the same event both within and across data sources. . . . [T]he Commission preliminarily believes that the Plan would reduce or eliminate the delays associated with merging and linking order events within the same lifecycle.” (footnote omitted)); see also *id.* at 30670 (“Regardless of whether order lifecycle reports are reflected in the same or different data sources, the process of linking lifecycle events is complex and can create inaccuracies. . . . The inability to link all records affects the accuracy of the resulting data and can force an inefficient manual linkage process that would delay the completion of the data collection and analysis portion of the examination, investigation, or reconstruction.”).

<sup>41</sup> The Commission estimates, based on its communications with the Participants, that such measures could save approximately \$4.5-6 million annually.

regulatory users to react to major market events in an effective and expeditious way.

The Commission therefore determines that the conditional exemptive relief granted herein satisfies the standards of section 36(a)(1) of the Exchange Act and Rule 608(e) of Regulation NMS.

### **C. Requirement to Provide an OTQT**

Section 6.10(c)(i) of the CAT NMS Plan requires the Plan Processor to provide the Participants and the Commission with access to processed CAT Data through different methods, including an OTQT and user-defined direct queries and bulk extracts.<sup>42</sup> Specifically, the CAT NMS Plan specifies that the OTQT “will provide authorized users with the ability to retrieve CAT Data via an online query screen that includes the ability to choose from a variety of pre-defined selection criteria.”<sup>43</sup> Section 8.1, including sections 8.1.1-8.1.3, of Appendix D of the CAT NMS Plan sets forth certain performance requirements for the OTQT, subject to certain conditional exemptive relief granted by the Commission in the November 2023 Order.<sup>44</sup>

To allow for cost savings, the Commission has now determined to grant conditional exemptive relief from the requirements for DIVER, ARLE, OLA Viewer, and MIRS volume concentration and market replay tools. Specifically, for these tools, the Commission grants conditional exemptive relief from the above-described provisions in the CAT NMS Plan directing the Participants to maintain an OTQT and setting forth performance requirements for the OTQT, subject to the following conditions:

- To ensure that the remaining CAT query tools continue to perform at the same level in the absence of certain OTQT functionality, the Plan Processor must maintain currently-existing performance requirements, controls, monitoring, logging, and reporting for the

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<sup>42</sup> The OTQT functionality implemented by the Plan Processor is implemented through various tools, which are referred to as “DIVER,” “MIRS,” “OLA Viewer,” and “ARLE.” The user-defined query tool is referred to as “BDSQL,” and the bulk extract tool as “Direct Read.”

<sup>43</sup> See CAT NMS Plan, *supra* note 5, at section 6.10(c)(i)(A).

<sup>44</sup> See November 2023 Order, *supra* note 27, at 77130, 77132-34.

user-defined direct queries (BDSQL) and bulk extract (Direct Read) tools, as well as for the MIRS reporting statistics tools that provide regulatory users with access to compliance information.

- To enable Participants and the Commission sufficient time to adjust their regulatory programs to use any necessary replacement tools, OTQT functionality may not be eliminated earlier than 2 months after the publication of this Order in the *Federal Register*.

This conditional exemptive relief granted in this Order is intended to supersede the conditional exemptive relief set forth in the November 2023 Order with respect to OTQT performance requirements.<sup>45</sup>

The Commission understands, based on communications with the Participants, that elimination of the OTQT will generate meaningful cost savings,<sup>46</sup> and the Commission does not believe that elimination of the OTQT functionality would unduly impact regulators' oversight of the markets. The elimination of OTQT functionality would not in any way impact the underlying CAT Data that is made available for regulators. Although the Commission has previously observed that certain OTQT functionality may enable "regulatory users with less expertise in sophisticated programming skills to access CAT Data," insofar as BDSQL and Direct Read "require programming skills in remote data processing and/or knowledge of structured query programming language,"<sup>47</sup> the Commission understands from its communications with the Participants that their regulatory groups would be able to conduct their regulatory programs using only BDSQL and Direct Read or otherwise could adjust by creating their own internal tools to replicate the same targeted queries they would otherwise run on

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<sup>45</sup> See id. The conditional exemptive relief provided by the November 2023 Order continues to be in force for the other areas addressed therein, except as provided in Parts II.A-B.

<sup>46</sup> The Commission understands from its communications with the Participants that such measures could save approximately \$2.35-2.85 million annually.

<sup>47</sup> See 2024 Cost Savings Amendment, supra note 8, at 103036.

DIVER. The Commission likewise believes that its own regulatory program would not be impaired by the loss of certain OTQT functionality. Staff already have the necessary skill sets to use the BDSQL and Direct Read tools, which will be maintained by the Plan Processor, and the Commission has already developed internal tools that replicate functionality supplied by the DIVER, ARLE, OLA Viewer, and MIRS volume concentration and market replay tools that may not be available if the Participants utilize this exemptive relief. The Commission therefore determines that the conditional exemptive relief described above satisfies the standard of section 36(a)(1) of the Exchange Act and Rule 608(e) of Regulation NMS.

