



8011-01

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-87149; File No. 4-698]

Joint Industry Plan; Notice of Filing and Immediate Effectiveness of Amendment to the National Market System Plan Governing the Consolidated Audit Trail by Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., BOX Options Exchange LLC, Cboe C2 Options Exchange, Inc., Cboe Exchange, Inc., Financial Industry Regulatory Authority, Inc., Investors' Exchange 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, New York Stock Exchange LLC, NYSE Arca, Inc., NYSE American, LLC, NYSE Chicago, Inc. and NYSE National, Inc.

I. Introduction

On August 29, 2019, the Operating Committee for CAT NMS, LLC (the “Company”), on behalf of the following parties to the National Market System Plan Governing the Consolidated Audit Trail (the “CAT NMS Plan” or “Plan”):¹ Cboe BYX Exchange, Inc., (previously known as

¹ On February 27, 2015, BATS-Y Exchange, Inc. (n/k/a Cboe BYX Exchange, Inc.), BATS Exchange, Inc. (n/k/a Cboe BZX Exchange, Inc.), BOX Options Exchange LLC, C2 Options Exchange, Incorporated (n/k/a Cboe C2 Options Exchange, Inc.), Chicago Board Options Exchange, Incorporated (n/k/a Cboe Exchange Inc.), Chicago Stock Exchange, Inc. (n/k/a NYSE Chicago, Inc.), EDGA Exchange, Inc. (n/k/a Cboe EDGA Exchange, Inc.), EDGX Exchange, Inc. (n/k/a Cboe EDGX Exchange, Inc.), Financial Industry Regulatory Authority, Inc., International Securities Exchange, LLC (n/k/a Nasdaq ISE LLC), ISE Gemini, LLC (n/k/a Nasdaq GEMX, LLC), Miami International Securities Exchange LLC, NASDAQ OMX BX, Inc. (n/k/a Nasdaq BX, Inc.), NASDAQ OMX PHLX LLC (n/k/a Nasdaq PHLX LLC), The NASDAQ Stock Market LLC, National Stock Exchange, Inc. (n/k/a NYSE National, Inc.), New York Stock Exchange LLC, NYSE MKT LLC (n/k/a NYSE American, LLC), and NYSE Arca, Inc. filed with

Bats BYX Exchange, Inc.), Cboe BZX Exchange, Inc. (previously known as Bats BZX Exchange), Inc., Cboe EDGA Exchange, Inc. (previously known as Bats EDGA Exchange, Inc.), Cboe EDGX Exchange, Inc. (previously known as Bats EDGX Exchange, Inc.), BOX Options Exchange LLC, Cboe C2 Options Exchange, Inc., Cboe Exchange, Inc., Financial Industry Regulatory Authority, Inc., Investors' Exchange, LLC, Miami International Securities Exchange, LLC, MIAX EMERALD, LLC, MIAX PEARL, LLC, Nasdaq ISE, LLC (previously known as International Securities Exchange, Inc.), Nasdaq GEMX (previously known as ISE Gemini, LLC), Nasdaq MRX (previously known as ISE Mercury, LLC), Nasdaq BX, Inc. (previously known as NASDAQ BX, Inc.), Nasdaq PHLX LLC (previously known as NASDAQ PHLX LLC), The NASDAQ Stock Market LLC, New York Stock Exchange LLC, NYSE Arca, Inc., NYSE Chicago, Inc. (previously known as Chicago Stock Exchange, Inc.), NYSE American, LLC (previously known as NYSE MKT, LLC) and NYSE National, Inc. (previously known as National Stock Exchange, Inc.) (collectively, the "Participants," "self-regulatory organizations," or "SROs") filed with the Securities and Exchange Commission ("Commission" or "SEC") pursuant to Section 11A(a)(3) of the Securities Exchange Act of 1934 ("Exchange Act"),² and

the Commission, pursuant to Section 11A of the Exchange Act and Rule 608 of Regulation NMS thereunder, the CAT NMS Plan. 15 U.S.C. 78k-1; 17 CFR 242.608. The 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); 79318 (November 15, 2016), 81 FR 84696 (November 23, 2016) ("CAT NMS Plan Approval Order"). On January 30, 2017, the Commission noticed for immediate effectiveness an amendment to the Plan to add MIAX PEARL, LLC as a Participant. See Securities Exchange Act Release No. 79898, 82 FR 9250 (February 3, 2017). On March 1, 2019, the Commission noticed for immediate effectiveness an amendment to the Plan to add MIAX Emerald, LLC as a Participant. See Securities Exchange Act Release No. 85230, 84 FR 8356 (March 7, 2019).

