

_____, 2023

By Email

Vanessa A. Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 205499–1090

Re: Request for permanent exemption from the requirement that the CAT Reporter sending an order must report “port-level settings” as part of the Material Terms of an Order

Dear Ms. Countryman:

On behalf of our member firms that are defined as “Industry Members” under the national market system plan governing the creation, implementation, and maintenance of a consolidated audit trail (the “CAT NMS Plan”),¹ the Financial Information Forum (“FIF”) requests that the Securities and Exchange Commission (the “Commission”) grant such firms exemptive relief pursuant to the Commission’s authority under Section 36 of the Securities Exchange Act of 1934 (“Exchange Act”)² and Rule 608(e) of Regulation NMS under the Exchange Act³ from the requirements that the CAT reporter sending an order report port-level settings as part of the Material Terms of an Order. For the reasons discussed in this request, FIF believes the requested exemptive relief is “necessary or appropriate in the public interest, and is consistent with the protection of investors,” and 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.”⁴

¹ Limited Liability Company Agreement of Consolidated Audit Trail, LLC (July 24, 2020), available at <https://catnmsplan.com/sites/default/files/2020-07/LLC-Agreement-of-Consolidated-Audit-Trail-LLC-as-of-7.24.20.pdf> (“CAT NMS Plan”). Capitalized terms not otherwise defined in this letter have the same meaning as they do in the CAT NMS Plan.

² 15 U.S.C. §78mm(a)(1) provides, in relevant part, that the “Commission, by rule, regulation, or order, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of this title 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.”

³ 17 CFR §242.608(e) provides that “[t]he Commission may exempt from the provisions of this section, 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.”

⁴ 17 CFR §242.608(e).

A. Background

1. General background

Rule 613(c)(7) of Regulation NMS requires that the “material terms” of an order be reported to the Consolidated Audit Trail (“CAT”) in connection with the receipt, origination, routing, modification or cancellation of the order.⁵ Rule 613(j)(7) of Regulation NMS provides that the “material terms” of an order:

shall include, but not be limited to, the NMS security symbol; security type; price (if applicable); size (displayed and non-displayed); side (buy/sell); order type; if a sell order, whether the order is long, short, short exempt; open/close indicator; time in force (if applicable); if the order is for a listed option, option type (put/call), option symbol or root symbol, underlying symbol, strike price, expiration date, and open/close; and any special handling instructions.⁶

Section 6.3(d) of the CAT NMS Plan similarly requires the participants of the CAT NMS Plan (the “Participants”) to report the “Material Terms of the Order” to CAT in connection with the receipt, origination, routing, modification or cancellation of an order.⁷ Pursuant to Section 6.4(d)(i) of the CAT NMS Plan, each Participant, through its rules, is required to mandate this same reporting obligation for Industry Members.⁸

On December 16, 2020, the Commission, pursuant to Section 36(a)(1) of the Exchange and Rule 608(e) under the Exchange Act, granted the Participants temporary exemptive relief, until July 31, 2023, from “the requirement in Sections 6.3(d)(i)(F), (ii)(G), (iii)(F), (iv)(E) and 6.4(d)(i) of the CAT NMS Plan that the Participants report, and amend their Compliance Rules to require Industry Members report the Material Terms of an Order that are communicated in port-level settings or instructions.”⁹ On July 8, 2022, the Commission extended this temporary exemptive relief until July 31, 2024.¹⁰

The exemptive orders do not define what is meant by a port-level setting. FIF members understand the intended definition of the term “port-level setting”, in the context of CAT, to be: a CAT-reportable

⁵ 17 CFR §242.613(c)(7).

⁶ 17 CFR §242.613(j)(7).

⁷ CAT NMS Plan, Sections 6.3(d)(i)(F), 6.3(d)(ii)(G), 6.3(d)(iii)(F) and 6.3(d)(iv)(E).

⁸ CAT NMS Plan, Section 6.4(d)(i). The definition of “Material Terms of the Order” in the CAT NMS Plan is equivalent to the definition of “material terms” of an order under Rule 613(j)(7) of Regulation NMS. CAT NMS Plan, Section 1.1. While Rule 613 and the CAT NMS Plan do not define the term “special handling instructions”, the CAT Reporting Technical Specifications for Industry Members enumerate certain special handling instructions that Industry Members must report to CAT. CAT Reporting Technical Specifications for Industry Members, Version 4.0.0 r17 (Aug. 24, 2022), available at https://catnmsplan.com/sites/default/files/2022-08/08.24.2022_CAT_Reporting_Technical_Specifications_for_Industry_Members_v4.0.0r17_CLEAN.pdf (“CAT Reporting Technical Specifications for Industry Members”).

⁹ Securities and Exchange Commission Release No. 34-90688 (Dec. 16, 2020).

