



July 31, 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; Order Instituting Proceedings to Determine Whether to Approve or Disapprove an Amendment to the National Market System Plan Governing the Consolidated Audit Trail (June 16, 2023)

Dear Secretary,

The Financial Information Forum (“FIF”)¹ and the Securities Industry and Financial Market Association (“SIFMA”)² appreciate the opportunity to comment on the Order Instituting Proceedings (the “Order”) published by the Securities and Exchange Commission (the “Commission”) on June 16, 2023 to determine whether to approve or disapprove an amendment to the National Market System Plan Governing the Consolidated Audit Trail (the “CAT NMS Plan” or the “Plan”).³ The amendment (the “Amendment”) proposes a revised funding model for the Consolidated Audit Trail (“CAT”) referred to as

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 SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry’s one million employees, we advocate on legislation, regulation and business policy affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA).

³ Securities Exchange Act Release No. 34-97750 (June 16, 2023), 88 FR 41142 (June 23, 2023) (Order Instituting Proceedings to Determine Whether to Approve or Disapprove an Amendment to the National Market System Plan Governing the Consolidated Audit Trail).

the “Executed Share Model”.⁴ This letter is focused on the magnitude of CAT costs, including the level of CAT costs relative to what was projected in the CAT NMS Plan and the recent annual increases in CAT costs.

The following are some of the key points discussed in this letter:

- It is important to address rising CAT costs, which currently have no legal limit or mechanism for control that is being implemented.
- It is important to address three distinct categories of CAT costs: costs for operating the CAT system (we refer to these as “CAT operating costs”); internal firm costs; and firm workflow changes required to comply with CAT reporting requirements.
- The CAT operating costs projected for 2023 significantly exceed the costs estimated in the CAT NMS Plan. More specifically, the CAT operating costs projected for 2023 are approximately 5.2 (or 520%) times the costs projected in the CAT NMS Plan.⁵
- The annual increases in CAT operating costs during the past three years of 73.2%, 27.3% and 27.0%, respectively, are not sustainable over the long-term.⁶
- Recent actions and decisions taken by the Commission to mandate additional processing and reporting requirements for CAT will lead to acceleration of these unsustainable annual cost increases.⁷
- The actions and decisions by the Commission to mandate additional processing requirements that will accelerate the current CAT cost increases include the following:

⁴ Notice of Filing of Amendment to the National Market System Plan Governing the Consolidated Audit Trail regarding CAT Funding Model (Mar. 13, 2023), available at <https://catnmsplan.com/sites/default/files/2023-03/3.13.23-Amendment-to-CAT-NMS-Plan-CAT-Funding-Model.pdf>.

⁵ The CAT financial and operating budget for 2023 projects total expenditures of \$236.7 million. Consolidated Audit Trail, LLC, 2023 Financial and Operating Budget (Mar. 28, 2023), available at <https://www.catnmsplan.com/sites/default/files/2023-03/03.28.23-CAT-Q1-2023-Budget.pdf> (“CAT Q1 2023 Budget”). The Commission, in its approval order for the CAT NMS Plan, projects that annual costs for operating the CAT system will range between \$36.5 million and \$55 million. Securities Exchange Act Release No. 34-79318 (Nov. 15, 2016), 81 FR 84696 (Nov. 23, 2016) (Order Approving the National Market System Plan Governing the Consolidated Audit Trail) (“CAT NMS Plan Approval Order”), at 84854. Dividing \$236.7 million by the mid-point of the range projected by the Commission in its approval order (\$45.75 million) means that CAT costs for 2023 are expected to be 5.2 (or 520%) times what the Commission projected when it approved the CAT NMS Plan.

⁶ See the detailed discussion below of the most recent annual CAT operating cost increases.