² 15 U.S.C 78k-1(a)(3).

Rule 608 thereunder,³ a proposed amendment to the CAT NMS Plan to accommodate the creation of a new Delaware limited liability company, named Consolidated Audit Trail, LLC, for the purpose of conducting activities related to the CAT.⁴ A copy of the proposed revisions to the CAT NMS Plan is attached as Appendix A hereto. The Commission is publishing this notice to solicit comments from interested persons on the amendment.⁵

II. Description of the Plan

Set forth in this Section II is the statement of the purpose and summary of the amendment, along with information required by Rule 608(a)(4) and (5) under the Exchange Act,⁶ substantially as prepared and submitted by the Participants to the Commission.⁷

A. Description of the Amendments to the CAT NMS Plan

The Participants previously formed a Delaware limited liability company named CAT NMS, LLC for the purpose of conducting activities related to the consolidated audit trail (“CAT”), and CAT NMS, LLC currently conducts those activities.⁸ The Participants are the limited liability company members of CAT NMS, LLC. The Limited Liability Company Agreement of CAT NMS, LLC, itself, including its appendices, is the CAT NMS Plan, the national market system plan as defined in Rule 600(b)(43) of Regulation NMS under the Exchange Act.⁹ The Participants propose to form a new Delaware limited liability company

³ 17 CFR 242.608.

⁴ See Letter from Michael Simon, CAT NMS Plan Operating Committee Chair, to Brent J. Fields, Secretary, Commission, dated May 8, 2017 (“Transmittal Letter”).

⁵ 17 CFR 242.608.

⁶ See 17 CFR 242.608(a)(4) and (a)(5).

⁷ See Letter from Michael Simon, Chair, CAT NMS Plan Operating Committee, to Ms. Vanessa Countryman, Secretary, Commission, dated August 29, 2019.

⁸ CAT NMS Plan Approval Order at 84699.

⁹ Id.

named Consolidated Audit Trail, LLC for the purpose of conducting activities related to the CAT from and after the effectiveness of the proposed amendment of the CAT NMS Plan, and Consolidated Audit Trail, LLC will conduct those activities from and after that time. The Participants will be the limited liability company members of Consolidated Audit Trail, LLC. Upon the effectiveness of the proposed amendment of the CAT NMS Plan, the Limited Liability Company Agreement of Consolidated Audit Trail, LLC would serve as the CAT NMS Plan, and the Limited Liability Company Agreement of CAT NMS, LLC would no longer serve as the CAT NMS Plan.

The language of the Limited Liability Company Agreement of Consolidated Audit Trail, LLC is the same as the language of the Limited Liability Company Agreement of CAT NMS, LLC except for changes related to the name of the new limited liability company and the date of the agreement.¹⁰ Specifically, the proposed amendment would replace the name CAT NMS, LLC with the name Consolidated Audit Trail, LLC in the title, opening paragraph, Section 2.3 and the title of Exhibit A of the new limited liability company agreement. In addition, the proposed amendment would replace the current date of the agreement in the opening paragraph with the date of the new agreement with Consolidated Audit Trail, LLC. Accordingly, the proposed revisions to the current CAT NMS Plan are limited only to those that are necessary to accommodate the creation of the new limited liability company, not to change any of the substantive provisions of the CAT NMS Plan that govern the way activities with regard to the CAT are performed, including, for example, provisions related to governance, fees, the Plan

¹⁰ In addition to these name changes, the Operating Committee notes that the names and addresses of the Participants have been updated in the signature block and Exhibit A of the Limited Liability Company Agreement of Consolidated Audit Trail, LLC to reflect the current names and addresses of the Participants. These changes are set forth in the Appendix A to this letter.

Processor, and CAT Data. The proposed revisions to the CAT NMS Plan are attached as the Appendix A to this filing.