¹⁰ Securities and Exchange Commission Release No. 34-95234 (July 8, 2022).

“material” term of an order that is not communicated explicitly by the Order Sender to a Venue but is appended to the order by the Venue, either as a default, or by some logic that depends on the other terms of the order or on current market conditions.¹¹

2. Specific background context for this request

It is already a requirement that a Venue must report all “material terms” of that order to the CAT on its Order Accepted (MEOA) events; and this includes any material terms that the Venue applies to that order through “port-level settings”. Therefore, those material terms are already recorded in the CAT database and are discoverable by its users (regulators).

By definition, the elements applied to an order by a Venue using “port settings” is data that is not systematized or readily available to Order Senders (otherwise, the Order Sender could explicitly include those instructions on the order message sent to the Venue, and “port settings” would not be necessary).

So, if the temporary exemption were allowed to expire, the new requirement would essentially be for Order Senders (i) to obtain the information about port-level settings from each Venue they route to, and (ii) then to integrate that data into their own books and records after the fact, such that those data could be included in the Order Route (MEOR) events that the Order Senders report to CAT. In this letter we will explain the significant difficulties in doing so, and the lack of regulatory benefit of that effort.

B. Request to make the current exemption permanent

FIF requests that the temporary exemptive relief for Order Senders to report any material terms of an order that are added by the Venue be made permanent. The primary reasons for this request are:

- If Order Senders are compelled to report data regarding a Venue’s port-level settings, this will result in a less reliable and less accurate audit trail than we currently have;
- This requirement will delay the daily submission of order records, resulting in increased processing stress and costs for CAT reporters and for CAT itself, and challenges for the current CAT SLA requirements;
- For Order Senders to report these settings (duplicative of Venues reporting them) will involve significant development cost, and ongoing maintenance costs, for all CAT reporters (Order Senders as well as Venues);
- The requirement for Order Senders to report port-level setting will likely reduce the scope of customization that Venues provide and discourage innovation; and
- All of these costs come with no corresponding regulatory benefit, because the data already exists in CAT today.

¹¹ References in this letter to Order Senders refer to firms that route orders and are subject to CAT reporting for those routes. References in this letter to Venues refer to firms that receive orders from Order Senders and are subject to CAT reporting for this activity. For purposes of this letter, Order Senders and Venues can include broker-dealers, exchanges and alternative trading systems.

We examine these and other factors below.

1. Inaccurate audit trail

FIF members believe that the CAT data should represent what actually happens in trading, and not necessarily an “enhanced” version of reality. If an Order Sender reports values to CAT that the Order Sender did not actually send to the Venue on its order message, this obscures the actual order instructions that were explicitly sent. Stated a different way, requiring an Order Sender to report port-level settings provides regulators with a duplicate of what the Venue is reporting, but what is lost to the regulators is the actual instruction transmitted by the Order Sender to the Venue.

In most applications, an audit trail is intended and designed to capture events accurately in form as well as substance, so as not to confuse or mislead the user of the data about either the form or the substance. In the context of industry workflows, the “form” of any order instructions configured by “port settings” at a venue is often a phone call, a written trading agreement, or an instruction on the venue’s web portal. If regulators wish to require Order Senders to report such general order instructions, they should be reported in such a way that truthfully represents the form in which they are agreed. Order Senders should not, then, be asked to add such data to MEOR (Order Route) events in CAT.

Meanwhile, in FIF conversations with Commission staff, the staff have expressed a desire to be able to know “Does the Order Sender know what port settings are applied at the Venue?” FIF members urge the Commission to recognize that no event-by-event audit trail system can accurately answer this question. The vast majority of CAT reporters use fully-automated systems to derive CAT reports from their own data storage. The humans in a firm’s order room or trading desk, who make order routing decisions, are rarely involved in building or maintaining CAT reporting scripts. For Order Senders to obtain certain data from Venues, and parrot that data to CAT, implies nothing about what is “known” by the Order Senders’ staff. If this is indeed an objective of the Commission, other avenues (such as annual examinations, or firm attestations, or submission of a firm’s signed trading agreements) are more appropriate and would be more accurate.

2. Challenges with implementing Order Sender reporting of port settings

If the temporary exemption expires, and Order Senders must report the enhancements that are applied by Venues, how would they do it? The most obvious, and robust, solution is an order-by-order “Pre-Linkage” process. That is, Senders and Venues must exchange and collate (or “link”) their data before sending it to CAT. The Pre-Linkage process would work as follows:

- Order Senders must postpone sending any data to CAT until they receive Venue data about their orders, presumably end-of-day.
- Venues must prepare the data required by Order Senders. Presumably this would be in a common file format, produced after the market close, and after the CAT “day” ends. The files must list every order received by a Venue from a particular Order Sender, and the specific “material terms” that were added to each order.

