

Arca Rule 8.900–E(d)(2)(C)(ii) provides that, if the Exchange becomes aware that: (i) The VIIV of a series of Managed Portfolio Shares is not being calculated or disseminated in one second intervals, as required; (ii) the NAV with respect to a series of Managed Portfolio Shares is not disseminated to all market participants at the same time; (iii) the holdings of a series of Managed Portfolio Shares are not made available on at least a quarterly basis as required under the 1940 Act; or (iv) such holdings are not made available to all market participants at the same time (except as otherwise permitted under the applicable Exemptive Order or no-action relief granted by the Commission or Commission staff to the Investment Company with respect to the series of Managed Portfolio Shares), it will halt trading in such series until such time as the VIIV, the NAV, or the holdings are available, as required.

In support of this proposal, the Exchange has also made the following representations:

(1) The Shares will conform to the initial and continued listing criteria under NYSE Arca Rule 8.900–E, as well as all terms in the Exemptive Order.<sup>28</sup>

(2) The Exchange states that a minimum of 100,000 Shares of each Fund will be outstanding at the commencement of trading on the Exchange.<sup>29</sup>

(3) The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities.<sup>30</sup>

(4) Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders ("ETP Holders") in an Information Bulletin ("Bulletin") of the special characteristics and risks associated with trading the Shares.<sup>31</sup>

order to determine whether to halt trading in a series of Managed Portfolio Shares, and the Exchange retains sole discretion in determining whether trading should be halted. As provided in the Exemptive Application, each series of Managed Portfolio Shares would employ a pricing verification agent to continuously compare two intraday indicative values during regular trading hours in order to ensure the accuracy of the VIIV. See *id.* at 13, n.19.

<sup>28</sup> See *id.* at 14.

<sup>29</sup> See Amendment No. 2, *supra* note 5, at 3.

<sup>30</sup> See Amendment No. 1, *supra* note 5, at 13.

<sup>31</sup> The Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares; (2) NYSE Arca Rule 9.2–E(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) how information regarding the VIIV is disseminated; (4) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; (5) trading

(5) FINRA, on behalf of the Exchange, or the regulatory staff of the Exchange, or both, will communicate as needed regarding trading in the Shares and certain exchange-traded instruments with other markets and other entities that are members of the Intermarket Surveillance Group ("ISG"), and FINRA, on behalf of the Exchange, or the regulatory staff of the Exchange, or both, may obtain trading information regarding trading such securities from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and certain exchange-traded instruments from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.<sup>32</sup>

(6) The Exchange represents that, for initial and/or continued listing, each Fund will be in compliance with Rule 10A–3 under the Act.<sup>33</sup>

This approval order is based on all of the Exchange's statements and representations set forth above and in Amendments No. 1 and No. 2.

Additionally, the Exchange states that all statements and representations made in its proposal regarding (a) the description of the portfolio or reference assets, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange rules shall constitute continued listing requirements for listing the Shares on the Exchange, as provided under NYSE Arca Rule 8.900–E(b)(1). The issuer of the Shares will be required to represent to the Exchange that it will advise the Exchange of any failure by a Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will surveil for compliance with the continued listing requirements. If a Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5–E(m).<sup>34</sup>

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendments No. 1 and No. 2, is consistent with Section 6(b)(5) of the Act<sup>35</sup> and Section 11A(a)(1)(C)(iii) of the Act<sup>36</sup> and the rules and regulations

information; and (6) that the portfolio holdings of the Shares are not disclosed on a daily basis. See *id.* at 14–15.

<sup>32</sup> See *id.* at 14.

<sup>33</sup> See *id.* at 6, n.6.

<sup>34</sup> See *id.* at 14.

<sup>35</sup> 15 U.S.C. 78f(b)(5).

<sup>36</sup> 15 U.S.C. 78k–1(a)(1)(C)(iii).

thereunder applicable to a national securities exchange.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>37</sup> that the proposed rule change (SR–NYSEArca–2020–94), as modified by Amendments No. 1 and No. 2, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>38</sup>

**J. Matthew DeLesDernier,**  
Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90689]

### Order Granting Temporary 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, From Section 8.1.1 and Section 8.1.2 of Appendix D of the National Market System Plan Governing the Consolidated Audit Trail

December 16, 2020.