The Operating Committee proposes to amend the CAT NMS Plan for several reasons. On February 26, 2019, the Operating Committee selected a successor Plan Processor for the CAT, FINRA CAT LLC. With FINRA CAT LLC as the successor Plan Processor, a new CAT System will be used to conduct the activities related to the CAT. With a successor Plan Processor and new CAT System, the Operating Committee has been advised that it would be appropriate to utilize a new entity to implement the CAT NMS Plan. The Operating Committee also proposes to create Consolidated Audit Trail, LLC to ensure that fees collected by that entity will fund the development and operation of the CAT System.

B. Governing or Constituent Documents

The governing document for Consolidated Audit Trail, LLC, the Limited Liability Company Agreement for Consolidated Audit Trail, LLC, is the same as the Limited Liability Agreement for CAT NMS, LLC except for the changes set forth in the Appendix A to this letter. In addition, the changes made to the Limited Liability Company Agreement of CAT NMS, LLC are described above in Section A.

C. Implementation of Amendment

The terms of the proposed amendment will become effective upon filing pursuant to Rule 608(b)(3)(ii) of the Exchange Act because it is concerned solely with the administration of the Plan, or involving the governing or constituent documents relating to any person authorized to implement or administer the Plan on behalf of its sponsors.¹¹ The Limited Liability Company Agreement of Consolidated Audit Trail, LLC will become the CAT NMS Plan immediately

¹¹ 17 CFR 242.608(b)(3)(ii).

upon filing the proposed amendment with the Commission. To effectuate the proposed amendment upon filing, the Participants have previously filed the necessary documents with the State of Delaware to form Consolidated Audit Trail, LLC. In addition, CAT NMS, LLC has taken the necessary steps to assign its agreement with the Plan Processor, FINRA CAT LLC, and the Technical Specifications for the CAT System to Consolidated Audit Trail, LLC and for Consolidated Audit Trail, LLC to guarantee the payment obligations under the promissory notes made by CAT NMS, LLC to the Participants for development costs related to the CAT for the period prior to the creation of Consolidated Audit Trail, LLC. Consolidated Audit Trail, LLC also has taken the necessary steps to enter into new contracts with other third parties performing administrative and other functions on behalf of Consolidated Audit Trail, LLC.

At any time within sixty days of the filing of this amendment, the Commission may summarily abrogate the amendment and require that it be refiled in accordance with paragraph (a)(1) of Rule 608 and reviewed in accordance with paragraph (b)(1) of Rule 608, if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system or otherwise in furtherance of the purposes of the Exchange Act.

D. Development and Implementation Phases

Not applicable.

E. Analysis of Impact on Competition

The Participants do not believe the proposed amendments will have any impact on competition, that the proposed amendment is a technical amendment related to the entity which would conduct the activities related to the CAT, and that the proposed amendment does not make

substantive changes to the CAT NMS Plan or the operation of the CAT.

F. Written Understanding or Agreements Relating to Interpretation of, or Participation in, Plan

Not applicable.

G. Approval by Plan Sponsors in Accordance with Plan

Section 12.3 of the CAT NMS Plan states that, subject to certain exceptions, the Plan may be amended from time to time only by a written amendment, authorized by the affirmative vote of not less than two-thirds of all of the Participants, that has been approved by the SEC pursuant to Rule 608 or has otherwise become effective under Rule 608. The Participants, by a vote of the Operating Committee taken at a meeting on August 29, 2019, has authorized the filing of this proposed amendment with the SEC in accordance with the Plan.

H. Description of Operation of Facility Contemplated by the Proposed Amendment

Not applicable.

I. Terms and Conditions of Access

Not applicable.

J. Method and Frequency of Processor Evaluation

Not applicable.

K. Dispute Resolution

Not applicable.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the amendment is consistent with the Exchange Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number 4-698 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number 4-698. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed plan amendment that are filed with the Commission, and all written communications relating to the amendment between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. Copies of such filing also will be available for inspection and copying at the Participants' offices. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number 4-698 and should be submitted on or before **[INSERT DATE 21 DAYS FROM PUBLICATION IN THE FEDERAL REGISTER]**.

By the Commission.

Eduardo A. Aleman,

Deputy Secretary.

