

Via Electronic Delivery

July 20, 2016

Brent J. Fields
Secretary, Securities and Exchange Commission
100F Street, NE
Washington, DC 20549-1090

Re: **File No. 4-698** - Notice of Filing of the National Market System Plan Governing the Consolidated Audit Trail

Dear Mr. Fields,

Thank you for providing the Industry Participants, including FIF, SIFMA, and STA of the Development Advisory Group (the “DAG”) with an opportunity to respond to the National Market System Plan Governing the Consolidated Audit Trail (“CAT” or the “Plan”). As you are aware, DAG membership was announced in March 2013 after a selection process by the national securities exchanges and FINRA (the “SROs”), and its membership was expanded in May 2014.¹ Since then, the DAG has convened on an ongoing basis and has provided extensive feedback in an effort to help shape the ultimate Plan.

Upon reviewing the Plan, the DAG was pleased to see that in many instances, the Industry’s feedback via the DAG was incorporated into the Plan. However, after meeting frequently for over three years with the Plan Participants, participating in cost surveys, gap analyses, order scenario working groups, and meetings with the SEC Staff and Commissioners, there are still several significant issues that remain in the Plan as currently published. The DAG has raised these issues both prior to and after viewing the draft Plan that the Plan Participants filed with the SEC in March 2015, but were ultimately advised and encouraged by the Plan Participants to wait until the formal comment period to express our concerns and views. We believe that the DAG process and its advisory function was flawed in that it did not enable the Industry to have its feedback addressed in the CAT Plan that was filed, and in areas where the Industry and SRO DAG members disagreed, there was no mechanism to ensure that the differences were appropriately addressed.

Additionally, the DAG understands that both the Financial Information Forum (“FIF”) and the Securities Industry and Financial Markets Association (“SIFMA”) have, or will be submitting additional, detailed comment letters related on the CAT NMS Plan. Both of these groups have significant representation from members of the DAG, and are also members of the DAG themselves. As such, the DAG voices its continued support and collaboration with any comments submitted by these groups related to CAT. The topics below represent significant matters that the DAG would like to highlight, but by no means is this list exhaustive; we urge you to review the more detailed and specific comment letters submitted by the aforementioned Industry groups.

¹ See <http://www.catnmsplan.com/pastevents/p229428.pdf>.

Elimination of Systems

Rule 613(a)(1)(ix) requires that the NMS Plan must include a plan to eliminate existing systems (or components thereof) that will be rendered duplicative by CAT.² It is widely recognized that significant duplication within existing regulatory reporting systems, including but not limited to FINRA's Order Audit Trail System ("OATS") and Electronic Blue Sheets ("EBS")/Large Trader (SEC Rule 13h-1), will occur once CAT reporting begins.

Section C within Appendix C of the Plan establishes these objective milestones to assess Participants' progress towards the establishment of a Plan, including the aforementioned plan to eliminate duplication.³ It prescribes that Participants should complete analysis of duplicative and partially duplicative elements within twelve (12) and eighteen (18) months, respectively, of Industry reporting (excluding small member reporting), but if such analysis cannot be completed by this date, a subsequent date should be determined.⁴

Since its formation, the DAG has continually stressed the importance of eliminating duplicative reporting systems. We have worked with Industry groups (namely SIFMA and FIF) to both identify and prioritize existing systems that should be eliminated with the creation of the CAT. Additionally, the DAG has assisted in in-depth gap analyses to help identify data attributes that should be added to the CAT reporting process to assist in retiring the duplicative systems. The technical specifications and functional requirements should consider these additional or modified fields and the CAT should be built accordingly. Additionally, the DAG supports the inclusion of OTC equities, and believes this will more readily allow for the retirement of duplicative systems.