#### I. Introduction

By letter dated December 1, 2020 ("Participant Letter"), 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. ("FINRA"), Investors Exchange LLC, Long-Term Stock Exchange, Inc., 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, New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc. (collectively, the "Participants") request that the Securities and Exchange Commission (the "Commission"), pursuant to the Commission's authority under Section 36 of the Exchange Act<sup>1</sup> and Rule 608(e) of Regulation NMS under the Exchange Act,<sup>2</sup> grant exemptive relief from the national market system plan governing the

<sup>37</sup> 15 U.S.C. 78s(b)(2).

<sup>38</sup> 17 CFR 200.30–3(a)(12).

<sup>1</sup> 15 U.S.C. 78mm.

<sup>2</sup> 17 CFR 242.608(e).

consolidated audit trail (the “CAT NMS Plan”).<sup>3</sup> Specifically, the Participants request that the Commission provide temporary exemptive relief from certain requirements of the CAT NMS Plan that relate to the online targeted query tool (“OTQT”) described in Section 6.10(c)(i) of the CAT NMS Plan.<sup>4</sup>

For the reasons set forth below, this Order grants the Participants’ request for temporary exemptive relief from the above-described provisions of the CAT NMS Plan, subject to certain conditions.

## II. Request for Relief

In their letter, the Participants explain that Section 6.10(c)(i) of the CAT NMS Plan requires the Plan Processor<sup>5</sup> to provide Participants and the Commission with access to all CAT Data<sup>6</sup> stored in the Central Repository<sup>7</sup> through three different methods: (1) The OTQT, (2) user-defined direct queries, and (3) and bulk extracts.<sup>8</sup> Sections 8.1.1 and 8.1.2 of Appendix D of the CAT NMS Plan set forth certain functionality requirements for the OTQT from which the Participants seek relief.

<sup>3</sup> The Commission approved the CAT NMS Plan, as modified, on November 15, 2016. See Securities Exchange Act Release Nos. 79318 (November 15, 2016), 81 FR 84696 (November 23, 2016) (“CAT NMS Plan Approval Order”). 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 activities related to the consolidated audit trail (the “Company”).

<sup>4</sup> See *id.* at Appendix D, Section 8.1.1. See also Letter from Michael Simon, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission, dated December 1, 2020, available at <https://catnmsplan.com/sites/default/files/2020-12/12.01.20-CAT-Exemption-Request-OTQT.pdf> (“Participant Letter”). The Participants state that this exemptive relief request amends and replaces in its entirety the request previously submitted to the Commission on November 16, 2020. See *id.* at 2 n.5.

<sup>5</sup> “Plan Processor” is a defined term under the CAT NMS Plan and means “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 this Agreement.” See CAT NMS Plan, *supra* note 3, at Section 1.1.

<sup>6</sup> “CAT Data” is a defined term under the CAT NMS Plan and means “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 *id.*

<sup>7</sup> “Central Repository” is a defined term under the CAT NMS Plan and means “the repository responsible for the receipt, consolidation, and retention of all information reported to the CAT pursuant to SEC Rule 613 and this Agreement.” See *id.*

<sup>8</sup> See Participant Letter, *supra* note 4, at 2; see also CAT NMS Plan, *supra* note 3, at Section 6.10(c)(i).

### A. Error Correction Rate Functionality

The Participants state that the OTQT must “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>9</sup> including, among other things, the “CAT Reporter correction rate over time.”<sup>10</sup> The Participants request temporary exemptive relief from compliance with the requirement in Section 8.1.1 of Appendix D of the CAT NMS Plan that authorized users must be able to conduct targeted queries through the OTQT with respect to the CAT Reporter correction rate over time (the “Error Correction Rate Functionality”).<sup>11</sup> The Participants state that the Plan Processor needs additional time to incorporate the Error Correction Rate Functionality to the OTQT.<sup>12</sup> Specifically, the Participants believe that regulators will be able to perform searches with respect to the CAT Reporter correction rate over time by April 30, 2021.<sup>13</sup> The Participants therefore request that any exemptive relief granted by the Commission with respect to the Error Correction Rate Functionality extend until April 30, 2021.<sup>14</sup>

To support their request, the Participants state that the Participants and the Commission currently have access to “a variety of fields of processed CAT Data and/or validated (unlinked) data” via existing Plan Processor tools called DIVER and MIRS.<sup>15</sup> The Participants further represent that, by December 2020, the Participants and the Commission will have access to information regarding the CAT Reporter correction rate over time for “compliance review purposes” either through the CAT Reporter Portal or through another existing Plan Processor tool called BDSQL,<sup>16</sup> such

<sup>9</sup> See CAT NMS Plan, *supra* note 3, at 6.10(c)(i)(A).

