

FINANCIAL INFORMATION FORUM

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Via Electronic Delivery

December 23, 2013

Ms. Elizabeth M. Murphy
Secretary
U. S. Securities and Exchange Commission
100 F Street, NE,
Washington, DC 20549-1090

Re: Release No. 34-70892, File Number 4-668, Proposed National Market System Plan Governing the Process of Selecting a Plan Processor and Developing a Plan for the Consolidated Audit Trail

Dear Ms. Murphy,

The Financial Information Forum (FIF)¹, on behalf of our Consolidated Audit Trail (“CAT”) Working Group (“Working Group”) is submitting this comment letter with respect to recent filing of the NMS Plan Governing the Process of Selecting a Plan Processor and Developing a Plan for the Consolidated Audit Trail (“Selection Process NMS Plan”).² The Working Group has been actively reviewing and commenting on the SEC Rule 613, the Consolidated Audit Trail RFP, and associated material produced by the Development Advisory Group over the past three years. Consistent with FIF’s focus on implementation issues, the Working Group comments are specifically from an implementation perspective.

Background

Two consistent themes of our comments over the past three years have been the need for transparency and industry participation in the CAT definition, to ensure that the rules and interfaces associated with the CAT accommodate current business processes while fulfilling regulatory obligations at a reasonable cost to the industry. The Selection Process NMS Plan documents a well-structured and fair voting process for selecting the Plan Processor, especially the inclusion of non-SRO bids and a broad pool of bids through the final selection phase. It reflects a good balance between managing conflict of interest concerns against a fair and open process that will yield qualified bidders to the final selection stage. However, there are specific aspects of this plan which merit comment, especially as it relates to industry involvement and transparency into the process.

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 trading and back office service bureaus, broker-dealers, market data vendors and exchanges. Through topic-oriented working groups, FIF participants focus on critical issues and productive solutions to technology developments, regulatory initiatives, and other industry changes.

² Proposed National Market System Plan Governing the Process of Selecting a Plan Processor and Developing a Plan for the Consolidated Audit Trail, November 13, 2013, Release No. 34-70892, File Number 4-668

The remainder of this document details our concerns with respect to specific sections of the Selection Process NMS Plan from an implementation perspective.

Section III.C.4: Operating Committee Minutes

In the interest of transparency, the Working Group recommends that the minutes of the Operating Committee be made public. While Operating Committee executive sessions may remain private, general discussions as it relates to the Selection Process should be available to other market participants. This level of transparency would be consistent with the CAT governance body's goals of being open and fair. Additionally, the minutes would serve as a communications vehicle for informing the industry of the CAT governance committee's actions and decisions, which will affect a significant number of market participants.

Section V.C.1: Quorum for Selection Committee Voting

Due to restrictions in the Selection Process NMS Plan associated with the position of Voting Senior Officer,³ this individual is a unique employee, and by definition, a very senior officer of the firm. No alternate members are included in the definition of the Selection Committee. All Senior Officers must be present to have a quorum of the Selection Committee. Establishing a quorum under these circumstances will be very difficult, likely leading to delays in the evaluation and voting procedures. It is recommended that an alternate member, perhaps with less stringent qualifications, be considered as a voting substitute for the Voting Senior Officer, but whose actions at the meetings will be the direct responsibility of the Voting Senior Officer.

Section VI.A.1: Selection Process

The definition of the selection process, which we assume will include the evaluation criteria, is the most critical step to the selection process. The CAT RFP includes possible evaluation criteria and guiding principles⁴, but does not include definitive criteria that will be used for evaluating the bids. If the evaluation criteria is thorough and known to all parties (SROs, SEC, industry, bidders), the process is likely to be more transparent and fair. We recommend that the evaluation process and criteria used for each of the final two rounds of voting be published prior to each voting round. Or, at a minimum, the evaluation criteria and process be reviewed with the industry via the CAT Development Advisory Group.