- Once the Order Sender receives all of these files, from all of its routing Venues, the Order Sender must run a Pre-Linkage process, attempting to integrate all of the files' data into the Order Sender's books and records. The Order Sender has to try to match every order in the Venues' files to the same order in its own files, and then copy over the "enhanced" fields and values.
- When the Order Sender finishes this Pre-Linkage task, only then can it start creating its own CAT files.
- Then the Order Sender can finally start sending its data to CAT.
- Given the time required for each step, one must assume that Order Senders' daily submissions to CAT will be delayed by several hours, compared to today.

But that's just the "optimistic" path. The following scenarios must be considered: .

- What happens if any one Venue is late getting its files out to its clients? Then Order Senders across the industry may have to delay their own processes.
- What happens if an Order Sender has "breaks" or "unlinked orders" in its Pre-Linkage process? Will the Order Sender then need to contact the Venue and resolve breaks before it can continue processing? Will the Order Sender go ahead and report to CAT, but then be required to reconcile the breaks, process Pre-Linkage again, and report additions, repairs and corrections to CAT?

An additional challenge with this process is that the CAT reporting specifications for exchanges and broker-dealers are different. In particular, the list of handlingInstructions that are available to exchanges for reporting to CAT are inconsistent with the list of handlingInstructions that are available to broker-dealers.¹² Either exchanges would need to translate their "port settings" data into the broker-dealer CAT specifications, when sending their pre-linkage files to broker-dealers; or CAT would need to update the specifications for the two parties to be identical; or CAT would have to recognize both sets of identifiers to be valid when reported by an Order Sender.

Why does this require an order-by-order, Pre-Linkage process? Because:

- Venues' order enhancements are not always done on a "port" level. They may be applied in various places in the Venue's systems, and may be based on the port, the FIX session, the account, the time of day, the product or ticker list, or other factors. The Order Sender cannot assume that just because a "port setting" exists, it gets applied to every order.
- Venues may change these "port settings" intra-day (whether on their own accord, or at the request of an Order Sender). Order Senders, in their CAT reporting systems, cannot assume that what was true at the beginning of the day is true all day long.

¹² CAT Reporting Technical Specifications for Industry Members, at 379-384. CAT Reporting Technical Specifications for Plan Participants, Version 4.1.0-r16 (Nov. 21, 2022), available at <https://catnmsplan.com/sites/default/files/2022-11/11.21.2022-CAT-Reporting-Technical-Specifications-for-Participants-4.1.0-r16.pdf>, at 317-331.

This end-of-day process will necessarily change the daily schedule of CAT reporting for Order Senders. The process could take hours, every day. This delayed reporting will delay the CAT Processor's ability to begin ingestion and linkage work, requiring it to compress its processes into an even shorter timeline, and putting further stress and increased costs on the entire operation of CAT.

Then, the daily operating costs for every Order Sender and Venue would be multiplied. As the CAT Operating Committee has said, "Linkage" is the most expensive, resource-consuming part of the CAT regime – and now we would be replicating it throughout the industry. Order Senders who give their data intraday to CAT today, would no longer be able to do so – all CAT reporting for Order Senders would have to wait until end of day *plus several hours*.

Look at the end result of all of this. The industry would now be duplicating the same process that CAT already does, across thousands of sites, before CAT does the same process. This would be a ridiculously complicated and expensive endeavor and there is zero gain from all of this. There is no gain in "useful information". Order Senders would not end up with an independently reliable data set to send to CAT; rather, they would simply be parroting to CAT the data that the Venues give them, which is the same data that Venues are already sending to CAT today.

3. The industry-wide "build and test" process would be extremely complex and expensive

Before we could get to the daily reporting of this data, there would need to be an industry-wide effort to build and test a Pre-Linkage process. There would be a de facto requirement to create an industry standard for the data sharing format. There would need to be a norm established for operations around the transmission and retrieval of the files, and communication and repair of Pre-Linkage Breaks, likely during the late hours.

For each firm, internally there would need to be a "discovery" process to identify all of the order enhancements applied to incoming orders, and where those enhancements take place; and to pass downstream the meta-data necessary to indicate that an order instruction was applied as a "port setting".

This meta-data is not captured today. Today, while Venues must already report all material terms of orders to CAT, it is not necessary for Venues to know where those material terms were applied, nor to decipher the logic for applying them. However, if the temporary exemptive relief is not made permanent, then Venues will need to describe this logic and provide it in detail to all of their Order Senders (as described above from the Order Sender's point of view).