<sup>10</sup> See *id.* at Appendix D, Section 8.1.1. See also Participant Letter, *supra* note 4, at 2.

<sup>11</sup> See Participant Letter, *supra* note 4, at 2–3. The Participants describe this functionality as “Error Correction Time Functionality,” but the Commission believes that the term “Error Correction Rate Functionality” more accurately describes the functionality.

<sup>12</sup> See Participant Letter, *supra* note 4, at 3.

<sup>13</sup> See *id.* at 3. The Participants note that this schedule would align the release of the Error Correction Rate Functionality with other functionality releases that will add data for OTQT queries concerning “the new equity exchange order book and volume concentration using equity exchange data.” See *id.* at 3.

<sup>14</sup> See *id.* at 2.

<sup>15</sup> See *id.* at 3. The Participants note that “DIVER” and “MIRS” are FINRA CAT’s versions of the OTQT. See *id.* at 2 n.6

<sup>16</sup> “BDSQL” is the name used by FINRA to describe its proprietary user-defined direct query tool.

that providing the CAT Reporter correction rate over time through the OTQT would in many ways be duplicative.<sup>17</sup>

### B. Search Return Functionality and Simultaneous Query Functionality

The Participants state that Section 8.1.2 of Appendix D of the CAT NMS Plan sets forth various performance requirements for OTQT searches. One of these requirements sets forth timeframes in which results must be returned for various types of queries (“Search Return Functionality”).<sup>18</sup> Another requirement set forth in Section 8.1.2 of Appendix D is that the OTQT must “be able to process up to 300 simultaneous query requests with no performance degradation” (“Simultaneous Query Functionality”).<sup>19</sup>

According to the Participant Letter, the OTQT provided by the Plan Processor is based on a data mart model that “supports multi-day/month/year queries on any field in the CAT and can return all records to the regulatory user for further filtering and analytics.”<sup>20</sup> The Participants state that this model has been used by FINRA in its surveillance and market oversight operations for approximately five years that “has proven to be an effective and reliable surveillance tool that produces timely results for regulatory use cases.”<sup>21</sup> “[I]f the user requests data for a single symbol during a specified time period on a single trade date, all data for that date and symbol (hundreds of millions of records) must be scanned to locate the specific records requested.”<sup>22</sup> A data mart is then created which allows a regulatory user to perform any subsequent filtering and analysis.<sup>23</sup> The Participants state that, once a data mart has been created, the results from any subsequent filtering and analysis are returned “well within the timeframes set forth in Section 8.1.2 of Appendix

<sup>17</sup> See *id.* at 3.

<sup>18</sup> See *id.* at 3. See also CAT NMS Plan, *supra* note 3, at Appendix D, Section 8.1.2 (setting out the following timeframes: (1) “Within 1 minute for all trades and related lifecycle events for a specific Customer or CAT Reporter with the ability to filter by security and time range for a specified time window up to and including an entire day,” (2) “within 30 minutes for all trades and related lifecycle events for a specific Customer or CAT Reporter in a specified date range (maximum 1 month),” and (3) “within 6 hours for all trades and related lifecycle events for a specific Customer or CAT Reporter in a specified date range (maximum 12-month duration from the most recent 24 months)”).

<sup>19</sup> See Participant Letter, *supra* note 4, at 4. See also CAT NMS Plan, *supra* note 3, at Section 8.1.2.

<sup>20</sup> See Participant Letter, *supra* note 4, at 4.

<sup>21</sup> See *id.* at 4–5.

<sup>22</sup> See *id.* at 4.