#### **D. Requirements Related to Data Storage and Retention**

Several data storage and retention requirements govern the Participants' storage of data and/or data stored within the CAT. First, the Participants are subject to the storage requirements of Rule 17a-1, which states, among other things, that "[e]very national securities exchange [and] national securities association . . . shall keep and preserve at least one copy of all documents, including all correspondence, memoranda, papers, books, notices, accounts, and other such records as shall be made or received by it in the course of its business as such and in the conduct of its self-regulatory activity," and that "[e]very national securities exchange [and] national securities association . . . shall keep such documents for a period of not less than five years, the first two years in an easily accessible place, subject to the destruction and disposition provisions of Rule 17a-6."<sup>48</sup>

Second, Rule 613(e)(8) states that the CAT NMS Plan must require the Central Repository to "retain the information collected pursuant to paragraph (c)(7) and (e)(7) . . . in a convenient and usable standard electronic data format that is directly available and searchable electronically without any manual intervention for a period of not less than five years."<sup>49</sup>

The CAT NMS Plan itself imposes several storage requirements with respect to CAT

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<sup>48</sup> See 17 CFR 240.17a-1.

<sup>49</sup> See 17 CFR 242.613(e)(8).

Data, including requirements in section 6.5(b) that the Central Repository retain “the information collected pursuant to paragraphs (c)(7) and (e)(7) of SEC Rule 613 in a convenient and usable standard electronic data format that is directly available and searchable electronically without any manual intervention by the Plan Processor for a period of not less than six (6) years.”<sup>50</sup>

Additionally, pursuant to section 1.4 of Appendix D of the CAT NMS Plan, “[t]he Plan Processor must develop a formal record retention policy and program for the CAT, to be approved by the Operating Committee, which will, at a minimum . . . [m]ake data directly available and searchable electronically without manual intervention for at least six years . . . .”

Section 6.3 of Appendix D of the CAT NMS Plan provides an exception to these requirements for several kinds of data, including “Interim Operational Data older than 15 days,”<sup>51</sup> which may be retained in an archive storage tier, meaning such data is not directly available and searchable without manual intervention.<sup>52</sup>

The Commission understands from communications with the Participants that storage costs represent approximately 40% of monthly cloud services fees, as the CAT continues to accrue volume toward its six-year storage requirement and as data volumes continue to increase. Moreover, it appears to the Commission that the storage needs for the CAT far exceed what was envisioned when the CAT was first established. For example, the CAT NMS Plan approved by the Commission stated that it “is expected that the Central Repository will grow to more than 29 petabytes of raw, uncompressed data,”<sup>53</sup> but the Commission understands that the Plan Processor

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<sup>50</sup> See CAT NMS Plan, supra note 5, at section 6.5(d). Section 6.1(d)(i) of the CAT NMS Plan also requires the Plan Processor to comply with the recordkeeping requirements of Rule 613(e)(8).

<sup>51</sup> “Interim Operational Data” is defined as “all processed, validated and unlinked data made available to regulators by T+1 at 12:00 p.m. ET and all iterations of processed data made available to regulators between T+1 and T+5, but excludes the final version of corrected data that is made available at T+5 at 8:00 a.m. ET,” and “[f]or the avoidance of doubt, ‘Interim Operational Data’ does not include processed data relating to Options Market Maker quotes in Listed Options made available to regulators by T+1 at 12:00 p.m. ET.” See CAT NMS Plan, supra note 5, at Appendix D, section 6.3; see also Part II.A supra, for a discussion of conditional exemptive relief that would affect the definition of this data.

<sup>52</sup> The CAT NMS Plan states that the Plan Processor will restore archived data to an accessible storage tier upon request to the CAT Help Desk by an authorized regulatory user from the Participants or a senior officer from the SEC. See CAT NMS Plan, supra note 5, Appendix D, section 6.3.

<sup>53</sup> See CAT NMS Plan Approval Order, supra note 5, at 85023.

currently projects that cumulative storage will exceed 1 exabyte (or 1,000 petabytes) in 2025 – more than 37 times this original estimate. Given their significant contribution to increasing CAT costs, the Commission has determined to grant conditional exemptive relief to allow the Participants to immediately reduce the usage of storage and retention of CAT Data.

Specifically, the Commission grants conditional exemptive relief from the above-described requirements of Rule 17a-1,<sup>54</sup> Rule 613(e)(8), sections 6.1(d)(i) and 6.5(b) of the CAT NMS Plan, and sections 1.4 and 6.3 of Appendix D of the CAT NMS Plan, to the extent necessary to allow the Participants to:

- Delete all CAT Data older than five years.
- Move CAT Data older than three years to a more cost-effective storage tier (i.e., a tier requiring some “manual intervention” to retrieve data), subject to the condition that the Plan Processor will restore archived CAT data which is older than three years old to an accessible storage tier upon request to the CAT Help Desk by an authorized regulatory user from the Participants or from the SEC.<sup>55</sup>
- Delete OMM Quotes data after one year from the CAT System.
- Delete Interim Operational Data older than 15 days.