⁷ In certain cases (for example, with respect to reporting certain verbal activity to CAT), the Commission has acted through Commission Orders. Securities Exchange Act Release No. 90405 (Nov. 12, 2020), 85 FR 73544 (Nov. 18, 2020) (Order Granting a Temporary Conditional Exemption Pursuant to Section 36 of the Securities Exchange Act of 1934 (“Exchange Act”) and Rule 608(e) of Regulation NMS Under the Exchange Act, Relating to the Reporting of Certain Activities on the Floor of National Securities Exchanges and Certain Activities by Industry Members Off Exchange Floors, as Required by Section 6.4(d) of the National Market System Plan Governing the Consolidated Audit Trail) (“Initial Verbal Activity Exemption”). In other cases (for example, with respect to reporting non-executable RFQ responses to CAT), the Commission has not taken formal action and the staff of the Commission has orally communicated the Commission’s position to industry representatives and/or the CAT Plan Participants. With respect to these oral communications, it is not clear whether the position stated represents the position of the Commission staff or the Commission. Since this is not known to industry members, for purposes of this letter we refer to these actions and statements as actions and statements of the Commission.

- Requiring that the CAT Plan Participants assign an interim CAT Order ID by T+1 at noon⁸
- Requiring that the CAT Plan Participants reassign CAT Order IDs for all corrected data received after T+5⁹
- Requiring that the CAT Plan Participants link CAT transaction data with SIP data¹⁰
- Requiring that the online targeted query tool (a tool developed by the CAT Plan Processor and used by Commission and CAT Plan Participant surveillance personnel to query the CAT database) (the “OTQT”) return results within 1 minute for all trades and related lifecycle events for a specific Customer or CAT Reporter¹¹
- Requiring the CAT Plan Participants to measure on a monthly basis, using benchmark queries, the time it takes to provide results to users from OTQT searches that are run concurrently with up to 300 user queries.¹²
- The actions and decisions by the Commission to mandate new reporting requirements that will accelerate the current CAT cost increases include the following:
 - Requiring CAT reporting of verbal (unstructured) activity, where the verbal activity does not represent orders as defined under the CAT NMS Plan
 - Requiring that non-executable RFQ responses be reported to CAT, where these RFQ responses are not orders as defined under the CAT NMS Plan
 - Requiring that request messages be reported to CAT, where these request messages are not a type of event that is reportable under Rule 613
 - Requiring that order recipients report rejections to CAT, where these rejections are not a type of event that is reportable under Rule 613
 - Requiring an order sender to report order recipient (venue) port settings, where this will result in an inferior audit trail being made available to surveillance personnel
 - Requiring that firms provide linkage of representative to customer orders and linkage of order fulfillments to representative and principal orders, where firms do not maintain this linkage in their existing systems.
- The Commission’s decisions have the most impact on CAT costs, but the Commission does not have any process to effectively manage CAT costs.
- There is a lack of transparency about CAT operating costs. The largest CAT operating cost item for 2023 is cloud hosting services (\$176,248,699), representing 74.5% of CAT operating costs, but no further detail is provided.

⁸ See Brief in Support of Motion for Partial Stay of Order 34-90688, Before the United States Securities and Exchange Commission, In the Matter of the: Order Granting Temporary 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, Relating to Certain Requirements of the National Market System Plan Governing the Consolidated Audit Trail (Feb. 14, 2021) (“688 Brief”), at 5-9.

⁹ Id. at 9-13.

¹⁰ Id. 13-15.

¹¹ See Brief in Support of Motion for Partial Stay of Order 34-90689, Before the United States Securities and Exchange Commission, In the Matter of the: Order Granting Temporary 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 Section 8.1.1 and Section 8.1.2 of Appendix D of the National Market System Plan Governing the Consolidated Audit Trail (Feb. 14, 2021) (“689 Brief”), at 6-9.

¹² Id. at 9-10.

- Commission Rule 613 mandates that the CAT NMS Plan include “The detailed estimated costs for creating, implementing, and ***maintaining*** [emphasis added] the consolidated audit trail ...”¹³ In the adopting release for CAT, the Commission writes that “***a fulsome discussion***” [emphasis added] of the estimated costs to SROs and their members “will aid the Commission in its evaluation of whether to approve the NMS plan and in conducting its own analysis of the costs and benefits of the NMS plan.”¹⁴
- Based on Rule 613 and the CAT adopting release, additional processing or reporting requirements proposed by the Commission -- where the costs were not considered in connection with the Commission’s approval of the CAT NMS Plan -- should require a CAT NMS Plan amendment.

