

FINANCIAL INFORMATION FORUM

February 26, 2024

By electronic mail

Brandon Becker
CAT NMS Plan Operating Committee Chair

Shelly Bohlin
President and Chief Operating Officer, FINRA CAT

Re: Request for confirmation that routing and receiving firms can report to CAT order modifications that do not change the material terms of an order

Dear Mr. Becker and Ms. Bohlin,

On several occasions during 2021 and 2022, Financial Information Forum (“FIF”), on behalf of FIF members, wrote to FINRA CAT to request written confirmation that industry members are permitted to report to the consolidated audit trail system (“CAT”) order modifications that do not change the material terms of an order.¹ Absent this written confirmation, many industry members are excluding from their CAT reports order modifications that do not change the material terms of an order. As discussed below, excluding these order modifications is contrary to Securities and Exchange Commission (“Commission”) Rule 613.² Excluding these order modifications also continues to create significant and ongoing development and processing work for industry members. Further, excluding these order modifications continues to cause linkage errors that could otherwise be avoided, thereby creating further work for industry members and adversely impacting the quality of the CAT audit trail.

FIF members request that the CAT Operating Committee and FINRA CAT provide written confirmation that industry members are permitted to report to CAT order modifications that do not change the material terms of an order, whether or not a new identifier for the order route is assigned. FIF members understand that during 2021 and 2022 the CAT Operating Committee and FINRA CAT were focused on the roll-out of CAT Phase 2d and follow-up items from that roll-out. FIF members believe that now is an

¹ See prior FIF submissions on May 25, 2021 (Item 1), July 16, 2021 (Item 5), Sept. 2, 2021 (Item 4), Jan. 12, 2022 (Item 1), Feb. 7, 2022 (Item 1), Apr. 22, 2022 (Item 4), and July 14, 2022 (Item 1). On July 14, 2022, in response to a request from FINRA CAT, FIF submitted sample FIX messages provided by an FIF member. The definition of “material terms” of an order is presented below.

² 17 CFR §242.613(c)(7)(iv).

appropriate time for the CAT Operating Committee and FINRA CAT to revisit this issue and provide the requested clarification.

In this letter we use the phrase “material terms” to refer to the material terms of an order as defined in Commission Rule 613. As discussed below, FIF members consider that an order modification itself could be material even if the order modification does not change one of the data elements included in the definition of “material terms” in Rule 613. For example, an order modification that changes the routedOrderID could change the priority of an order on an exchange or other execution venue, which would be material.

In this letter, when we refer to the reporting of an order modification, we are referring to reporting from either the routing side (through a Route Modification event) or the receiving side (through an Order Modification event).

A. Based on Commission Rule 613 and Section 6.4 of the CAT NMS Plan, industry members are permitted to report order modifications that do not change the material terms of an order

Commission Rule 613 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.³

Under Rule 613, the CAT NMS Plan⁴ must provide for industry members to report certain details if an order is modified.⁵ Specifically, pursuant to Rule 613, the CAT NMS Plan must mandate the following reporting by industry members for order modifications:

(iv) ***If the order is modified or cancelled***, the following information:

(A) The CAT-Order-ID;

(B) Date the modification or cancellation is received or originated;

(C) Time the modification or cancellation is received or originated (using time stamps pursuant to paragraph (d)(3) of this section);

(D) Price and remaining size of the order, if modified;

(E) Other changes in material terms of the order, if modified; and

(F) The CAT-Reporter-ID of the broker-dealer or Customer-ID of the person giving the modification or cancellation instruction [emphasis added].⁶

³ 17 CFR §242.613(j)(7).

⁴ Limited Liability Company Agreement of Consolidated Audit Trail, LLC (updated as of Sept. 6, 2023), available at https://catnmsplan.com/sites/default/files/2023-09/LLC_Agreement_of_Consolidated_Audit_Trail_LLC-as-of-9.06.23.pdf (“CAT NMS Plan”).