<sup>23</sup> See *id.*

D.”<sup>24</sup> In some instances, however, the Participants acknowledge that the amount of time required by the OTQT to populate a data mart is longer than the timeframes set forth in the CAT NMS Plan.<sup>25</sup> They state, for example, that “[i]t typically currently takes up to four minutes for queries for a single day involving equities trades and up to six minutes for options trade queries for a single day for the OTQT to create and return a data mart in response to targeted search requests with a required response time of one minute under Section 8.1.2 of Appendix D.”<sup>26</sup>

The Participants therefore request temporary exemptive relief from compliance with the Search Return Functionality and the Simultaneous Query Functionality requirements of Section 8.1.2 of Appendix D of the CAT NMS Plan until July 31, 2023.<sup>27</sup> During the period of the exemption, the Participants assert that they will “continue to assess the performance of the OTQT and look for opportunities to further reduce the time that it takes to build the data mart in response to OTQT queries on a consistent basis.”<sup>28</sup> In this respect, the Participants represent that they have been working with the Plan Processor to reduce the time that it takes to populate an OTQT data mart.<sup>29</sup> They explain that the Plan Processor runs “multiple benchmark queries each day that are designed to measure system performance given CAT Data sets and query usage, including the times to create data marts for various types of queries and responses during simultaneous querying,” and shares its results with the Participants and the Commission to identify areas for potential performance enhancements.<sup>30</sup> The Participant Letter further states that such efforts have already reduced the

time required to populate data marts in the OTQT.<sup>31</sup>

### III. Discussion

As the Participants note, Sections 6.10(c) and Appendix D, Section 8.1.1 of the CAT NMS Plan require the OTQT to “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>32</sup> including, among other things, the “CAT Reporter correction rate over time” (or, the “Error Correction Rate Functionality”).<sup>33</sup> Section 8.1.2 of Appendix D of the CAT NMS Plan further sets forth minimum performance requirements for OTQT searches that include equities and options trade data only in the search criteria, including returning results within the following timeframes: (1) “within 1 minute for all trades and related lifecycle events for a specific Customer or CAT Reporter with the ability to filter by security and time range for a specified time window up to and including an entire day”; (2) “within 30 minutes for all trades and related lifecycle events for a specific Customer or CAT Reporter in a specified date range (maximum 1 month)”; and (3) “within 6 hours for all trades and related lifecycle events for a specific Customer or CAT Reporter in a specified date range (maximum 12-month duration from the most recent 24 months).”<sup>34</sup>

The timeframe for “returning results” in Section 8.1.2 of Appendix D (*i.e.*, the time to “return results” or the “Search Return Functionality”) begins with the submission of the query in the OTQT and ends with the return of the results of the query to the user; it does not begin with the population of a data mart. “Returning results” captures the entirety of the time it takes to generate results in response to the user’s initial query. If the query response time requirements for “returning results” begins at a time later than the time the query was submitted, query response times would fail to fully reflect the total time necessary for the OTQT to generate results, and display them to the user.<sup>35</sup>

This would be inconsistent with the plain meaning of the CAT NMS Plan language concerning query response time requirements and would undermine the purpose of the performance standard.

Appendix D, Section 8.1.2 of the CAT NMS Plan sets forth requirements for “related lifecycle events” and “complex queries.” “Related lifecycle events” are covered by the 1 minute, 30 minute, and 6 hour requirements in the CAT NMS Plan set forth above,<sup>36</sup> whereas Appendix D, Section 8.1.2 of the CAT NMS Plan separately provides that “[f]or the complex queries that either scan large volumes of data (*e.g.*, multiple trade dates) or return large result sets ( $\leq 1M$  records), the response time must generally be available within 24 hours of the submission of the request.”<sup>37</sup> Under the CAT NMS Plan, therefore, queries for “related lifecycle events” are not “complex queries” and thus the 24 hour requirement does not apply. If queries including “related lifecycle events” were “complex queries,” then any query that included “related lifecycle events” would be subject to the 24 hour requirement. This is not consistent with the language of the CAT NMS Plan. Rather, based on the language of the CAT NMS Plan, “related lifecycle events” are included in, and thus are subject to, the 1 minute, 30 minute, and 6 hour requirements for OTQT searches that include equities and options trade data only as search criteria. Interpreting any query that includes “related lifecycle events” as a “complex query” contradicts the presence of “related lifecycle events” in the CAT NMS Plan language setting forth the 1 minute, 30 minute, and 6 hour requirements.

Appendix D, Section 8.1.2 also requires that “[t]he online targeted query tool must be able to process up to 300 simultaneous query requests with no performance degradation” (or, the “Simultaneous Query Functionality”).<sup>38</sup> As stated above, the timeframe for “returning results” begins with the submission of the query in the OTQT and ends with the return of the results of the query to the user. The Commission understands that the Participants have not yet determined the meaning of “performance degradation,”

8.1.1. Since the CAT NMS Plan requires the OTQT to record the date and time the query request is submitted, the query response times set forth in the CAT NMS Plan should be based on this information.

