

FINANCIAL INFORMATION FORUM

September 15, 2023

By electronic mail to rule-comments@sec.gov

Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090
Attn: Secretary

Re: File Number 4-698: Joint Industry Plan; Notice of Filing of Amendment to the National Market System Plan Governing the Consolidated Audit Trail

Dear Secretary,

The Financial Information Forum (“FIF”)¹ and our members appreciate the opportunity to comment on the Notice of Filing (“Notice of Filing”)² published by the Securities and Exchange Commission (the “Commission”) on August 18, 2023 relating to a proposed amendment (the “proposed amendment”)³ to the National Market System Plan Governing the Consolidated Audit Trail (the “CAT NMS Plan” or “Plan”)⁴ to modify various linkage and other processing requirements under the Plan. The proposed amendment was filed by the Operating Committee for Consolidated Audit Trail, LLC (“CAT LLC”), on behalf of the participants of CAT LLC, on August 2, 2023. FIF is submitting this comment letter on behalf

¹ FIF (www.fif.com) was formed in 1996 to provide a centralized source of information on the implementation issues that impact the securities industry across the order lifecycle. Our participants include broker-dealers, exchanges, back office service bureaus, and market data, regulatory reporting and other technology vendors in the securities industry. Through topic-oriented working groups, FIF participants focus on critical issues and productive solutions to technology developments, regulatory initiatives, and other industry changes.

² Securities Exchange Act Release No. 98165 (Aug. 18, 2023), 88 FR 58012 (Aug. 24, 2023) (Joint Industry Plan; Notice of Filing of Amendment to the National Market System Plan Governing the Consolidated Audit Trail) (“Notice of Filing”).

³ Operating Committee for Consolidated Audit Trail, LLC (“CAT LLC”), on behalf of the participants of CAT LLC, File Number 4-698, Notice of Filing of Amendment to the National Market System Plan Governing the Consolidated Audit Trail regarding Revised Linkage Timeline (Aug. 3, 2023), available at <https://catnmsplan.com/sites/default/files/2023-08/08.03.23-Proposed-CAT-NMS-Plan-Amendment-to-Implement-Revised-Linkage-Timeline.pdf> (“Proposed Amendment”).

⁴ Limited Liability Company Agreement of Consolidated Audit Trail, LLC, a Delaware Limited Liability Company (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”).

of FIF members that are broker-dealers and vendors providing technology and reporting services to broker-dealers.

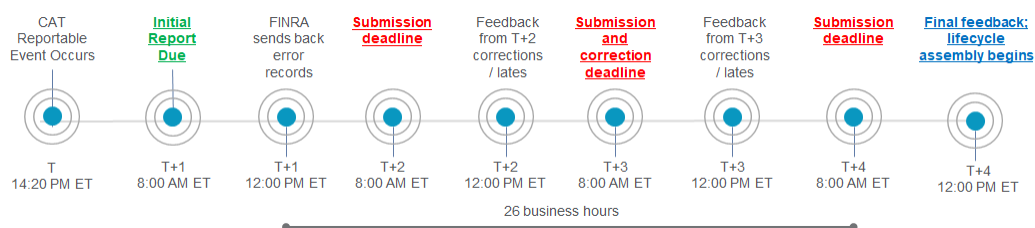
FIF members appreciate the focus of the CAT Plan Participants in seeking to manage the operating costs for the consolidated audit trail (“CAT”) system. FIF members oppose the proposal to change the timeline for commencement of final lifecycle assembly from T+4 at 8 am to T+2 at 8 am because this change, if adopted, would significantly impede industry members in complying with CAT reporting requirements. FIF members support the proposal to eliminate the interim CAT Order ID requirement because it would reduce the costs for operating the CAT system without impacting the ability of industry members to comply with CAT reporting requirements. If the proposal to eliminate the interim CAT Order ID requirement is conditioned on changing the timeline for commencement of final lifecycle assembly, FIF members are opposed to both proposals because the disadvantages of changing the timeline for final lifecycle assembly significantly outweigh the advantages of removing the requirement to generate an interim CAT Order ID.

More generally, FIF members remain concerned about the magnitude of the costs for operating the CAT system (“CAT operating costs”) relative to the cost estimates in the CAT NMS Plan, as well as the annual growth in CAT operating costs in recent years. While FIF members strongly oppose the proposal to change the timeline for commencement of final lifecycle assembly to T+2, FIF members appreciate and support the focus of the CAT Plan Participants in managing CAT operating costs and encourage the CAT Plan Participants to continue to explore approaches to manage CAT operating costs, provided that these approaches do not impact the ability for industry members to comply with CAT reporting requirements.

FIF members oppose changing the timeline for commencement of final lifecycle assembly from T+4 at 8 am to T+2 at 8 am

Under the proposed amendment, the timeline for commencement of final lifecycle assembly would change from T+4 at 8 am to T+2 at 8 am.⁵ FIF members oppose this change because it would significantly impede industry members in complying with CAT reporting requirements. This proposed change would also adversely impact the quality of CAT data.

