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For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁷

Sherry R. Haywood,
Assistant Secretary.

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⁷ 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–102234]

Order Granting Temporary Conditional Exemptive Relief, Pursuant to Section 36(a)(1) of the Securities Exchange Act of 1934 and Rule 608(e) of Regulation NMS Thereunder, From Certain Requirements of Appendix D, Section 3 of the National Market System Plan Governing the Consolidated Audit Trail

January 17, 2025.

I. Introduction

On December 9, 2024,¹ Financial Information Forum (“FIF”) requested that the Securities and Exchange Commission (“Commission” or “SEC”) extend temporary conditional exemptive relief, pursuant to its authority under section 36(a)(1) of the Securities Exchange Act of 1934 (“Exchange Act”)² and Rule 608(e) of Regulation NMS under the Exchange Act,³ related to the requirement set forth in Appendix D, section 3 of the national market system plan governing the consolidated audit trail (“CAT NMS Plan”)⁴ that the consolidated audit trail (“CAT”) “must be able to create the lifecycle between . . . [c]ustomer orders to ‘representative’ orders created in firm accounts for the purpose of facilitating a customer order (e.g., linking a customer order handled on a riskless principal basis to the street-side proprietary order).”⁵ For the reasons set

¹ See Letter from Howard Meyerson, Managing Director, Financial Information Forum, to Commission, dated Dec. 9, 2024, available at <https://fif.com/index.php/working-groups/category/271-comment-letters?download=3057:fif-request-to-the-commission-for-a-six-month-extension-of-the-current-exemption-relating-to-cat-representative-order-linkage&view=category> (“Request”).

² 15 U.S.C. 78mm(a)(1).

³ 17 CFR 242.608(e).

⁴ See 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 *id.* 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 (the “Company”). 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 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).

⁵ See *id.* at Appendix D, section 3. A representative order is an order originated in a firm-owned or -controlled account, including principal, agency average price and omnibus accounts, by an

forth below, the Commission has determined to grant FIF's request for a six-month extension of the temporary conditional exemptive relief previously provided by the Commission with respect to the above-described requirement set forth in Appendix D, section 3 of the CAT NMS Plan for representative order scenarios in which Industry Members do not have a systematic or direct link between their order management systems and execution management systems.

II. Discussion of the Request for Relief

On July 18, 2012, the Commission adopted Rule 613 of Regulation NMS, which required national securities exchanges and national securities associations (“Participants”)⁶ to jointly develop and submit to the Commission a national market system plan to create, implement, and maintain the CAT.⁷ The goal of Rule 613 was to create a modernized audit trail system that would provide regulators with timely access to a 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. On November 15, 2016, the Commission approved the national market system plan required by Rule 613—the CAT NMS Plan.⁸

On December 16, 2020, the Commission issued an exemptive relief order regarding the implementation of the CAT NMS Plan (“First Order”).⁹ This order granted temporary

industry member for the purpose of working one or more customer or client orders. See, e.g., Securities Exchange Act Release No. 88702 (Apr. 20, 2020), 85 FR 23075, 23076 n.26 (Apr. 24, 2020). FIF states in the Request that “the term ‘representative order’ is a concept created by CAT (it is not a concept that exists in actual trading), and that all of the linkage requirements covered in [the] July 2024 FIF exemption request involve linkage either from or to a representative order.” See Request, *supra* note 1.

⁶ The Participants include 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, MIAX Emerald, LLC, MIAX PEARL, LLC, MIAX 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 Chicago, Inc., and NYSE National, Inc.

⁷ See Securities Exchange Act Release No. 67457 (July 18, 2012), 77 FR 45722 (Aug. 1, 2012); 17 CFR 242.613.

⁸ See CAT NMS Plan Approval Order, *supra* note 4.