⁵ 17 CFR §242.613(c)(7)(iv).

⁶ Ibid.

While changes in “other ... material terms” is one of the categories of information that industry members must report for an order modification, Rule 613 does not limit the requirement for reporting order modifications to modifications that change the material terms of an order. ***To the contrary, the clear wording of Rule 613 requires reporting of all order modifications.*** For example, under the clear wording of Rule 613, if an order is modified for any reason, the date and time of the modification are reportable. The CAT NMS Plan adopts the same approach as Rule 613 on this point.⁷

It is also noteworthy that the definition of “material terms” in Rule 613 provides that such term “shall include, but not be limited to,” the items enumerated in the definition. In other words, the enumerated items in the definition of “material terms” are not exclusive. However, as noted above, Rule 613 requires the reporting of all order modifications, not just modifications that change the material terms of an order.

Based on Rule 613 and the CAT NMS Plan, industry members would rightfully conclude that they should be permitted to report to CAT order modifications that do not change the material terms of an order. Industry members request written confirmation on this point.

B. The CAT Technical Specifications similarly provide for reporting order modifications that do not change the material terms of an order

The CAT Reporting Technical Specifications for Industry Members (the “CAT Technical Specifications”) permit industry members to report order modifications that do not change the material terms of an order. Section 4.3.1 of the CAT Technical Specifications provides that, “Industry Members must report a Route Modified event to CAT when the Material Terms of a route have been changed (e.g., price, quantity), ***or when a route is cancel/replaced.***”⁸ The reference to the requirement to report a Route Modified event to CAT when a “a route is cancel/replaced” means that industry members are required to report certain order modifications that do not change the material terms of an order. In other words, if only modifications that change the material terms of a route are reportable to CAT, it would not be necessary to include the phrase “or when a route is cancel/replaced.” As discussed below, FIF members believe that the phrase “or when a route is cancel/replaced” is not broad enough because a route modification does not always involve a cancel/replace.

C. Modifications that do not change any of the material terms, as defined in Rule 613, could still be material

A modification could be material even if it does not change any of the material terms of an order, as defined in Rule 613. One example is a modification that changes the routedOrderID. This type of modification -- which might not involve a change in a material term, as defined under Rule 613 --- could be material if it changes the priority of the order on an exchange or other execution venue. Another

⁷ See Sections 1.1, 6.3(d)(iv) and 6.4(d)(i) of the CAT NMS Plan.

⁸ CAT Reporting Technical Specifications for Industry Members, Version 4.1.0 (Nov. 30, 2023), available at [https://catnmsplan.com/sites/default/files/2023-11/11.30.23 CAT Reporting Technical Specifications for Industry Members v4.1.0 CLEAN.pdf](https://catnmsplan.com/sites/default/files/2023-11/11.30.23%20CAT%20Reporting%20Technical%20Specifications%20for%20Industry%20Members%20v4.1.0%20CLEAN.pdf), at 59.

example is a routing firm changing the offset for a pegged order. This type of modification also could be material but might not involve a change in a material term, as defined under Rule 613.

D. Industry members should be permitted to report an order modification whether or not a new route identifier is assigned

An order modification does not require the assignment of a new route identifier.⁹ Accordingly, FIF members also request clarification that industry members can report a modification to CAT whether or not a new route identifier is assigned.

E. Lack of clarification on this issue continues to create significant processing work for industry members and cause unnecessary linkage errors

The continued lack of clarification on this issue continues to create significant processing work for industry members and cause unnecessary linkage errors. Without restating all of the points from the prior FIF submissions, FIF members would like to highlight the following points from our prior submissions.