Based on the above, FIF and SIFMA members recommend that the Commission take the following actions:

- Enhanced transparency about CAT costs is necessary. The Commission should mandate public disclosure of the financial terms of the contract between the CAT Plan Participants and Amazon Web Services (the cloud provider for the CAT system) (“AWS”) and the invoices from AWS from inception of the contract with AWS to the present.
- The Commission should direct the CAT Plan Participants to analyze why CAT operating costs have increased so dramatically over the past three years.
- As part of this analysis, the CAT Plan Participants should evaluate the expected annual CAT operating cost increases for future years (based on the current CAT requirements).
- Making the AWS financial terms and invoices publicly available will assist the Commission, industry members and the public in understanding and providing input on this analysis.
- Until this process has been completed, the Commission should not mandate any new processing or reporting requirements, including those discussed in this letter.
- After this process has been completed:
 - Any new processing or reporting requirement that would result in a significant increase in CAT costs should require a CAT NMS Plan amendment that includes a cost-benefit analysis by the CAT Plan Participants, including a fulsome discussion of the potential costs.
 - The CAT Plan Participants should analyze various changes to CAT processing requirements that could reduce CAT operating costs (for example, requiring that the CAT system complete initial data validation, lifecycle linkages, and communication of errors to CAT reporters by T+2 or later in the day on T+1 instead of by noon on T+1). The CAT Plan Participants should analyze how these changes could mitigate future CAT operating cost increases and make their conclusions publicly available. Based on these conclusions, appropriate amendments to the CAT NMS Plan should be considered.

¹³ 17 CFR §242.613(a)(1)(vii).

¹⁴ Securities Exchange Act Release No. 67457 (July 18, 2012), 77 FR 45722 (Aug. 1, 2012) (Consolidated Audit Trail) (“CAT Adopting Release”), at 45794.

The Commission should act cautiously and not impose any material new reporting requirements for CAT or material changes to the current CAT processing requirements until the Commission, market participants and the public have a better understanding of (i) the factors that have contributed to the significant increases in CAT operating costs over the past few years, (ii) the level of increases that can be expected in future years (based on current reporting and processing requirements), and (iii) whether, and the degree to which, the new CAT reporting requirements being proposed by the Commission and the Commission's proposed changes to the current CAT processing requirements would further exacerbate these rising CAT operating costs.

* * * * *

Given the focus of FIF on implementation issues and the fact that FIF members include broker-dealers, exchanges and technology vendors in the securities industry, FIF is not expressing (and this letter does not state) any position either for or against the Amendment. FIF members, SIFMA and SIFMA members have strong views on the Amendment, which are reflected through other comment letters. This letter is being submitted on behalf of FIF members that are broker-dealers and technology vendors that provide services to these broker-dealers.

A. It is important to address rising CAT costs, which currently have no legal limit or mechanism for control that is being implemented

The Amendment, comment letters submitted in response to the Amendment, and the Order have included significant discussion of the allocation of costs across market participants and the fee collection process. This letter is focused on another important consideration (also discussed in various comment letters), which is the magnitude of CAT costs, including the level of CAT costs relative to what was projected in the CAT NMS Plan and the recent annual increases in CAT costs. The recent year-over-year CAT cost increases are not sustainable over the long-term, and at present there is no cap or controls to prevent CAT costs from growing infinitely. In this letter, FIF and SIFMA identify steps that the Commission should take now, and in the future, to address rising CAT costs.