APPENDIX A

Additions underlined; deletions [bracketed]

LIMITED LIABILITY COMPANY AGREEMENT
OF
[CAT NMS,] CONSOLIDATED AUDIT TRAIL, LLC
a Delaware Limited Liability Company

* * * * *

LIMITED LIABILITY COMPANY AGREEMENT
OF
[CAT NMS,] CONSOLIDATED AUDIT TRAIL, LLC
a Delaware Limited Liability Company

This Limited Liability Company Agreement (including its Recitals and the Exhibits, Appendices, Attachments, and Schedules identified herein, this “Agreement”) of [CAT NMS,] CONSOLIDATED AUDIT TRAIL, LLC, a Delaware limited liability company (the “Company”), dated as of the [20th day of February, 2019] 29th day of August, 2019, is made and entered into by and among the Participants.

* * * * *

Section 2.3. Name. The name of the Company is “[CAT NMS,] CONSOLIDATED AUDIT TRAIL, LLC.” The name of the Company may be changed at any time or from time to time with the approval of the Operating Committee. All Company business shall be conducted in that name or such other names that comply with applicable law as the Operating Committee may select from time to time.

* * * * *

IN WITNESS WHEREOF, the Participants have executed this Limited Liability Company Agreement as of the day and year first above written.

PARTICIPANTS:

BOX EXCHANGE LLC [BATS BZX EXCHANGE, INC.]

By: _____

Name: _____

Title: _____

CBOE [BATS] BYX EXCHANGE, INC.

By: _____

Name: _____

Title: _____

CBOE BZX EXCHANGE, INC. [BOX OPTIONS LLC]

By: _____

Name: _____

Title: _____

CBOE EDGA EXCHANGE, INC. [C2 OPTIONS
INCORPORATED]

By: _____

Name: _____

Title: _____

[CHICAGO BOARD OPTIONS EXCHANGE,
INCORPORATED

By: _____

Name: _____

Title: _____]

[CHICAGO STOCK] CBOE EDGX EXCHANGE, INC.

By: _____

Name: _____

Title: _____

[BATS EDGA] CBOE C2 EXCHANGE, INC.

By:_____

Name:_____

Title:_____

[BATS EDGX] CBOE EXCHANGE, INC.

By:_____

Name:_____

Title:_____

FINANCIAL INDUSTRY REGULATORY AUTHORITY,
INC.

By:_____

Name:_____

Title:_____

[ISE GEMINI] INVESTORS' EXCHANGE, LLC

By:_____

Name:_____

Title:_____

[ISE MERCURY] MIAX EMERALD, LLC

By:_____

Name:_____

Title:_____

MIAMI INTERNATIONAL SECURITIES EXCHANGE LLC

By:_____

Name: _____

Title: _____

[INVESTORS' EXCHANGE LLC

By: _____

Name: _____

Title: _____]

[MIAMI INTERNATIONAL SECURITIES EXCHANGE LLC

By: _____

Name: _____

Title: _____]

MIAMI PEARL, LLC

By: _____

Name: _____

Title: _____

[MIAX EMERALD, LLC

By: _____

Name: _____

Title: _____]

NASDAQ BX, INC.

By: _____

Name: _____

Title: _____

NASDAQ [PHLX] GEMX, LLC

By: _____

Name: _____

Title: _____

NASDAQ ISE, LLC

By: _____

Name: _____

Title: _____

NASDAQ MRX, LLC

By: _____

Name: _____

Title: _____

NASDAQ PHLX LLC

By: _____

Name: _____

Title: _____

THE NASDAQ STOCK MARKET LLC

By: _____

Name: _____

Title: _____

[NATIONAL STOCK EXCHANGE, INC.

By:_____

Name:_____

Title:_____]

NEW YORK STOCK EXCHANGE LLC

By:_____

Name:_____

Title:_____

NYSE [MKT] AMERICAN LLC

By:_____

Name:_____

Title:_____

NYSE ARCA, INC.

By:_____

Name:_____

Title:_____

NYSE [ARCA] CHICAGO, INC.

By:_____

Name:_____

Title:_____

NYSE NATIONAL, INC.