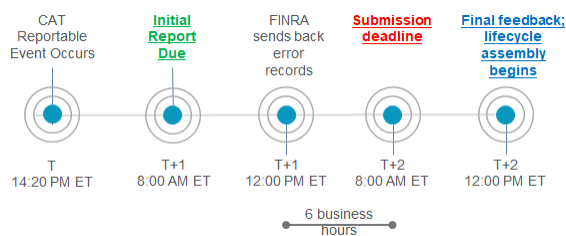
To illustrate these points, we compare the current process for managing and resolving CAT errors with how the process would change under the proposed amendment. This diagram illustrates the current process for resolution of CAT errors:



⁵ Notice of Filing, at 88 FR 58012-58013.

An industry member can submit an initial record to CAT on T (trade date) after the close of trading or between midnight and 8 am on T+1. The CAT system provides initial file feedback on resubmission by noon on T+1. If the CAT system generates an error, the industry member will research and seek to resolve the error. This could require coordination with counter-parties to resolve linkage errors. The industry member also receives file feedback from the CAT system by noon on T+2 and T+3 for records submitted prior to 8 am on the applicable date. If we assume a business day from 8 am-6 pm, the industry member has approximately 26 business hours to resolve an error (noon-6 pm on T+1; 8 am-6 pm on T+2; and 8 am-6 pm on T+3).⁶

This diagram illustrates the CAT error resolution process under the proposed amendment:



There are a number of problems with the process set forth in the proposed amendment. Currently, final lifecycle assembly for CAT commences on T+4 at 8 am. If an industry member submits a correction prior to T+4 at 8 am, the CAT system provides automated feedback to the industry member by T+4 at noon as to the status of the associated error. Given the volume of records that industry members submit, this automated feedback is essential for firms to properly identify and process the errors identified by the CAT system. In contrast, if an industry member submits a correction after T+4 at 8 am, the industry member does not receive automated feedback as to the status of the associated error. A representative from the industry member can manually search for the error in the CAT portal, but this is a manually-intensive and inefficient process for addressing and resolving CAT errors. Further, the CAT portal contains a limited and inadequate level of feedback for identifying and resolving an error.

The proposed amendment would change the current timeline for commencement of final lifecycle assembly from T+4 at 8 am to T+2 at 8 am. This means that if an industry member submits a correction on T+2 after 8 am, the industry member would not receive automated feedback relating to the error and the associated correction attempt. This would significantly impact industry members in their ability to resolve CAT errors. This would also adversely impact the quality of CAT data. The proposed amendment would provide industry members with approximately six business hours to correct an error (noon-6 pm on T+1) in place of the current 26 business hours described above.

Industry members currently have as many as three attempts to resolve an error. The proposed amendment would effectively provide industry members with one attempt to resolve an error. Under

⁶ While the industry member would miss the T+3 deadline for error correction, the industry member would still have the opportunity to correct the error after the deadline. This significantly enhances the quality of the CAT audit trail.

the proposed amendment, the effective time window for resolving an error would typically be about six hours (from noon to 6 pm on T+1). This is an unrealistic timeline for industry members given all of the following factors:

- A firm could have a large number of errors
- In many cases, errors can take significant time to research
- Errors (specifically, linkage errors) often require coordination with counter-parties
- The CAT system does not always provide linkage feedback by T+1 at noon.

The Notice of Filing notes that 99.75% of all submissions to CAT for a given trade date are submitted by T+2 at 8 am.⁷ Based on the data provided in the Commission’s recent Order approving the Executed Share Model for CAT funding, FIF calculates that industry members submit, on average, approximately 83.6 billion CAT records per trading day.⁸ This means that, under the proposed amendment, industry members would need to manually search and manage approximately 209 million CAT records per day with inadequate feedback from the CAT system. This is not feasible. If industry members do not have the necessary feedback for 209 million CAT records per day, this will adversely impact the quality and accuracy of the data that is available to regulatory surveillance personnel. The Commission also references CAT data in various Commission rule filings and would need to consider whether it can continue to rely on the accuracy of CAT data for future rulemaking if industry members do not have adequate feedback for resolving errors.

The Notice of Filing notes that “... if an Industry Member submits a MEOR on T+2 at noon with an incorrect routed OrderID, the Industry Member would not receive unlinked feedback and the error would not be included in the Industry Member’s compliance rate.”⁹ As FIF members are not aware of the regulators communicating that there is an acceptable level of CAT errors, an industry member is subject to potential sanction for any CAT error that it is not able to resolve, regardless of whether or not the error is included in the firm’s compliance rate. Accordingly, constraining an industry member in its ability to resolve CAT errors is highly problematic, regardless of whether these errors are included in the industry member’s compliance rate.¹⁰

FIF members also are concerned that the proposal would put pressure on firms to submit repairs by T+2 at 8 am instead of by T+3 at 8 am in order to receive adequate feedback on their repairs. Since receiving

⁷ Id. at 58013.

