

# FINANCIAL INFORMATION FORUM

April 25, 2024

## **By electronic mail**

Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090  
Attn: Sai Rao, Counsel for Trading and Markets, Office of the Chair

**Re: Reporting of NIA RFQ responses to CAT**

Dear Mr. Rao,

With the implementation date for consolidated audit trail (“CAT”) reporting of RFQ responses that are not immediately actionable soon approaching,<sup>1</sup> Financial Information Forum (“FIF”), on behalf of our members, is submitting this letter to reiterate certain points set forth in prior letters that FIF submitted to the Securities and Exchange Commission (the “Commission”) on June 1, September 6 and November 16, 2023.<sup>2</sup>

As discussed in the prior FIF letters, if the Commission were to require the reporting of RFQ responses that are not immediately actionable (“NIA RFQ responses”), this would require an amendment to Commission Rule 613<sup>3</sup> through the Commission’s rulemaking process.<sup>4</sup>

The following are some of the key points set forth in the prior FIF letters as to why NIA RFQ responses are not reportable to CAT absent an amendment to Rule 613. Please refer to the prior FIF letters for additional detail on these points.

- An NIA RFQ response is not a bid or offer under Commission Rule 613 because the Regulation NMS definition of “bid or offer” expressly excludes indications of interest (including actionable indications of interest)<sup>5</sup>

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<sup>1</sup> See, for example, 2024 Industry Member Releases (Transaction) - Scope and Schedule (Apr. 15, 2024), available at <https://www.catnmsplan.com/sites/default/files/2024-04/04.15.24-Release-Plan-Transaction.pdf>, at 2.

<sup>2</sup> Available at <https://fif.com/index.php/working-groups>.

<sup>3</sup> 17 CFR §242.613.

<sup>4</sup> See, for example, June 1, 2023 FIF letter, at 2.

<sup>5</sup> 17 CFR §242.601(b)(11). Securities Exchange Act Release No. 60997 (Nov. 13, 2009), 74 FR 61208 (Nov. 23, 2019) (Regulation of Non-Public Trading Interest), at 61212.

- The proposing and adopting releases for CAT make clear that the Commission never intended to include NIA RFQ responses in CAT reporting<sup>6</sup>
- Commission Rule 613, the proposing and adopting releases for CAT, the CAT NMS Plan and the Commission’s order approving the CAT NMS Plan make no reference to NIA RFQ responses<sup>7</sup>
- Commission Rule 300 (of Regulation ATS)<sup>8</sup> and Commission Rule 3b-16<sup>9</sup> do not apply to CAT
- Requiring NIA RFQ responses to be reported to CAT is inconsistent with the Commission’s April 2020 Order<sup>10</sup>
- CAT FAQ B45 further supports the point that the Commission never intended for NIA RFQ responses to be reportable to CAT<sup>11</sup>

In the June 1 letter, FIF also discussed how the Commission’s interpretation of the definition of “order”, “bid” and “offer” under Rule 613 to include NIA RFQ responses could unintentionally impact the interpretation of those terms under other Commission regulations and FINRA regulations.<sup>12</sup>

As further discussed in the prior FIF letters, even if the Commission had the legal authority to require the reporting of NIA RFQ responses to CAT without an amendment to Rule 613, the Commission has not provided guidance to industry members as to the conditions under which NIA RFQ responses would be reportable to CAT.<sup>13</sup> In subsequent discussions with industry members, Commission representatives have agreed that, prior to NIA RFQ responses being reportable to CAT, it would be necessary for the Commission to provide further guidance to industry members as to the conditions under which NIA RFQ responses would be reportable to CAT.