One of these steps, discussed below, would be to require an amendment to the CAT NMS Plan for any new reporting requirements or enhancements to CAT for which the costs and benefits were never considered by the Commission in the economic analysis the Commission relied upon to approve the current Plan. As discussed below, FIF and SIFMA members believe that this approach is required based on the wording of Commission Rule 613 (Consolidated audit trail)¹⁵ and the adopting release for CAT.¹⁶

B. It is important to address three distinct categories of CAT costs

FIF and SIFMA members have identified the following categories of CAT costs:

- Costs for the CAT Plan Participants to develop and operate the CAT system ("CAT operating costs").

¹⁵ 17 CFR §242.613.

¹⁶ CAT Adopting Release, at 45794.

- Internal costs incurred by market participants to develop and operate firm systems, and to implement firm processes, for CAT reporting
- Trading workflow changes that are necessary to comply with certain CAT reporting requirements.

All of these costs (including costs to develop and operate the CAT system) are borne 100% by market participants, consisting of broker-dealers and exchanges. While the Financial Industry Regulatory Authority (“FINRA”), as a participant of the CAT NMS Plan (“CAT Plan Participant”), is responsible for a percentage of CAT operating costs, FINRA has indicated that 100% of these costs will be passed through to broker-dealers that are FINRA members.

In addition to CAT operating costs, firms are subject to extensive internal costs relating to CAT, including: systems development, testing and implementation; daily reporting obligations and associated supervision; error resolution; monitoring and analysis of CAT system changes; monitoring and analysis of business changes that impact CAT reporting; daily system processing; data storage; data collection; data organization; and data security.

The third cost category is trading workflow changes that are necessary to comply with certain CAT reporting requirements. For example, firms have transitioned certain trading activity from manual to electronic because of the challenges in reporting manual trading activity to CAT.¹⁷ It is important to identify trading workflow changes as a cost. If a firm is changing its trading workflow for the sole purpose of being able to comply with very specific or prescriptive CAT reporting requirements, this may mean that the firm is implementing a less efficient trading workflow and incurring associated costs to accommodate CAT reporting.

While CAT operating costs are the most directly measurable of the three cost categories, in the view of FIF and SIFMA members, firms’ collective internal costs and the costs of trading workflow changes significantly exceed CAT operating costs. The Commission’s cost estimates in its Order Approving the National Market System Plan Governing the Consolidated Audit Trail (the “CAT NMS Plan Approval Order”) are consistent with this view. In the 2016 CAT NMS Plan Approval Order, the Commission writes that it “now believes that ...annual operating costs ...” will “... range from \$36.5 million to \$55 million.”¹⁸ The Commission further estimates in the CAT NMS Plan Approval Order that the ongoing annual costs for CAT (including CAT operating costs and internal market participant costs) would be \$1.7 billion.¹⁹

¹⁷ Consistent with the CAT Technical Specifications and other CAT documentation, (i) we use the term “manual” to include telephone and other voice communications as well as unstructured electronic communications, such as IM, chat and email, and (ii) we use the term “electronic” to refer to structured communications, such as FIX. CAT Reporting Technical Specifications for Industry Members, Version 4.0.0 r 19 (April 11, 2023), available at https://catnmsplan.com/sites/default/files/2023-04/04.20.2023_CAT_Reporting_Technical_Specifications_for_Industry_Members_v4.0.0r19_CLEAN.pdf (“April 2023 CAT Technical Specifications”), at 34-35.

¹⁸ CAT NMS Plan Approval Order, at 84854.

¹⁹ Id. at 84863.

C. The current CAT operating costs significantly exceed the costs estimated in the CAT NMS Plan; the recent annual increases in CAT operating costs are not sustainable over the long-term

In the 2016 CAT NMS Plan Approval Order, the Commission estimates that annual CAT operating costs would range from \$36.5 to \$55 million.²⁰ In the CAT Financial and Operating Budget published during the 1st quarter of 2023, the CAT Plan Participants estimate that total expenditures for CAT for 2023 will be \$236.7 million.²¹ This means that CAT operating costs for 2023 are expected to be 5.2 (or 520%) times what the Commission projected when it approved the CAT NMS Plan.²²