⁹ See Securities Exchange Act Release No. 90688 (Dec. 16, 2020), 85 FR 83634 (Dec. 22, 2020).

conditional exemptive relief from several requirements set forth in the CAT NMS Plan, including the requirement set forth in Appendix D, section 3 of the CAT NMS Plan that the CAT “must be able to create the lifecycle between . . . [c]ustomer orders to ‘representative’ orders created in firm accounts for the purpose of facilitating a customer order (e.g., linking a customer order handled on a riskless principal basis to the street-side proprietary order).”¹⁰ This relief was initially granted until July 31, 2023.¹¹

On July 8, 2022, the Commission issued a new exemptive relief order (“Second Order”),¹² which superseded the First Order and modified and/or clarified certain aspects of the First Order. The Second Order granted temporary conditional exemptive relief until July 31, 2024, from the above-described linkage requirement set forth in Appendix D, section 3, “for representative order scenarios in which Industry Members do not have a systematic or direct link between their order management systems and execution management systems.”¹³ The Commission subsequently issued an order (“Third Order”), on May 19, 2023, further extending such exemptive relief until January 31, 2025.¹⁴ This relief was superseded by a new order issued by the Commission on November 2, 2023 (“Fourth Order”),¹⁵ which was intended to mirror the temporary conditional exemptive relief granted by the Third Order (and the Second Order) with respect to the requirements set forth in Appendix D, section 3 of the CAT NMS Plan regarding lifecycle linkages between customer orders and representative orders for scenarios in which Industry Members do not have a systematic or direct link between their order management systems and execution management systems.¹⁶ The Fourth Order did not extend the

¹⁰ See *id.* at 83636. The Commission stated its understanding that “the Participants do not currently have the ability to create lifecycles in certain representative order scenarios, particularly because of the difficulty of linking representative orders for Industry Members with separate order management systems and execution management systems that do not currently have a systematic or direct link between them.” *Id.*

¹¹ *Id.*

¹² See Securities Exchange Act Release No. 95234 (July 8, 2022), 87 FR 42247 (July 14, 2022).

¹³ *Id.* at 42255–56. The term “Industry Member” is defined as “a member of a national securities exchange or a member of a national securities association.” See CAT NMS Plan, *supra* note 4, at section 1.1.

¹⁴ See Securities Exchange Act Release No. 97530 (May 19, 2023), 88 FR 33655 (May 24, 2023).

¹⁵ See Securities Exchange Act Release No. 98848 (Nov. 2, 2023), 88 FR 77128 (Nov. 8, 2023).

¹⁶ *Id.* at 77132.

temporary conditional exemptive relief beyond the time period provided by the Third Order.¹⁷

FIF requests that the Commission extend the previously granted temporary conditional exemptive relief until July 31, 2025.¹⁸

FIF states that the Participants, at the direction of the Commission, will “remove from the CAT system the ability for industry members to report certain flags on Order Fulfillment events (specifically, the ‘YE’ and ‘YP’ flags) in lieu of reporting linkage to specific representative orders” after January 31, 2025.¹⁹ FIF states that FIF and its members have demonstrated the “ongoing focus of industry members in complying with their CAT reporting obligations” and have devoted “significant resources . . . over many years towards such compliance.”²⁰ Nevertheless, FIF suggests that it may be difficult or impossible for Industry Members to comply with the requirement to report linkages for certain scenarios, which it states will be required as of February 1, 2025.²¹ “In some scenarios,” FIF states that “no representative order exists, and thus it is not possible for industry members to provide the linkage to specific representative orders that will be required as of February 1, 2025.”²² In other scenarios, FIF states that “industry members do not maintain this linkage in their books and records.”²³ Finally, FIF states that there are scenarios in which “the CAT system does not provide a method to provide linkage to a specific order.”²⁴

¹⁷ *Id.*

¹⁸ See Request, *supra* note 1, at 1.

¹⁹ See Request, *supra* note 1, at 1–2 (citing CAT Reporting Technical Specifications for Industry Members, version 4.1.0 r4, dated Oct. 18, 2024, at 367–69, available at https://catnmsplan.com/sites/default/files/2024-10/10.18.24_CAT_Reporting_Technical_Specifications_for_Industry_Members_v4.1.0r4_CLEAN.pdf). Contrary to the assertion made by FIF, the Commission has not directed the Participants to remove the “YE” or “YP” flags from the CAT Reporting Technical Specifications for Industry Members by any specific date. Furthermore, and also contrary to the assertion made by FIF in its request, the Commission understands that the “YE” and “YP” flags would continue to be available after Jan. 31, 2025, even in the absence of the temporary conditional exemptive relief granted by the Commission herein.