Discovering and documenting this logic will be an expensive, industry-wide project. The first challenge is that the application of "port settings" by a Venue is a complex and multi-layered process. Generally speaking, there are at least three places at which these enhancements commonly occur:

- Third-party vendor communications networks
- Internal FIX translation engines

- Order management system.

Many Venues use third-party vendor FIX connectivity platforms to manage their FIX connectivity before order-level messages from Order Senders are delivered to the FIX engines or order management systems (OMSs) of the Venues. These types of platforms receive FIX messages, determine where to route the order, and send out FIX messages to external systems. If these FIX management platforms adjust the FIX attributes in any way before it hits the OMS of the Venue, it will be a significant challenge for the Venue to identify or audit this.

Many Venues have inbound FIX gateways connecting to a large number of Order Senders and other customers, and have to contend with a wide variety of FIX versions, FIX interpretations, and rules of engagement from many sending firms. Many connections do not send a certain subset of vital fields, which often need to be defaulted in the FIX engine in order to function properly. Other connections use custom FIX tags or values to represent potentially CAT-reportable attributes. A Venue often needs to translate these FIX tags or values in a way that is understandable to the Venue's OMS, and hence may result in defaulting.

Order enhancements also can occur at the OMS level. Because of the number of places in the order path where these enhancements may occur, as described in this section, it would be very challenging and costly for Venues to systematically share port-level settings with Order Senders.

4. Negative impact on innovation and order handling functionality

Having done all of this industry-wide discovery, planning, building, and testing, one must then recognize that the current state will not be static. Any future enhancements by Venues would have to be shared with Order Senders, and the "defaulting and mapping" logic added to Order Senders' CAT reporting platforms, before those enhancements could be deployed. This would severely inhibit the receivers' ability to innovate new product offerings, algorithms, order types, etc., and be a negative burden on the industry as a whole.

Some Order Senders may conclude that the effort and expense of maintaining mappings of any port level settings for each Venue that it routes orders to, and building and maintaining CAT reporting logic to consider the mappings when generating CAT records, is not worth the benefit of maintaining any default port settings at some or all of its routing destinations. Some Venues similarly may conclude that the effort and expense of maintaining port level settings, and delivering them to their customers that are Order Senders in a machine readable format, is not worth the benefit of maintaining any default port level settings. In either case, removal of any default port level settings at the request of Order Senders or Venues would result in a smaller set of order handling functionality, and/or stifle innovation by the industry, both of which would be harmful to public end investors.

5. No clear regulatory benefit

There is no clear regulatory benefit to requiring Order Senders to report port settings data.

First, the data already exists in CAT because Venues already have to report this data, if it is “material”. CAT users can logically retrieve all of the relevant, material, order terms on a Route (MEOR), simply by looking to the counterparty’s Order Acceptance (MEOA) record. Further, if CAT users perceive a need to enhance an Order Sender’s MEOR with the additional data on a Venue’s MEOA record, the CAT Processor can execute the enhancement process once for all, leveraging the Processor’s incumbent Linkage process. This would fairly obviously be far cheaper, far less complex, than the massively expensive and complex Pre-Linkage process that we have outlined above; and it would achieve exactly the same result.

Second, if the Order Sender were required to add a Venue’s data to its CAT “Route” reports, it would not be “authoritative”; rather, the Order Sender would merely be blindly parroting data received from the Venue.

Finally, for Order Senders to gather, integrate, and report this data that they receive from Venues does not in any way indicate that the Order Sender’s traders or supervisors are meaningfully aware of the Venue’s systematic behavior; it only indicates that the sender’s CAT system is able to receive and repeat data given to it post-hoc.

6. It would be more cost efficient for FINRA CAT to generate this data

If any enhancement of Route data is necessary at all, the CAT Plan Processor should do this once, instead of the Commission requiring the same work to be done by thousands of CAT reporters. That is, rather than force every sender and receiver to share port settings data in an automated, “pre-linkage” process, FINRA CAT could build the process once at a far more efficient cost. FINRA CAT could take the “material terms” that a Venue reports but are found missing on the Order Sender’s report and add them to the Order Sender’s report with a meta-tag that indicates it was “enhanced” but not originally reported by the Order Sender. This would accomplish exactly the same end result, without requiring thousands of firms industry-wide to do throwaway work.

C. Conclusion

Requiring Order Senders to report port-level settings would involve a significant industry effort for both Order Senders and Venues, would result in delayed CAT submissions and associated stress and cost for the CAT system, and would result in a less accurate audit trail for regulators. Accordingly, FIF requests that the current exemption for Order Senders from reporting port-level settings applied by a Venue be made permanent.

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Thank you for your attention to this matter. Please contact the undersigned at _____ for further discussion of this request.

Very truly yours,

/s/ Howard Meyerson

Howard Meyerson
Managing Director, Financial Information Forum