The CAT audited financial statements for 2020 through 2022 report annual CAT operating expenses of \$84,529,904 for 2020, \$146,536,571 for 2021 and \$186,376,256 for 2022.²³ In the CAT Financial and Operating Budget published during the 1st quarter of 2023, the CAT Plan Participants estimate that total expenditures for CAT for 2023 will be \$236.7 million.²⁴ This represents annual increases in CAT operating costs of 73.2%, 27.3% and 27.0%, respectively, for the three most recent years. Comparing the CAT budgets for Q4 2022 and Q1 2023, the largest CAT budget item, for cloud hosting services, increases from \$129.6 million to \$176.2 million from 2022 to 2023.²⁵ This represents a 36.0% year-over-year increase in this line item. If CAT operating costs were to continue to increase at the current rate of 27.0%, and the Commission's annual budget were to increase after 2024 at the recent rate of inflation (4.0%, as measured by the CPI-U),²⁶ in ten years the operating costs for CAT would be 74.5% of the entire Commission budget.²⁷ Industry members also have their own related storage and processing costs, which also increase when trading volumes and CAT complexity increase.

²⁰ Id. at 84854.

²¹ CAT Q1 2023 Budget. FIF and SIFMA members note that the CAT "Financial and Operating Budget" is not actually a budget per se, but only an estimate. There is no mechanism that restricts CAT spending if the estimates are exceeded. The excess expenditures are simply tacked on to the following year's estimates and (proposed) fee collections.

²² The range for annual CAT operating costs projected by the Commission in its approval order is \$36.5 million to \$55.0 million. CAT NMS Plan Approval Order, at 84854. The mid-point of this range is \$45.75 million. We divide the current budget projection for 2023 by this mid-point to calculate that CAT costs for 2023 are expected to be 5.2 (or 520%) times what the Commission projected when it approved the CAT NMS Plan.

²³ Consolidated Audit Trail, Financial Statements, December 31, 2021 and 2020, available at <https://catnmsplan.com/sites/default/files/2022-06/CAT-NMS-LLC-2021-and-2020-Financial-Statements.pdf> ("CAT 2021 Financial Statements"), at 4. Consolidated Audit Trail, Financial Statements, December 31, 2022 and 2021, available at <https://catnmsplan.com/sites/default/files/2023-07/FY2022-CAT-Audited-Financial-Statements.pdf> ("CAT 2022 Financial Statements"), at 4.

²⁴ CAT Q1 2023 Budget.

²⁵ CAT Q1 2023 Budget. Consolidated Audit Trail, LLC, 2022 Financial and Operating Budget (July 25, 2023), available at <https://www.catnmsplan.com/sites/default/files/2023-07/07.25.23-CAT-2022-Financial-and-Operating-Budget.pdf>.

²⁶ U.S. Bureau of Labor Statistics, "Economic News Release, Consumer Price Index Summary," available at <https://www.bls.gov/news.release/cpi.nr0.htm#:~:text=Not%20seasonally%20adjusted%20CPI%20measures,percent%20prior%20to%20seasonal%20adjustment.>

²⁷ The Commission's budget request for 2024 is \$2.436 billion. "Fiscal Year 2024 congressional budget justification annual performance plan, Fiscal Year 2022 annual performance report," available at https://www.sec.gov/files/fy-2024-congressional-budget-justification_final-3-10.pdf, at 7.

FIF and SIFMA members recommend that the Commission consider steps that it could take to address these non-sustainable cost increases, including implementation of the recommendations set forth in this letter.

D. The Commission’s decisions have the most impact on CAT costs, but the Commission does not have any process to effectively manage CAT costs

FIF and SIFMA members are concerned that the Commission, as the party that has undertaken the primary responsibility for determining the scope of CAT reporting and processing requirements (and, as a result, the party whose decisions have the most impact on CAT operating costs and internal firm costs), does not have any process to effectively manage CAT costs. CAT operating costs are not part of the Commission’s budget and do not require the Commission to obtain any appropriation. As discussed in this letter, the Commission has extended CAT reporting requirements beyond the adopted Rule and the approved CAT NMS Plan and intends to impose additional requirements that exceed the scope of the Rule and the Plan. The Commission also intends to impose changes to CAT processing requirements that could greatly increase CAT costs. FIF and SIFMA members are concerned that the Commission’s lack of process to effectively manage CAT costs has been a contributing factor to these decisions.