Section VI.C.1 and VI.C.2: Optimal Proposed Solutions

The inclusion of "optimal proposed solutions" in the CAT NMS Plan requires clarification. We request clarification as to whether individual bids and their associated costs/benefits will be included as "optimal proposed solutions" or if the Selection Committee will select portions of different bids to create a composite "optimal proposed solution." If the Selection Committee intends to create composite solutions based on multiple bidders, additional information should be added to the Selection Process NMS Plan to address how the costs/benefits of the composite solution will be formulated. Additionally, the impact of functionality changes between the proposed and approved full CAT NMS Plan should be addressed.

Additionally, we are concerned with the ability of the SROs to determine the costs and benefits associated with optimal proposed solutions without sharing sections of the RFP responses with the

³ Proposed National Market System Plan Governing the Process of Selecting a Plan Processor and Developing a Plan for the Consolidated Audit Trail, November 13, 2013, Release No. 34-70892, File Number 4-668, Exhibit A, Section V.D, p. 14

⁴ Consolidated Audit Trail Request for Proposal, February 16, 2013, Sections 1.9 and 1.10

industry for evaluation. Based on prior discussions with the SROs, FIF has recommended that the information from the following RFP sections that discuss CAT Reporter functions and interfaces as described above be reviewed with the industry so that feedback can be provided to the SROs for their assessment of RFP bidders' responses:

- Section 3.2 Customer ID Information Management
- Section 3.3 Order Lifecycle Assembly
- Section 3.4 Data Validation
- Section 3.5 Central Repository
- Section 3.6 System Overview Description
- Section 3.7 System Availability, Disaster Recovery and Business Continuity Plans
- Section 3.8 Build Project Management
- Section 3.9 Operations
- Appendix II. Cost Schedule (in order to understand both direct and indirect costs to the CAT Reporter)

Examples of information that would be useful for the SROs to share with the industry from the RFP bidders' submissions include but are not limited to the following:

- Messaging and communications protocols to be used by CAT Reporters for sending CAT reports.
- How sensitive data will be protected when transmitted and stored by CAT.
- Approach for each scenario identified (e.g., riskless principal, agency route, etc.)
- Matching process and types of errors that will be identified by CAT.
- Data validation rules to be used on the submission of Customer Information and CAT reports.
- Functionality to be provided via the Web interface for reviewing CAT report errors and making corrections.
- Details surrounding the bulk download facility for submission of CAT reports, error corrections and Customer ID information.
- Expected performance, availability and reliability characteristics of the CAT as it would impact CAT Reporters.
- CAT maintenance policy as it impacts CAT Reporters (e.g., software/hardware upgrades, application of maintenance, etc.)
- Implementation roll-out proposal and steps recommended to mitigate risk on the roll-out
- Plans for elimination of redundant regulatory rules/systems
- Description of CAT Processor support services that will be available to CAT Reporters

While there can be varied responses among the bidders in all of the above areas, this information represents an external description of the CAT Processor and should not require any disclosure of internal implementations or proprietary information from any of the bidders. However, at this time, it does not appear that this information will be shared with the industry.

FIF recommends that in much the same way as Rule 613 requires the SROs to seek industry involvement in the creation and review of the NMS Plan⁵, the SEC also require the SROs to seek industry and technology expertise in the review of RFP bid proposals for the CAT Processor. Without such input, it

⁵ SEC [Release No. 34-67457; File No. S7-11-10], Consolidated Audit Trail, 613.a.1.vii and 613.a.1.xi-xii

will be very difficult for the SROs to ensure that the selected CAT Processor best meets the combined needs of the regulatory and industry communities at a cost considered fair to all constituents.

Section VI.D.1: Revisions of Bids for Shortlisted Bidders

In the interest of fairness and openness, all bidders should be permitted to revise their bids, based on the provisions in the approved CAT NMS Plan. FIF recommends removing the provision that requires Selection Committee permission before revising bids.