<sup>36</sup> See, *e.g.*, note 34 *supra*.

<sup>37</sup> See CAT NMS Plan, *supra* note 3, at Appendix D, Section 8.1.2.

<sup>38</sup> See CAT NMS Plan, *supra* note 3, at Appendix D, Section 8.1.1.

<sup>24</sup> See *id.* With respect to complex queries, the Participants state that the OTQT returns data marts to regulatory users “well before” the 24-hour time limit set forth in the CAT NMS Plan. See *id.*; see also CAT NMS Plan, *supra* note 3, at Appendix D, Section 8.1.2. However, the Participants also state that “a request for related lifecycles makes a query complex.” See Participant Letter, *supra* note 4, at 5 n.18. The Commission does not agree that a request for related lifecycles makes a query complex. See Part III *infra* for further discussion of the OTQT requirements set forth in the CAT NMS Plan. In addition, and as discussed in Part III *infra*, the Commission believes that the timeframe for “returning results” in Section 8.1.2 of Appendix D of the CAT NMS Plan begins with the submission of the query in the OTQT and ends with the return of the results of the query to the user inclusive of related linkages.

<sup>25</sup> See Participant Letter, *supra* note 4, at 4.

<sup>26</sup> See *id.* at 4–5.

<sup>27</sup> See *id.* at 6.

<sup>28</sup> See *id.*

<sup>29</sup> See *id.* at 5.

<sup>30</sup> See *id.*

<sup>31</sup> See *id.*

<sup>32</sup> See CAT NMS Plan, *supra* note 3, at 6.10(c)(i)(A).

<sup>33</sup> See *id.* at Appendix D, Section 8.1.1.

<sup>34</sup> See *id.* at Appendix D, Section 8.1.2.

<sup>35</sup> Appendix D, Section 8.1.1 requires that the OTQT “must provide a record count of the result set, the date and time the query request is submitted, and the date and time the result set is provided to the users.” It also requires that the OTQT must “log submitted queries and parameters used in the query, the user ID of the submitter, the date and time of the submission, as well as the delivery of results.” See *id.* at Appendix D, Section

but the Commission believes “performance degradation” on query requests should be based on the ability of the OTQT to meet the above-described timeframes set forth by Appendix D, Section 8.1.2 of the CAT NMS Plan.<sup>39</sup> Performance degradation is a deterioration in performance as measured according to a certain standard. The Commission believes it is reasonable to assess “performance degradation” based on a measurement of performance against the CAT NMS Plan and service level agreement (“SLA”) requirements,<sup>40</sup> because the Participants are already required to meet these standards. Thus, if the OTQT is able to process up to 300 simultaneous query requests while meeting the CAT NMS Plan and SLA requirements, there would be no “performance degradation.”<sup>41</sup>

Section 36 of the Exchange Act grants the Commission the authority, with certain limitations, to “conditionally or unconditionally exempt any person, security, or transaction . . . from any provision or provisions of [the Exchange Act] or of any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.”<sup>42</sup> Rule 608(e) of Regulation NMS under the Exchange Act authorizes the Commission to exempt, either unconditionally or on specified terms and conditions, any self-regulatory organization, member thereof, or specified security, from the provisions of the rule 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.<sup>43</sup>

The Commission believes that, pursuant to Section 36 of the Exchange Act, the temporary exemptive relief requested by the Participants is appropriate in the public interest and consistent with the protection of investors, and that, pursuant to Rule 608(e) under the Exchange Act, the temporary exemptive relief requested by the Participants is consistent with the public interest, the protection of

investors, the maintenance of fair and orderly markets and the removal of impediments to, and the perfection of the mechanisms of, a national market system. The OTQT is an important regulatory tool required by the CAT NMS Plan; it is one of only three access methods that regulators have to query CAT Data, and it is the only method that can be used by regulatory staff without programming experience to directly access the CAT using tools provided by the Plan Processor. Thus, it is consistent with the public interest, the protection of investors, and the maintenance of fair and orderly markets that all facets of the OTQT are implemented consistent with the CAT NMS Plan. The Commission understands that implementing the above-described functionality will require software development and architectural changes to the existing OTQT. Providing the requested temporary exemptive relief will give the Participants additional time to properly implement the above-described functionality. The Commission believes that the long-term benefits of allowing the Participants sufficient time to correctly implement these facets of the OTQT outweigh any concerns regarding the impact of delayed implementation.