E. Enhanced transparency about CAT costs is necessary

In the financial statements for CAT for 2022, the largest expense item in the Statement of Activities is “Technology costs”. The technology costs for CAT for 2022 were \$171.2 million, representing 91.9% of total CAT operating expenses for that year.²⁸ The financial statements do not provide any further breakout of these costs. The CAT budget for 2023 estimates technology costs of \$222.5 million, representing 95.3% of total operating costs.²⁹ In the 2023 budget, technology costs are divided into four categories; the largest line item is \$176.2 million, for cloud hosting services, which represents 75.5% of estimated CAT costs for 2023.³⁰ Other significant technology line items in the 2023 budget include operating fees (\$26.3 million) and CAIS operating fees (\$18.1 million).³¹ There is no further break-out of any of these items.³²

Given that industry members will ultimately be responsible for a significant portion of these costs, it is important that the Commission and the CAT Plan Participants provide enhanced transparency to the public and to industry members relating to these costs. More specifically, FIF and SIFMA members request that the Commission and the CAT Plan Participants make publicly available the financial terms of the contract between the CAT Plan Participants and AWS, as well as the invoices from AWS from inception of the contract with AWS to the present.

It is very important that the public, the Commission and industry participants obtain a clearer understanding of the drivers of CAT operating costs, why CAT operating costs have significantly

²⁸ CAT 2022 Financial Statements, at 4.

²⁹ CAT Q1 2023 Budget.

³⁰ Ibid.

³¹ Ibid.

³² Ibid.

exceeded the CAT operating costs projected in the CAT NMS Plan, and why CAT operating costs are projected to increase 27.0% from 2022 to 2023. For example, the following are some (and definitely not all) possible contributors to the projected increase in CAT costs:

- Increased data storage costs resulting from increased historical data that must be stored
- Increased market trading volume
- Increased processing costs resulting from new requirements being introduced during the period (for example, the requirement to report request events to CAT).

As noted above, the recent annual CAT operating cost increases of 73.2%, 27.3% and 27.0% are not sustainable over the long-term, so it is crucial to understand what is driving this increase. Understanding the drivers of CAT cost increases at a detailed level is necessary for the Commission, market participants and the public to evaluate potential approaches to manage CAT operating costs. In particular, this transparency is necessary to conduct a proper cost-benefit analysis of various new CAT processing and reporting requirements that the Commission proposes to mandate. As discussed below, FIF and SIFMA members believe that Rule 613 and the CAT adopting release require a proper cost-benefit analysis of these types of changes.

- F. The Commission should not mandate CAT processing changes that will further exacerbate CAT cost increases; any CAT processing changes mandated by the Commission that will materially increase CAT operating costs should be subject to the filing and approval of a CAT NMS Plan amendment**

Each of the Commission’s proposed CAT processing changes should require a CAT NMS Plan amendment

As discussed in this section, the Commission intends to mandate CAT processing changes that will further exacerbate CAT cost increases. Consolidated Audit Trail, LLC (“CAT LLC”), the legal entity established to conduct the activities relating to CAT, has filed motions and accompanying briefs on behalf of 23 of the 24 exchanges that are CAT Plan Participants.³³ In these motions, CAT LLC has objected to the Commission’s planned CAT processing changes based on the significant cost and questionable surveillance use.³⁴ FIF and SIFMA members note that the CAT Plan Participants on whose behalf these motions have been filed have detailed knowledge of both CAT operating costs and surveillance. Because industry members will be obligated to fund a significant portion of any costs resulting from these CAT processing changes, it is important that these processing changes, including the cost concerns identified by CAT LLC, be subject to public disclosure and comment through the filing of a proposed CAT NMS Plan amendment.