Section VI.D.2: Advisory Committee Consultation

The Working Group recommends that the Advisory Committee consultation be mandatory as part of the review of shortlisted bids. FIF has formally shared the following recommendations⁶ with the SROs as it relates to making the Advisory Committee a responsible and effective participant for the SROs' benefit in the issue analysis and decision formation process:

- An Advisory Committee comprised of approximately 20 participants with a minimum of 12 SRO member firms represented on the Advisory Committee is recommended to allow representation from a broad selection of different types of firms within the industry,
- Multiple participants from each category should be considered because one firm cannot represent all of the possible business models in use by firms within the business category.
- Categories of participants that should be added are trade processing and order management service bureaus, as well as adding the industry associations, such as FIF and SIFMA, to provide insight from a broader industry perspective not possible with limited Advisory Committee membership.
- Some categories of participants could be combined or eliminated (see answer to SRO Questions).
- A three year team should be considered for improved continuity on long-range directions and operational issues.
- FIF requests that the SROs consider the definition of the Advisory Committee to reflect a more participatory, active role in the formulation of decisions and directions being reviewed by the SROs. This should include:
 - Presenting recommendations to the SROs,
 - Having a non-binding vote on issues being reviewed by the SROs,
 - Recommending (selected) items to be published for public comment.

The Working Group has concerns regarding the current SRO position as it relates to the composition of the Advisory Committee which does not include many of the recommendations above. If the Advisory Committee is extremely limited in scope of participation, we are concerned that input provided by the Advisory Committee will not be reflective of the various business and processing models that will need to interact with the CAT processor.

In addition to mandating Advisory Committee consultation, the Working Group recommends that the Commission consider broadening participation in the Advisory Committee as part of the Selection

⁶ FIF Consolidated Audit Trail (CAT) Working Group, [Response to SRO Questions on Selected Plan Topics](#), June 12, 2013.

Process NMS Plan. We are concerned that the Advisory Committee will not serve its purpose as discussed in the Rule 613 filing:

“The Commission believes that the Advisory Committee could provide members of the SROs with a forum for informing the plan sponsors of any potential implementation or operational issues faced by them in connection with the consolidated audit trail. Plan sponsors also will be able to draw on the knowledge and experience of these members to help assure the Commission and market participants that any requirements imposed on SRO members will be accomplished in a manner that takes into account the costs to SRO members. The Commission also believes that an Advisory Committee could help foster industry consensus on how to approach and resolve possible issues that may be disputed, and approaches that may conflict, regarding operation of the consolidated audit trail.”⁷

The selection process is a critical stage in the fulfillment of Rule 613 and without consideration of industry recommendations the ability for the industry to provide input will be severely limited to the detriment of the entire process. A strong Advisory Committee is especially important given that the Selection Committee will include firms that are bidding on CAT.

Section VII: Timing

The Working Group is concerned that selecting the Plan Processor within two months after the effectiveness of the CAT NMS Plan is insufficient time to select a Plan Processor from the pool of shortlisted bidders, especially if there are significant changes between the proposed and approved CAT NMS plan. Given the importance of the final round of selection, FIF recommends that a four to six month time period be defined in the schedule for final selection of the Plan Processor. Four to six months should be sufficient to allow for the shortlisted bidders to incorporate changes to the CAT NMS Plan into their bid proposals, for the SROs to carefully consider the bidders’ proposals and seek industry and technical expertise to aid in their evaluation process.

Summary

In summary, we believe there are several opportunities to strengthen the transparency of the selection process as outlined in the recommendations above. Industry input is critical at this stage of the implementation of Rule 613. As such, the Selection Process NMS Plan should incorporate industry input prior to the approval of the CAT NMS Plan as part of the Development Advisory Group and after effectiveness of the Plan in the form of a robust and representative Advisory Committee.

Regards,



Manisha Kimmel
Executive Director
Financial Information Forum

cc: The Honorable Mary Jo White, Chairman
The Honorable Luis A. Aguilar, Commissioner
The Honorable Daniel J. Gallagher, Commissioner
The Honorable Kara M. Stein, Commissioner

⁷ SEC, 17 CFR Parts 242 (Release No. 34-67457; File No. @7-11-10) RIN 3235-AK51, Consolidated Audit Trail, p. 246

The Honorable Michael S. Piwowar, Commissioner

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