²⁰ See Request, *supra* note 1, at 3.

²¹ But see *supra* note 19.

²² See Request, *supra* note 1, at 2.

²³ *Id.*

²⁴ *Id.* FIF states that these scenarios are more fully described in a previous request for exemptive relief submitted to the Commission. See *id.*; see also Letter from Howard Meyerson, Managing Director, FIF, to Commission, dated July 2, 2024, available at <https://fif.com/index.php/working-groups/category/271-comment-letters?download=2962:fif-exemptive-request-letter-to-the-sec-on-representative-order-linkage&start=10&view=category>.

If Industry Members cannot use the “YE” and “YP” flags to report certain trading scenarios and/or must report the information necessary for FINRA CAT to create lifecycle linkages between customer orders and representative orders, FIF states that Industry Members “will be faced with the choice of either (i) submitting large numbers of Order Fulfillment events that the CAT system will reject and that will not be repairable, or (ii) abandoning certain common existing trading workflows.”²⁵ FIF further states its view of the potential harms that could flow from the expiration of the existing exemptive relief:

For example, it is a common workflow for industry members to trade as a principal against customer orders without the industry member creating a firm order. This workflow will no longer be possible if the flags referenced above are removed from CAT because a firm will not be able to report Order Fulfillments to CAT when the firm fulfills its ‘Manning’ obligation for this workflow. Conversely, if industry members submit large numbers of Order Fulfillments that the CAT system will reject, this will present a significant processing and workflow challenge for the CAT system, the regulators and industry members as large numbers of rejected and unsubmitted CAT events pile-up.²⁶

FIF states that its members have further identified for Commission staff, the Participants, and FINRA CAT the “significant challenges with implementing certain CAT linkage requirements relating to representative orders and order fulfillments” in presentations²⁷ and previous exemptive relief requests that were submitted to the Commission in March 2024 and July 2024.²⁸ FIF therefore requests an extension of the current exemptive relief to identify long-term reporting solutions for the specific trading scenarios set forth in previous exemptive relief requests.²⁹

Section 36(a)(1) of the Exchange Act grants the Commission the authority to “conditionally or unconditionally exempt any person, security, or transaction . . . from any provision or provisions of [the Exchange Act] or of

²⁵ See Request, *supra* note 1, at 2. These outcomes could occur even if the “YE” and “YP” flags remain available after Jan. 31, 2025, because Industry Members would be required to report the information necessary for FINRA CAT to create lifecycle linkages between customer orders and representative orders in the absence of the temporary conditional exemptive relief granted by the Commission in the past and herein. See *supra* note 19.

²⁶ See *id.* at 2–3.

²⁷ See Request, *supra* note 1, at 3 n.10–11 and associated text.

²⁸ See *id.* at 3–4 n.13–14 and associated text.

²⁹ *Id.* at 2, 4.

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.”³⁰ Rule 608(e) of Regulation NMS similarly grants the Commission the authority to “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 mechanisms of, a national market system.”³¹

The Commission agrees that additional time is needed to identify and evaluate appropriate long-term solutions for certain trading scenarios. In developing those solutions, the Commission emphasizes its willingness to consider alternative solutions that achieve the regulatory goals of Rule 613 and the CAT NMS Plan. The Commission therefore determines that the requested extension of the existing exemptive relief is appropriate in the public interest and consistent with the protection of investors under section 36(a)(1) of the Exchange Act, as well as consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets, and the perfection of the mechanisms of a national market system under Rule 608(e) of Regulation NMS.

Specifically, the Commission grants temporary conditional exemptive relief from the requirements set forth in Appendix D, section 3 of the CAT NMS Plan related to lifecycle linkages between customer orders and representative orders,³² for representative order scenarios in which Industry Members do not have a systematic or direct link between their order management systems and execution management systems, until July 31, 2025. Such relief is intended to mirror the exemptive relief provided by the Second Order, the Third Order, and the Fourth Order.

III. Conclusion

Accordingly, *it is hereby ordered*, pursuant to Section 36(a)(1) of the Exchange Act³³ and Rule 608(e) under

the Exchange Act,³⁴ that the above-described temporary conditional exemptive relief be granted.