Commission Rule 613 mandates that the CAT NMS Plan include “The detailed estimated costs for creating, implementing, and *maintaining* [emphasis added] the consolidated audit trail ...”³⁵ In the adopting release for CAT, the Commission writes that “*a fulsome discussion*” [emphasis added] of the

³³ See 688 Brief and 689 Brief. CAT LLC did not file motions on behalf of FINRA or the Long-Term Stock Exchange.

³⁴ Ibid.

³⁵ 17 CFR §242.613(a)(1)(vii).

estimated costs to SROs and their members “will aid the Commission in its evaluation of whether to approve the NMS plan and in conducting its own analysis of the costs and benefits of the NMS plan.”³⁶ Based on Rule 613 and the CAT adopting release, prior to implementation of any of these processing changes, the Commission should require a CAT NMS Plan amendment that provides a fulsome cost-benefit analysis.

Commission action to date on CAT processing changes

As adopted, the CAT NMS Plan imposes various requirements relating to: the time and method by which data must be made available to regulators; data validations; error correction and processing; linkage; and the creation of the lifecycle of an order.³⁷ On December 16, 2020, the Commission granted the CAT Plan Participants temporary exemptive relief from certain requirements relating to the online targeted query tool described in the CAT NMS Plan.³⁸ Also on December 16, 2020, the Commission granted the CAT Plan Participants temporary exemptive relief, until July 31, 2023, from (i) requirements to complete initial data validation, make lifecycle linkages and communicate errors to CAT reporters by 12 pm ET on T+1,³⁹ (ii) certain requirements relating to the re-processing of corrections received after T+5,⁴⁰ and (iii) certain requirements relating to the linkage of data submitted by CAT reporters with data from the Securities Information Processor.⁴¹ On July 8, 2022, the Commission extended this temporary exemptive relief until July 31, 2024.⁴² On May 19, 2023, the Commission further extended this temporary exemptive relief until January 31, 2025.⁴³

³⁶ CAT Adopting Release, at 45794.

³⁷ See, for example, Limited Liability Company Agreement of Consolidated Audit Trail, LLC (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”), at C-15 to C-22, D-7 to D-10 and D-18 to D-20.

³⁸ Securities Exchange Act Release No. 90688 (Dec. 16, 2020), 85 FR 83667 (Dec. 22, 2020) (Order Granting Temporary 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 Section 8.1.1 and Section 8.1.2 of Appendix D of the National Market System Plan Governing the Consolidated Audit Trail).

³⁹ Securities Exchange Act Release No. 90688 (Dec. 16, 2020), 85 FR 83634 (Dec. 22, 2020) (Order Granting Temporary 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, Relating to Certain Requirements of the National Market System Plan Governing the Consolidated Audit Trail) (“December 2020 Exemption”), at 4-5.

⁴⁰ Id. at 5-6.

⁴¹ Id. at 6-7.

⁴² Securities Exchange Act Release No. 95234 (July 8, 2022), 87 FR 42247 (July 14, 2022) (Order Granting Temporary 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 Certain Requirements of the National Market System Plan Governing the Consolidated Audit Trail) (“July 2022 Exemption”), at 7-28.

⁴³ Securities Exchange Act Release No. 97530 (May 19, 2023), 88 FR 33655 (May 24, 2023) (Order Granting Temporary 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 Certain Requirements of the National Market System Plan Governing the Consolidated Audit Trail) (“May 2023 Exemption”), at 9.

The Commission should provide transparency relating to these CAT processing changes

To date, the Commission has not provided transparency to industry members and the public relating to these CAT processing changes. Instead, FIF and SIFMA members understand that these changes have been subject to private discussions between the Commission and the CAT Plan Participants. FIF and SIFMA members assume that the Commission's view is that because these changes relate to CAT processing and surveillance, it is not necessary to provide transparency to industry members and the public about these proposed changes. FIF and SIFMA members disagree with this approach. Because industry members will be responsible for a significant portion of the resulting costs, and given the wording of Rule 613 and the CAT adopting release (as noted above), it is important that the Commission provide transparency about these proposed CAT processing changes.