As summarized in Appendix C of the Plan, there are significant costs associated with ongoing regulatory reporting.⁵ Prolonging those costs for at least another 2.5 years seems avoidable and would reduce the economic benefit expected from implementing a consolidated audit trail. In the DAG's opinion, it is both disappointing and unnecessary that the Plan Participants should avoid committing to a retirement schedule for these reporting systems, instead only loosely committing to an analysis completion date. There has, and will continue to be, ample opportunity to conduct such analysis prior to the dates set forth in the Plan. The DAG is also a strong proponent of the exemption from OATS reporting proposed within the Plan, which states "If it is practicable to integrate the data in a way that ensures no interruption in FINRA's surveillance capabilities, FINRA will consider exempting firms from the OATS Rules provided they report data to the Central Repository pursuant to the CAT NMS Plan and any implementing rules."⁶ While the relief from OATS reporting ranks the most critical, all duplicate reporting would produce an unnecessary strain on Reporting Firms. Accordingly, the DAG encourages the other SROs to consider this same approach for those firms that meet or exceed certain error rates.

² 17 C.F.R. § 242.613(a)(1) ("[The national market system plan shall discuss] . . . a plan to eliminate existing rules and systems (or components thereof) that will be rendered duplicative by the consolidated audit trail, including identification of such rules and systems").

³ See CAT NMS Plan at Appendix C, Section C.10.

⁴ *Id.* at Appendix C, Section C.9.

⁵ See *Id.* at Appendix C, Section B.

⁶ See *Id.* at Appendix C – 99.

Governance

The language within Rule 613 was clear in its intent that Industry representatives should be involved in the creation and operation of the CAT. For example, the Rule states that the NMS Plan for the CAT “shall include a governance structure to ensure fair representation of the plan’s sponsors, and administration of the central repository, including the selection of the Plan processor.”⁷ The Plan calls for the creation of an Operating Committee and an Advisory Committee. Section 4.1 of the Plan indicates that “except as otherwise expressly provided herein, [the Operating Committee] shall make all decisions and authorize or otherwise approve all actions taken or to be taken by the Company.”⁸ The Advisory Committee is intended to support the Operating Committee; per Section 4.13 of the Plan, it “shall advise the Participants on the implementation, operation, and administration of the Central Repository, including possible expansion of the Central Repository to other securities and other types of transactions.”⁹

The DAG is firm in its belief that the Advisory Committee should have a strong Industry contingent and that this contingent should be formed prior to the approval of the plan. This would allow representative participation in the selection of the Processor and in developing Operating Procedures. Additionally, the CAT governance structure should include independent directors, comprised of both non-Industry and Industry participants, and an audit committee comprised mostly of independent directors.

The Industry’s experience as part of DAG reinforced our strong belief that the CAT can only be successful and equitable if Industry members are allowed full participation on the CAT Operating Committee. While there was collaboration between SRO and Industry members on many operational and technical issues, the SROs limited the Industry’s participation in important aspects of the development process. For example, the SROs required the acceptance of a very broad Non-Disclosure Agreement (which the Industry did not sign), without which they could not share relevant information on the bidders or the bidder’s proposals. Instead the Industry approached bidders directly and requested that they present details of their proposed solutions. The bidders were quick to agree and provided a more complete and relevant picture of the proposed CAT solution than had been received through involvement in the DAG. However, the Industry continues to be unaware of how the needs of thousands are CAT submitters are being represented by the SROs in the Plan Processor selection process.

The DAG membership is fully committed to the success of the Consolidated Audit Trail. In this regard, we believe that frequent and continuous Industry input to the CAT’s development and ongoing change is key to the CAT’s ultimate success. Our experience on DAG has shown that filtering this input through SROs, who face a different set of reporting challenges than Industry members, has proven to be an imperfect mechanism for communicating and addressing concerns. As such, we continue to have concerns with the existing governance structure as written in the Plan, as the Industry remains too far removed from decision-making processes.

⁷ 17 C.F.R. § 242.613(b)(1).

⁸ CAT NMS Plan, p. 18.

⁹ CAT NMS Plan, p. 29

Exemptive Relief Letter

On January 30, 2015, the Plan Participants submitted a Request for Exemptive Relief from certain provisions of Rule 613 including (1) Options Market Maker quotes; (2) Customer-IDs; (3) CAT-Reporter-IDs; (4) linking of executions to specific subaccount allocations on Allocation Reports; and (5) time stamp granularity for manual order events.¹⁰ This Exemptive Relief request was the result of collaborative, ongoing discussions with the Industry and Plan Participants via the DAG process.