The Commission also believes that providing the requested exemptive relief on the schedule proposed by the Participants is appropriate. With respect to the Error Correction Rate Functionality requirements, the Participants request that temporary exemptive relief be granted until April 30, 2021. This schedule will align the release of the Error Correction Rate Functionality with another planned functionality release,<sup>44</sup> while still providing a certain deadline that will encourage progress towards the implementation of the required OTQT functionality. The Commission believes that such alignment will enable the SROs to leverage planned functionality release activities—including user acceptance testing, documentation, and approvals—for the release of the Error Correction Rate Functionality. Moreover, the Commission believes that granting the requested exemptive relief on the schedule proposed by the Participants would have only a limited impact on regulators’ utilization of the OTQT. As stated in the Participant Letter, the Participants and the Commission currently have access to a variety of fields of processed CAT Data

and/or validated (unlinked) data via the OTQT,<sup>45</sup> and information regarding the CAT Reporter correction rate over time will likewise be available for compliance review purposes through the CAT Reporter Portal and/or the Plan Processor’s BDSQL tool by December 2020.<sup>46</sup>

With respect to the Search Return Functionality and the Simultaneous Query Functionality requirements, the Participants request that temporary exemptive relief be granted until July 31, 2023. The Commission believes this deadline will give the Participants and the Plan Processor sufficient time to develop the necessary systems and technology.

The Commission is also conditioning this temporary exemptive relief on the following:

First, as a condition to this exemptive relief, the Participants would be required to satisfy all other requirements of the Full Implementation of Core Equity Reporting Requirements milestone by December 31, 2020.<sup>47</sup>

Second, to better enable the Commission to monitor progress towards the reduction of query response times, the Participants would be required, as a condition to this exemptive relief, to perform the following benchmark queries to measure, on a monthly basis, the timeframes in which the OTQT returns results for the following types of queries: (1) All trades and related lifecycle linkages and/or events for a specific Customer or CAT Reporter with the ability to filter by security and time range for a specified time window up to and including an entire day; (2) all trades and related lifecycle linkages and/or events for a specific Customer or CAT Reporter in a specified date range

<sup>39</sup> See *id.* at 3.

<sup>40</sup> See *id.* at 3. However, the Error Correction Rate Functionality is still critical, as it will facilitate a regulatory user’s ability to determine the quality of CAT Data for regulatory use (versus compliance review purposes).

<sup>41</sup> See note 13 *supra*. To the extent that the Participants are availing themselves of exemptive relief from a CAT NMS Plan requirement, including requirements relating to Error Correction Rate Functionality, Search Return Functionality, and Simultaneous Query Functionality, such requirement shall not be included in the requirements for the Full Implementation of Core Equity Reporting Requirements milestone, provided that the conditions of the exemption are satisfied. However, to meet the Full Implementation of Core Equity Reporting Requirements milestone, all other functionality required by Section 8.1.1 and Section 8.1.2 of Appendix D of the CAT NMS Plan must incorporate the relevant equities transaction data and be available to Participants and to the Commission. See CAT NMS Plan, *supra* note 3, at Section 1.1 (“Full Implementation of Core Equity Requirements” definition).

<sup>39</sup> See, e.g., notes 34–37 and associated text *supra*.

<sup>40</sup> See CAT NMS Plan, *supra* note 3, at Appendix D, Section 8.5 (requiring the establishment of SLAs for “query performance and response times”).

<sup>41</sup> The OTQT is required at all times to meet the CAT NMS Plan requirement to process up to 300 simultaneous query requests with no performance degradation.

<sup>42</sup> 15 U.S.C. 78mm(a)(1).

<sup>43</sup> 17 CFR 242.608(e).

<sup>44</sup> This release will include, among other things, industry member reporting of new equity exchange order book and volume concentration data and expanded OTQT functionality related to this data. See *id.* at 3.

