

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In The Matter of:

The Application of SECURITIES INDUSTRY AND
FINANCIAL MARKETS ASSOCIATION,

For Review of Action Taken by CAT LLC and Certain
Self-Regulatory Organizations in Violation of Exchange
Act Sections 19(d) and 19(f)

Admin. Proc. File No. _____

APPLICATION FOR REVIEW OF SRO ACTION THAT VIOLATES
EXCHANGE ACT SECTIONS 19(d) AND 19(f)

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Dated: New York, New York
April 22, 2020

*Attorneys for Securities Industry and
Financial Markets Association*

1. Securities Industry and Financial Markets Association (“SIFMA”) submits this application pursuant to Sections 19(d) and 19(f) of the Securities Exchange Act of 1934 requesting that the Securities and Exchange Commission (the “Commission”) set aside action taken by the self-regulatory organizations in Exhibit A (the “SROs”) that prohibits and limits access of SIFMA members (“Industry Members”) to the Consolidated Audit Trail (“CAT”) System, which is operated and managed by the SROs through Consolidated Audit Trail, LLC (“CAT LLC”).¹

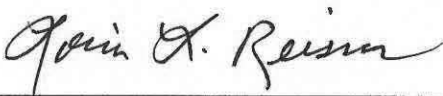
2. The SROs have prohibited and limited access by Industry Members to the CAT System by requiring that Industry Members execute a proposed CAT Reporter Agreement (the “CRA”) as a condition of submitting order and trade data to the CAT. The CRA contains terms that are unfair, inappropriate and bad policy. For example, the proposed CRA improperly purports to impose a limitation of liability for CAT LLC, its participant SROs, and their officers, employees and agents in the event of a CAT data breach, misuse of CAT data or other activities relating to the CAT System. The CRA also purports to require a CAT Reporter to indemnify CAT LLC, its participant SROs, and their officers, employees and agents against various third-party claims relating to the misuse of CAT data. These purported limitations on SRO liability and indemnification requirements relating to a potential CAT data breach are inappropriate where, as here, the SROs maintain and control the CAT System, the data in the CAT System and the transmission of data from the CAT System. As a matter of fairness and good policy, the SROs should not be permitted to impose these additional risks and responsibilities relating to a potential CAT data breach on Industry Members when the SROs control the CAT System.

¹ The “CAT System” is defined as: “all data processing equipment, communications facilities, and other facilities, including equipment, utilized . . . in connection with operation of the CAT and any related information or relevant systems pursuant to this Agreement.” Amended CAT NMS Plan, § 1.1.

3. In any event, the CRA is not the appropriate method for addressing these important policy issues, and the unilateral action of the SROs to deny access to the CAT System absent execution of the CRA should be set aside by the Commission. Section 19(d) of the Exchange Act expressly provides that if any SRO “prohibits or limits any person in respect to access to services offered by such” SRO, the Commission shall review such action “upon application by any person aggrieved” by such action. 15 U.S.C. § 78s(d)(1), (2). The Industry Members on whose behalf SIFMA files this application are aggrieved by the challenged SRO conduct because it limits their access to the CAT System, imposes unfair and unreasonable conditions, and improperly seeks to establish practices, policies and standards pursuant to the CRA that can only be developed through a rule-making process. The CRA and its terms were never filed or approved pursuant to Section 19(b) of the Exchange Act and, accordingly, Exchange Act Section 19(f) requires that the SRO action be set aside. In fact, the Commission has not hesitated to set aside SRO action that limited access to SRO services without engaging in the required rule-making process. *See In re Bloomberg L.P.*, 2004 WL 67566 (Jan. 14, 2004). Accordingly, for these reasons and those set forth in the accompanying Declaration of Lorin L. Reisner, the Commission should set aside the actions of the SROs in accordance with Sections 19(d) and 19(f) of the Exchange Act.

Dated: New York, New York
April 22, 2020

PAUL, WEISS, RIFKIND, WHARTON &
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EXHIBIT A

1. BOX Exchange, LLC
2. Cboe BYX Exchange, Inc.
3. Cboe BZX Exchange, Inc.
4. Cboe C2 Exchange, Inc.
5. Cboe EDGA Exchange, Inc.
6. Cboe EDGX Exchange, Inc.
7. Cboe Exchange, Inc.
8. Financial Industry Regulatory Authority, Inc.
9. Investors' Exchange, LLC
10. Long-Term Stock Exchange, LLC
11. Miami International Securities Exchange, LLC
12. MIAX Emerald, LLC
13. MIAX PEARL, LLC
14. NASDAQ BX, Inc.
15. NASDAQ GEMX, LLC
16. NASDAQ ISE, LLC
17. NASDAQ MRX, LLC
18. NASDAQ PHLX, LLC
19. New York Stock Exchange, LLC
20. NYSE American, LLC
21. NYSE Arca, Inc.
22. NYSE Chicago, Inc.
23. NYSE National, Inc.
24. The NASDAQ Stock Market, LLC