Throughout its tenure, the DAG has worked diligently to provide thoughtful and meaningful feedback to the Commission. We have committed to, and believe we have provided you and the Plan Participants with viable alternatives that have addressed your goals in establishing the CAT. The recommendations made in the Exemptive Relief Letter were based on extensive research and discussions in various forums. While the Exemptive Relief was granted, the Plan as it currently stands contemplates many questions that the DAG believes it has already addressed through many mechanisms. While we welcome the opportunity to hear additional considerations, we urge you to value the work done in this process and carefully assess any changes to the Exemptive Relief.

For example, the DAG has significant concerns about the current state of the CAT Customer ID requirements. Modifying the Exemptive Relief and CAT NMS Plan to reflect the recommended Customer Information Approach, whereby customer identifying information is provided to the Processor via a separate report (and not on a per-order-event basis) has significant benefits.¹¹ These include, but are not limited to, improving overall security and protection of customer personally identifiable information (“PII”); avoiding significant cost burdens to Firms; simplification of processing and messaging, and centralization and normalization of data. Importantly, the DAG would like to reiterate that the proposed approach does not diminish the integrity or accuracy of the data to which the Plan Participants will have access.

Cost and Funding

Throughout its ongoing discussions with the Plan Participants, the DAG has repeatedly expressed the importance of cost and funding in the overall Plan, as well as the importance of broker-dealer feedback in shaping this requirement. The Plan, as currently written, does not adequately represent the feedback provided in multiple DAG meetings. As it is currently written, the Plan estimates that approximately 88% of the total annual cost of the CAT would be allocated to broker-dealers. The Plan further indicates intent to require broker-dealers to help fund both the creation and continuing costs of the CAT, which has the potential to significantly increase the burden of broker-dealers. The DAG strongly urges the SEC to consider whether, given the ongoing costs to maintain the CAT, the broker-dealer community should be responsible for funding the costs of the CAT itself. First and foremost, funding should come from realized cost savings and existing regulatory funding sources. Further, with broker-dealers

¹⁰ See CAT Exemptive Relief Letter (January 30, 2015) available at <http://www.catnmsplan.com/web/groups/catnms/@catnms/documents/appsupportdocs/p602383.pdf>.

¹¹ See CAT NMS Plan at Appendix C, Section A.1(a)(iii)

shouldering a projected 88% of the cost, this Plan does not meet the standard of reasonable and equitable cost allocation.

Additionally, the Plan does not provide an analysis of how a new CAT fee would be integrated into the existing funding model for regulation and, for example, after the retirement of OATS, if there would be a commensurate reduction in FINRA Trading Activity Fees. Directly sourcing a portion of the creation and ongoing maintenance of the CAT from broker-dealers is a significant departure from the existing environment. Additionally, the DAG strongly opposes the proposal of the SROs to use their funding authority to both recoup costs incurred in the development of the Plan and share any profits generated by fees, which seems both unprecedented and unjustified.

The DAG also supports many of the other suggestions submitted by SIFMA and FIF, including a commitment to charging user fees in connection with usage of CAT data for regulatory purposes; amending the Plan to prohibit SROs from using profits from the CAT to fund other SRO operations; and, additional transparency related to the funding model based on market share and message traffic.

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The DAG is dedicated in its resolve to help create a CAT that meets the goals of the SROs and the Commission, while representing the views of the Industry and providing critical and informed feedback. Once again, the above are illustrative of topics that the DAG feels strongly about, and we strongly encourage you to review the more in-depth letters that have, or will be submitted by FIF and SIFMA. We thank you for the opportunity to respond to the Plan and look forward to continuing to engage in meaningful dialogue on this topic.

Regards,

Industry Members, including FIF, SIFMA, and STA, of the Development Advisory Group

cc: Peter Santori, Executive Vice President, Chief Regulatory Officer - Chicago Stock Exchange