By: _____

Name: _____

Title: _____

EXHIBIT A

PARTICIPANTS IN [CAT NMS,] CONSOLIDATED AUDIT TRAIL, LLC

[Bats] <u>Cboe BZX Exchange, Inc.</u> <u>400 South LaSalle St.</u> <u>Chicago, IL 60605</u> [8050 Marshall Drive, Lenexa, KS 66214]	[Bats] <u>Cboe BYX Exchange, Inc.</u> <u>400 South LaSalle St.</u> <u>Chicago, IL 60605</u> [8050 Marshall Drive Lenexa, KS 66214]	<u>Cboe Exchange, Inc.</u> <u>400 South LaSalle St.</u> <u>Chicago, IL 60605</u> [BOX Options Exchange LLC 101 Arch St., Suite 610 Chicago, IL 60605]
<u>Cboe C2 Options Exchange, Inc.</u> [Incorporated] 400 South LaSalle St. Chicago, IL 60605	[Chicago Board Options] <u>Cboe EDGA Exchange, Inc.</u> [Incorporated] 400 South LaSalle St. Chicago, IL 60605	[Chicago Stock] <u>Cboe EDGX Exchange, Inc.</u> [440] <u>400 South LaSalle St.</u> Chicago, IL 60605
<u>BOX Exchange LLC</u> <u>101 Arch St., Suite 610</u> <u>Boston, MA 02110</u> [Bats EDGA Exchange, Inc.] 8050 Marshall Drive Lenexa, KS 66214]	<u>New York Stock Exchange LLC</u> <u>11 Wall St.</u> <u>New York, NY 10005</u> [Bats EDGX Exchange, Inc. 8050 Marshall Drive Lenexa, KS 66214]	<u>NYSE Chicago, Inc.</u> <u>440 South LaSalle St., Suite 800</u> <u>Chicago, IL 60605</u> [Financial Industry Regulatory Authority Inc. 1735 K Street, NW Washington DC, 20006]
<u>NYSE National, Inc.</u> <u>11 Wall St.</u> <u>New York, NY 10005</u> [ISE Gemini, LLC 60 Broad Street New York, New York 10004]	<u>NYSE American LLC</u> <u>11 Wall St.</u> <u>New York, NY 10005</u> [International Securities Exchange, LLC 60 Broad Street New York, New York 10004]	<u>NYSE Arca, Inc.</u> <u>11 Wall St.</u> <u>New York, NY 10005</u> [Miami International Securities Exchange LLC 7 Roszel Road, 5th floor Princeton, NJ 08540]
NASDAQ [BX] <u>GEMX, LLC</u> [Inc.] One Liberty Plaza 165 Broadway New York, NY 10006	NASDAQ [PHLX] <u>ISE, LLC[.]</u> <u>One Liberty Plaza</u> <u>165 Broadway</u> <u>New York, NY 10006</u> [1900 Market Street Philadelphia, PA 19103]	[The] NASDAQ [Stock Market] <u>MRX, LLC</u> <u>60 Broad Street</u> <u>New York, NY 10004</u> [One Liberty Plaza 165 Broadway New York, NY 1006]

<u>NASDAQ BX, Inc.</u> <u>One Liberty Plaza</u> <u>165 Broadway</u> <u>New York, NY 10006</u> [National Stock Exchange, Inc. 101 Hudson Street Suite 1200 Jersey City, NJ 07302]	<u>NASDAQ PHLX LLC.</u> <u>One Liberty Plaza</u> <u>165 Broadway</u> <u>New York, NY</u> <u>10006</u> [New York Stock Exchange LLC 11 Wall St. New York, NY 10005]	<u>The NASDAQ Stock Market</u> <u>LLC</u> <u>One Liberty Plaza</u> <u>165 Broadway</u> <u>New York, NY</u> <u>10006</u> [NYSE MKT LLC 11 Wall St. New York, NY 10005]
<u>Financial Industry Regulatory</u> <u>Authority, Inc.</u> <u>1735 K Street, NW</u> <u>Washington DC, 20006</u> [NYSE Arca, Inc. 11 Wall St. New York, NY 10005]	<u>Investors' Exchange, LLC</u> <u>3 World Trade Center,</u> <u>58th Floor</u> <u>New York, NY 10007</u> [ISE Mercury, LLC 60 Broad Street New York, NY 10004]	<u>Miami International</u> <u>Securities Exchange LLC</u> <u>7 Roszel Road, 5th floor</u> <u>Princeton, NJ 08540</u> [Investors' Exchange, LLC 4 World Trade Center 44th Floor New York, NY 10007]
MIAX PEARL, LLC 7 Roszel Road, 5th Floor, Princeton, New Jersey 08540	MIAX Emerald, LLC 7 Roszel Road, 5th Floor Princeton, New Jersey 08540	

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