(maximum 1 month); and (3) all trades and related lifecycle linkages and/or events for a specific Customer or CAT Reporter in a specified date range (maximum 12-month duration from the most recent 24 months). For each benchmark query, the Participants should provide the average, standard deviation, maximum, and minimum timeframes in which the OTQT returns results, as the Commission believes it is important to capture not only information regarding the average timeframes in which the OTQT returns results, but also information regarding the variability and consistency of the timeframes in which the OTQT returns results. In addition, for each benchmark query, the Participants should use all available CAT Data, including Participant data submitted by FINRA and national securities exchanges, data submitted by Industry Members,<sup>48</sup> and other data. Finally, the Participants should provide monthly reports regarding any actual queries done by regulatory users with the average, standard deviation, maximum, and minimum timeframes in which the OTQT returns results for actual queries. All of the above-described measurements should be provided to the Operating Committee on a monthly basis and should be clearly set forth as factual indicators in the Quarterly Progress Reports required by Section 6.6(c) of the CAT NMS Plan. This condition will permit the Commission and the public to track the Participants' progress towards meeting the above-described CAT NMS Plan requirements and providing regulators with an effective OTQT by the July 31, 2023 deadline.<sup>49</sup>

Third, to better enable the Commission to monitor their progress towards meeting the parallel processing requirements of the CAT NMS Plan, the Participants would also be required, as a condition to this exemptive relief, to measure on a monthly basis, using benchmark queries, the time it takes to provide results to users from OTQT searches that are run concurrently with either 50–100, 100–200, or 200–300 queries, and to evaluate whether such results otherwise meet current CAT NMS Plan and SLA performance requirements for targeted and complex

queries. These measurements should be provided to the Operating Committee on a monthly basis and should be clearly set forth as factual indicators in the Quarterly Progress Reports required by Section 6.6(c) of the CAT NMS Plan.

#### IV. Conclusion

Accordingly, *it is hereby ordered*, pursuant to Section 36(a)(1) of the Exchange Act<sup>50</sup> and Rule 608(e) under the Exchange Act,<sup>51</sup> that the Commission grants the Participants' request for temporary exemptive relief, as set forth in the Participant Letter and subject to the conditions described herein, from the requirements in Section 8.1.1 of Appendix D of the CAT NMS Plan with respect to the Error Correction Rate Functionality until April 30, 2021 and from the requirements in Section 8.1.2 of Appendix D of the CAT NMS Plan with respect to the Search Return Functionality and the Simultaneous Query Functionality until July 31, 2023.

By the Commission.

**J. Matthew DeLesDernier**,

*Assistant Secretary.*

[FR Doc. 2020–28153 Filed 12–21–20; 8:45 am]

BILLING CODE 8011–01–P

#### DEPARTMENT OF STATE

[Public Notice: 11284]

#### Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations: “Fotoclubismo: Brazilian Modernist Photography, 1946–1964” Exhibition

**SUMMARY:** Notice is hereby given of the following determinations: I hereby determine that certain objects being imported from abroad pursuant to agreements with their foreign owners or custodians for temporary display in the exhibition “Fotoclubismo: Brazilian Modernist Photography, 1946–1964” at The Museum of Modern Art, New York, New York, and at possible additional exhibitions or venues yet to be determined, are of cultural significance, and, further, that their temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Chi D. Tran, Program Administrator, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: [section2459@state.gov](mailto:section2459@state.gov)). The mailing address is U.S. Department of State,

L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

**SUPPLEMENTARY INFORMATION:** The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000.

**Marie Therese Porter Royce**,

*Assistant Secretary, Educational and Cultural Affairs, Department of State.*

[FR Doc. 2020–28165 Filed 12–21–20; 8:45 am]

BILLING CODE 4710–05–P

#### DEPARTMENT OF TRANSPORTATION

##### Federal Aviation Administration

[Docket No. FAA–2020–0997]

#### Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Noise Certification Standards for Subsonic Jet Airplanes and Subsonic Transport Category Large Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on October 21, 2020.

**DATES:** Written comments should be submitted by January 21, 2021.

**ADDRESSES:** Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov), or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.

<sup>48</sup> “Industry Member” is a defined term under the CAT NMS Plan and means “means a member of a national securities exchange or a member of a national securities association.” See CAT NMS Plan, *supra* note 3, at Section 1.1.

<sup>49</sup> Pursuant to Section 6.6(c)(ii) of the CAT NMS Plan, Quarterly Progress Reports must be filed with the Commission and made publicly available on each SRO’s website or collectively on the CAT NMS Plan website.

<sup>50</sup> 15 U.S.C. 78mm(a)(1).

<sup>51</sup> 17 CFR 242.608(e).