By the Commission.

Sherry R. Haywood,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–102218; File No. SR–DTC–2025–001]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend and Restate the Second Amended and Restated Netting Contract and Limited Cross-Guaranty Between NSCC and DTC

January 16, 2025.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act”)¹ and Rule 19b–4 thereunder,² notice is hereby given that on January 2, 2025, The Depository Trust Company (“DTC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Item I below, which Item has been substantially prepared by the clearing agency. DTC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Exchange Act³ and Rule 19b–4(f)(6) thereunder.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency’s Statement of the Terms of Substance of the Proposed Rule Change

The purpose of this proposed rule change⁵ is to amend and restate the Second Amended and Restated Netting Contract and Limited Cross-Guaranty, dated as of October 1, 2002, between NSCC and DTC (the “Cross-Guaranty Agreement”).⁶ As part of the proposed

amendment and restatement of the Cross-Guaranty Agreement, NSCC and DTC (each, a “Clearing Agency,” and together, the “Clearing Agencies”) propose to enter into a Third Amended and Restated Netting Contract and Limited Cross-Guaranty. The proposed changes would amend and restate the Cross-Guaranty Agreement to (i) revise the description of the Clearing Agencies’ cross-endorsement procedures to better reflect current practices of the Clearing Agencies, (ii) simplify and consolidate the liquidity and guaranty obligations of the Clearing Agencies under the current Cross-Guaranty Agreement into a single guaranty obligation of each Clearing Agency, (iii) provide for the netting of guaranty obligations between the Clearing Agencies’ in certain instances, (iv) provide for more up-to-date valuations of securities under the Cross-Guaranty Agreement, (v) provide for the Clearing Agency receiving securities in connection with the performance of the other Clearing Agency’s guaranty obligation the ability to select the particular securities it receives, (vi) enhance the information sharing between the Clearing Agencies under the Cross-Guaranty Agreement, and (vii) make appropriate conforming and clarifying changes to the Cross-Guaranty Agreement.

The proposed rule change, including the Clearing Agency’s statement of the purpose of, and statutory basis for, the proposed rule change, is available on the Clearing Agency’s website at <https://www.dtcc.com/legal/sec-rule-filings> and on the Commission’s website at https://www.sec.gov/rules-regulations/self-regulatory-organization-rulemaking/dtc?file_number=SR-DTC-2025-001.

II. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Clearing Agency has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act⁷ and Rule 19b–4(f)(6)⁸ thereunder. Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; or (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the

(DTC Rule 1, Definitions; Governing Law, *supra* note 5) and is subject to, *inter alia*, Rule 9(E) of the DTC Rules (DTC Rule 9(E), Clearing Agency Agreements, *supra* note 5), and (ii) is a Clearing Agency Cross-Guaranty Agreement as defined in the NSCC Rules (NSCC Rule 1, Definitions and Descriptions, *supra* note 5) and is subject to, *inter alia*, Rule 25 of the NSCC Rules (NSCC Rule 25, Cross-Guaranty Obligation, *supra* note 5).

⁷ 15 U.S.C. 78(b)(3)(A).

⁸ 17 CFR 240.19b–4(f)(6).

³⁴ 17 CFR 242.608(e).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b–4(f)(6).

⁵ Capitalized terms not defined herein are defined in the Rules, By-Laws and Organization Certificate of DTC (“DTC Rules”) or the National Securities Clearing Corporation (“NSCC”) Rules & Procedures (“NSCC Rules”), available at <https://www.dtcc.com/legal/rules-and-procedures>, or the Second Amended and Restated Netting Contract and Limited Cross-Guaranty, dated as of October 1, 2002, between NSCC and DTC, as applicable.

⁶ The Cross-Guaranty Agreement (i) is a Clearing Agency Agreement as defined in the DTC Rules

³⁰ 15 U.S.C. 78mm(a)(1).

³¹ 17 CFR 242.608(e).

³² The requirements related to lifecycle linkages between customer orders and representative orders set forth in Appendix D, section 3 of the CAT NMS Plan are described in the Second Order. See Second Order, *supra* note 12, at 42255–56.

³³ 15 U.S.C. 78mm(a)(1).