The CAT Reporting Technical Specifications for Industry Members provide that,

Beginning August 1, 2024, all RFQ responses that are communicated in standard electronic format directly to an Industry Member’s OMS/EMS or to an RFQ platform and that are not “immediately actionable” (i.e., further action is required before a trade can

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<sup>6</sup> Securities Exchange Act Release No. 67457 (July 18, 2012), 77 FR 45721 (Aug. 1, 2012) (Consolidated Audit Trail) (“CAT Adopting Release”), at 45745-45747. Securities Exchange Act Release No. 62174 (May 26, 2010), 75 FR 32555 (Jun. 8, 2010) (Consolidated Audit Trail) (“CAT Proposing Release”), at 32570-32571.

<sup>7</sup> CAT Proposing Release. CAT Adopting Release. Limited Liability Company Agreement of Consolidated Audit Trail, LLC (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](https://catnmsplan.com/sites/default/files/2023-09/LLC_Agreement_of_Consolidated_Audit_Trail_LLC-as-of-9.06.23.pdf). Securities Exchange Act Release No. 79318 (Nov. 15, 2016), 81 FR 84696 (Nov. 23, 2016) (Order Approving the National Market System Plan Governing the Consolidated Audit Trail).

<sup>8</sup> 17 CFR §242.300.

<sup>9</sup> 17 CFR §240.3b-16.

<sup>10</sup> Securities Exchange Act Release No. 88702 (Apr. 20, 2020), 85 FR 23075 (Apr. 24, 2020) (Order Granting Conditional 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 Sections 6.4, 6.7(a)(v) and 6.7(a)(vi) of the National Market System Plan Governing the Consolidated Audit Trail).

<sup>11</sup> Available at <https://catnmsplan.com/faq>.

<sup>12</sup> June 1, 2023 FIF letter, at 10-12.

<sup>13</sup> Id. at 12.

be executed/routed), to the extent such responses are considered “orders” reportable pursuant to Rule 613(j)(8), will be required to be reported to CAT.<sup>14</sup>

As discussed above, FIF members do not consider that NIA RFQ responses are orders. Accordingly, FIF members do not understand the meaning of the passage above. Given that the Commission has neither explained why NIA RFQ responses are “orders” subject to reporting under Commission Rule 613 nor provided guidance as to the “extent” (i.e., the conditions under which) such NIA RFQ responses are considered “orders” reportable to CAT, FIF members are not in a position to commence work on this reporting requirement.

If you would like clarification on any of the points discussed in the FIF letters on this topic or would like to discuss further, please contact me at [howard.meyerson@fif.com](mailto:howard.meyerson@fif.com).

Very truly yours,

/s/ Howard Meyerson

Howard Meyerson  
Managing Director, Financial Information Forum

Cc: Lily Bailey, Securities and Exchange Commission  
Brandon Becker, CAT NMS Plan Operating Committee  
Erika Berg, Securities and Exchange Commission  
Shelly Bohlin, FINRA CAT  
Mark Donohue, Securities and Exchange Commission  
David Hsu, Securities and Exchange Commission  
Andrew Sherman, Securities and Exchange Commission  
David S. Shillman, Securities and Exchange Commission  
Haoxiang Zhu, Securities and Exchange Commission

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<sup>14</sup> CAT Reporting Technical Specifications for Industry Members, Version 4.1.0 r2 (Mar. 28, 2024), available at [https://catnmsplan.com/sites/default/files/2024-03/03.28.24\\_CAT\\_Reporting\\_Technical\\_Specifications\\_for\\_Industry\\_Members\\_v4.1.0r2\\_CLEAN.pdf](https://catnmsplan.com/sites/default/files/2024-03/03.28.24_CAT_Reporting_Technical_Specifications_for_Industry_Members_v4.1.0r2_CLEAN.pdf), at 40. The CAT Reporting Technical Specifications further provide: “On February 13, 2024, the Plan Participants filed an exemptive relief request associated with requirements to report responses to requests for quotes (RFQs) provided in standard electronic format (e.g., FIX) that are not ‘immediately actionable’, to the extent such responses are considered ‘orders’ reportable pursuant to Rule 613(j)(8), from August 1, 2024 to August 1, 2026.” Ibid.