⁸ Securities Exchange Act Release No. 34-98290 (Sept. 6, 2023), 88 FR 62629 (Sept. 12, 2023) (Joint Industry Plan; Order Approving an Amendment to the National Market System Plan Governing the Consolidated Audit Trail) (the “ESM Approval Order”), at 88 FR 62680 and 62681. In the ESM Approval Order, the Commission (citing data provided by the CAT Plan Participants) writes that the CAT system receives 418 billion records per day. In the ESM Approval Order, the Commission also equates 90% of participant CAT records to 72% of total CAT records. This means that participant CAT records represent 80% of total CAT records, and industry member CAT records represent 20% of total CAT records. Multiplying 418 billion by 20%, FIF estimates that industry members submit approximately 83.6 billion CAT records per trading day.

⁹ Notice of Filing, at 88 FR 58013.

¹⁰ The CAT Plan Participants cite to the fact that these errors would not be included in an Industry Member’s compliance rate as part of the factual description of their proposal and not as an argument in support of their proposal.

feedback is critical for a firm to determine whether or not an error has been cured, especially if it is an inter-firm linkage error that cannot be resolved until the CAT system performs the updated linkage, the proposal effectively moves the error correction deadline from T+3 at 8 am to T+2 at 8 am because there is no longer any meaningful feedback after T+2 at noon. Further, if a firm has a technology issue preventing the firm from submitting a CAT record (or correction) until after 8 am on T+2, the firm will never receive meaningful feedback on that CAT record (or correction).

Regarding submissions subsequent to 8 am on T+3, though these corrections may have been submitted after the formal corrections deadline, they nevertheless result in better CAT data and a more accurate audit trail. The feedback the CAT system currently provides for these corrections is similarly instrumental in firms being able to validate such corrections.

Because industry members are directly responsible for funding the majority of CAT costs, the input of industry members should be primary with respect to any proposals that impact the magnitude of CAT costs. The CAT Plan Participants indicate in their rule filing that their proposal to change the current timeline for commencement of final lifecycle assembly from T+4 at 8 am to T+2 at 8 am would save approximately \$4.9 million per year in CAT operating costs.¹¹ FIF members are concerned that implementing this proposed change would result in industry members incurring increased personnel and operational costs for managing and resolving CAT errors that, in the aggregate across the industry, would greatly exceed this \$4.9 million savings. FIF members further note that, regardless of the increased internal costs that industry members incur, this proposal, if adopted, would have a significant adverse impact on the quality of CAT data.

FIF members support the proposal to eliminate the interim CAT Order ID requirement

The Commission currently requires that the CAT system generate an interim CAT Order ID by T+1 at 9 pm. FIF members agree with the CAT Plan Participants that this is not required under the Plan. FIF members support the proposal by the CAT Plan Participants to amend the Plan to make explicit that the assignment of an interim CAT Order ID is not required. As noted above, if the proposal to eliminate the interim CAT Order ID requirement is conditioned on changing the timeline for commencement of final lifecycle assembly, FIF members are opposed to both proposals because the disadvantages of changing the timeline for final lifecycle assembly significantly outweigh the advantages of removing the requirement to generate an interim CAT Order ID.

More generally, FIF members request that the Commission, in an updated Notice of Filing, provide additional background on why the Commission requires the CAT system to generate interim and final CAT Order IDs. As an example, FIF members would like to understand the benefits and costs for this requirement as compared to this processing of CAT data being conducted as part of the querying process by surveillance personnel.

¹¹ Proposed Amendment, at 6.

FIF members continue to have concerns about the magnitude of CAT operating costs relative to the cost estimates in the Plan and the annual growth in CAT operating costs in recent years; FIF members appreciate that the CAT Plan Participants are considering potential approaches for managing CAT operating costs

In a recent joint comment letter, FIF and the Securities Industry and Financial Markets Association express concerns about the magnitude of CAT operating costs relative to the cost estimates in the CAT NMS Plan and the annual growth in CAT operating costs in recent years.¹² The joint comment letter further notes that the recent annual increases in CAT operating costs are not sustainable over the long-term. In this regard, FIF members appreciate and support the focus of the CAT Plan Participants on managing CAT operating costs.

FIF members request that the CAT Plan Participants continue to consider and propose different approaches for managing CAT operating costs, including approaches that would require changes to the CAT NMS Plan. As noted in the joint comment letter, the current levels of CAT record volumes and CAT operating costs were not contemplated at the time of the Commission's approval of the CAT NMS Plan, and it is important for the Commission to reconsider various CAT NMS Plan requirements in light of these higher than anticipated record volumes and costs.

As noted in the joint comment letter, industry members also believe that additional transparency is required to assist industry members and other market participants in properly evaluating proposals for managing CAT operating costs.

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FIF appreciates the opportunity to comment on the Notice of Filing. If you would like clarification on any of the items discussed in this letter or would like to discuss further, please contact me at howard.meyerson@fif.com.

Very truly yours,

/s/ Howard Meyerson

Howard Meyerson
Managing Director, Financial Information Forum

¹² Letter dated July 31, 2023 from Joseph Corcoran, Managing Director, Associate General Counsel, SIFMA; Ellen Greene, Managing Director, Equities & Options Market Structure, SIFMA; and Howard Meyerson, Managing Director, Financial Information Forum, available at <https://www.sec.gov/comments/4-698/4698-238359-498762.pdf>.