Tracking modifications beyond the most recent prior event presents a significant processing challenge for industry members

Assume that a routing firm sends a primary peg order to a receiving firm with an offset of 5 cents. This route has a routedOrderID of 001. The routing firm subsequently sends a route modification instruction that changes the offset to 3 cents. The amount of the offset is not a CAT-reportable value, but the routing firm will need to generate an updated routedOrderID (002) in its order management system (OMS) to reflect the change in order instruction. If the routing firm sends a subsequent route instruction that involves a change in limit price, the routing firm will once again update the routedOrderID in its OMS (003). When reporting the Route Modification event for this change in limit price, it is most straightforward for the routing firm to report "002" as the priorRoutedOrderID. Having to track that the modification represented by routedOrderID 003 should track back to routedOrderID 001 as the priorRoutedOrderID presents a significant processing challenge for industry members.

This processing challenge impacts routing and receiving firms

Identifying and filtering out modifications that do not change the material terms of an order represents significant additional processing work for industry members on both the routing and receiving sides.

⁹ See, for example: Nasdaq QIX Programming Specification, Version 2020-02 (updated Mar. 11, 2020), available at https://www.nasdaqtrader.com/content/technicalsupport/specifications/TradingProducts/qix_sb.pdf, Section 4.18, at 48 ("This message allows you to update or modify an existing order while keeping its order reference number with minimum impact to its execution time priority."); and Nasdaq RASHport, Version 1.1 (updated April, 2023), available at https://www.nasdaqtrader.com/content/technicalsupport/specifications/TradingProducts/rash_sb.pdf, Section 2.3 (Cancel Order Message), at 8.

The current lack of clarity is causing delays in CAT submissions

The additional processing required for firms to identify and filter out specified modifications and reassign the priorRoutedOrderID (as discussed above) results in firms submitting files to CAT at a later time as compared to when they could submit files absent this additional processing requirement. This can result in increased CAT processing costs if the daily time window for CAT processing is reduced.

The current lack of clarity is causing unnecessary linkage errors

The current lack of clarity continues to result in a significant number of additional linkage errors because routing and receiving firms invariably make different determinations as to when specific events should be filtered out.

These unnecessary linkage errors reduce the quality of the CAT audit trail

These unnecessary linkage errors reduce the quality of the CAT audit trail.

Because of the current lack of clarity, firms are required to coordinate with multiple counter-parties

Because of the current lack of clarity, firms are required to coordinate with multiple counter-parties as firms seek to prevent and resolve linkage errors. An additional challenge is that different firms have adopted different interpretations of the current requirements as to when a modification is reportable.

Requiring that firms filter out specified modifications means that firms are not accurately reporting based on their books and records

If a firm is required to filter out a specified modification that changes the routedOrderID, this results in a discrepancy between the firm's books and records and CAT reporting for the next following CAT-reportable modification. For example, in the scenario presented above, the firm reports "001" as the priorRoutedOrderID for its second modification when the firm's books and record show "002" as the priorRoutedOrderID for this second modification.

The regulators should not require industry members to incur processing costs and unnecessary linkage errors to exclude information that CAT surveillance personnel can exclude based on their own database queries

Regulatory surveillance personnel can design their queries to remove from the result set route modifications where the only change (or changes) from the prior route modification event is the routedOrderID or eventTimestamp (or both). Based on the data in the CAT database, the CAT system can determine if the only changes between a route modification event and the prior route modification event that it references are the routedOrderID and the eventTimestamp. As a fundamental principle, the regulators should not require industry members to incur processing costs and unnecessary linkage errors for data that is already in the CAT system.

* * * * *

FIF members request that the CAT Operating Committee and FINRA CAT provide clarification on the issues discussed above on an expedited basis. If the CAT Operating Committee or FINRA CAT has a different view as to any of the issues discussed above, FIF members request the opportunity to discuss these issues with representatives from the CAT Operating Committee and FINRA CAT on an expedited basis. Please contact me at howard.meyerson@fif.com after you and your colleagues have had an opportunity to review this request.

Very truly yours,

/s/ Howard Meyerson

Howard Meyerson
Managing Director, Financial Information Forum