The Commission does not believe the reduced data storage and shorter data retention periods permitted by the conditional exemptive relief granted herein would unduly impact regulators’

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<sup>54</sup> Because the CAT is a facility of the Participants, it is subject to the record-keeping provisions of Rule 17a-1. See, e.g., id. at 84736. The Participants require exemptive relief from Rule 17a-1 to delete OMM Quotes data after one year from the CAT System and to delete Interim Operational Data older than 15 days. Conditions enabling the Participants to delete all CAT Data older than five years and/or to move CAT Data older than three years to a more cost-effective storage tier are already consistent with or more generous than Rule 17a-1, although they are more lenient than the requirements otherwise contained in Rule 613 and/or the CAT NMS Plan.

<sup>55</sup> The Commission understands from communications with the Participants that CAT Data is currently stored in four storage tiers: S3 Frequent Access, S3 Infrequent Access, S3 Instant Archive Access, and S3 Glacier Deep Archive. Data files that are either new or that have recently been read by regulatory users are stored in S3 Frequent Access. If a file is not read by a regulatory user for 30 days, then it moves to S3 Infrequent Access. Similarly, if a file is not read by a regulatory user for 90 days, then it moves to S3 Archive Instant Access. Finally, the CAT NMS Plan permits certain kinds of data, including Interim Operational Data older than 15 days, to be moved to S3 Glacier Deep Archive. See, e.g., CAT NMS Plan, supra note 5, at Appendix D, section 6.3. The conditional exemptive relief granted herein would likewise permit the Participants to move all CAT Data older than three years to a storage tier like S3 Glacier Deep Archive.

ability to oversee the markets. In addition, permitting the Plan Processor to delete all CAT Data older than five years from the CAT System is consistent with the data storage and retention requirements otherwise applicable to the Participants as national securities exchanges and national securities associations.<sup>56</sup>

Allowing the movement of CAT Data older than three years to a more cost-effective storage tier, subject to the condition identified above, would allow the Participants to use lower-cost archive storage options while simultaneously maintaining records for regulatory use as needed. The first three years of CAT Data, which the Commission believes will be more frequently accessed and needed by regulatory users based on its experience in using the CAT and CAT Data, will still be maintained in a convenient and usable standard electronic data format that is directly available and searchable electronically without any manual intervention by the Plan Processor.<sup>57</sup> Although the Commission has stated that OMM Quotes data has substantial regulatory value,<sup>58</sup> based on Commission experience in using the CAT and CAT Data, the Commission expects that regulators are less likely to access OMM Quotes data after a period of one year and thus the costs of maintaining older OMM Quotes data in the CAT are not sufficiently justified by its regulatory benefits.<sup>59</sup> Permitting the Participants to delete all OMM Quotes data after one year will significantly reduce the CAT's storage requirements, which should result in significant cost savings. To the extent older data is required, the Commission could request access to or analysis of OMM Quotes data directly from options exchanges, because Rule 17a-1 requires them to maintain OMM Quotes data for five years.<sup>60</sup> Finally,

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<sup>56</sup> See 17 CFR 240.17a-1; 17 CFR 242.613(e)(8). See also, e.g., CAT NMS Plan Approval Order, supra note 5, at 84758 (stating that the CAT is a facility of each of the Participants).

<sup>57</sup> This framework exceeds the applicable requirements set forth in Rule 17a-1, which requires that records be kept for “the first two years in an easily accessible place.” See 17 CFR 240.17a-1.

<sup>58</sup> See, e.g., 2024 Cost Savings Amendment, supra note 8, at 103037.

<sup>59</sup> According to information provided by the Participants in 2024, OMM Quotes data is the single largest data source for the CAT, comprising approximately 98% of all options data and approximately 75% of all transaction volume stored in the CAT. Id.

<sup>60</sup> 17 CFR 240.17a-1.

deleting Interim Operational Data older than 15 days will likely have little effect, as the Commission understands from communications with the Participants that it has not been used after nearly five years of CAT operation.

The Commission therefore determines that it satisfies the standards of section 36(a)(1) of the Exchange Act and Rule 608(e) of Regulation NMS to grant this conditional exemptive relief, which will not unduly impede the intended regulatory benefits of Rule 17a-1, Rule 613, and/or the CAT NMS Plan, while enabling the Participants to realize meaningful cost savings.<sup>61</sup>

### **III. Conclusion**

Accordingly, IT IS HEREBY ORDERED, pursuant to section 36(a)(1) of the Exchange Act<sup>62</sup> and Rule 608(e) under Regulation NMS,<sup>63</sup> that the above-described conditional exemptive relief be granted.

By the Commission.

**Sherry R. Haywood,**

*Assistant Secretary.*

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<sup>61</sup> The Commission understands from its communications with the Participants that such measures could save approximately \$11-15 million annually.

<sup>62</sup> 15 U.S.C. 78mm(a)(1).

<sup>63</sup> 17 CFR 242.608(e).