Because of the lack of transparency relating to these issues, industry members do not have a full understanding of what the Commission is requiring. However, we quote below some of the objections that 23 of the 24 exchanges that are CAT Plan Participants, and that have detailed knowledge of both CAT costs and surveillance, have raised about these planned processing changes (items indicated below as redacted have been redacted by CAT LLC):

- ***Assignment of CAT Order IDs by noon on T+1.*** "The Plan does not require the Participants to assign interim CAT Order IDs at any point, let alone by noon on T+1."⁴⁴ "Even if the Plan contemplated including interim CAT Order IDs as part of the process of ingesting CAT Reporter data submissions and validating lifecycle linkages by noon on T+1, such reporting would impose costs for no benefit."⁴⁵
- ***Assignment of new CAT Order ID for all post T+5 error corrections.*** "Cost is not a trivial concern. The Plan Processor has preliminarily estimated that building the infrastructure to allow the CAT to reassign CAT Order IDs daily would require approximately [redacted]."⁴⁶ "Because errors are always corrected in the Central Repository regardless of when the correction is submitted, the Commission is able to see the whole picture for each order without assigning new CAT Order IDs. Further, requiring reassignment of new CAT Order IDs can impede effective regulation."⁴⁷
- ***Linkage of CAT transaction data with SIP data.*** "Although Part II.C of the 688 Order interprets this provision to require that SIP Data and other CAT Transaction Data be linked such that both types 'are part of the lifecycle of an Order,' the Order correctly acknowledges that such linkage is unfeasible: 'the CAT Plan Processor is only able to provide a regulatory user a side-by-side view of – instead of a linkage between – both the transactional data in CAT and SIP Data through an online targeted query tool or a user-defined direct query.'"⁴⁸ "Unfortunately, meeting this requirement would require more than just additional time."⁴⁹ "The SIPs are not governed by the Plan, but rather by their own NMS plan.... If changes are to be made to SIP Data, those changes must be made through the relevant NMS plan, not through an order interpreting the CAT NMS

⁴⁴ 688 Brief, at 5.

⁴⁵ Id. at 8.

⁴⁶ Id. at 12

⁴⁷ Id. at 12-13.

⁴⁸ Id. at 13-14.

⁴⁹ Id. at 14.

Plan. As a result, the requirement imposed by the 688 Order is not an appropriate or effective means of bringing about the necessary changes to SIP systems and data reporting.”⁵⁰ “In light of the above, the Order’s requirement would impose substantial costs while yielding no meaningful benefits.”⁵¹

- **One-minute query requirement.** “Part of the Order requires the Participants to develop the CAT in ways that would be of little, if any, value to regulatory users. Among other things, the Order interprets the Plan as requiring searches using the Online Targeted Query Tool (“OTQT”)—including an intermediate data-organizing step—to be completed in one minute.”⁵²
- **Requirement to test search performance with up to 300 concurrent user queries.** “Another part of the Order imposes costs on the Participants outweighing their regulatory benefits and that also impedes existing CAT benefits. In particular, the Order requires the Participants to conduct monthly tests of the OTQT’s search performance with up to 300 concurrent user queries. The technological upgrades necessary to run these tests would cost [redacted] with no corresponding regulatory benefits because the Participants already [redacted].”⁵³ “This condition bears no reasonable relation to the CAT’s regulatory purpose.”⁵⁴ “The Order’s testing condition also imposes costs with no tangible benefit.”⁵⁵

Industry members are limited in our ability to comment on the issues above because these issues have been the subject of private discussions between the Commission and the CAT Plan Participants. Accordingly, in this letter, industry members do not provide substantive comment on the points above made by CAT LLC. However, industry members can certainly state that the costs for the processing changes above were not contemplated in the Commission’s approval order for the CAT NMS Plan and, accordingly, public transparency through the filing of a CAT NMS Plan amendment is necessary for a proper evaluation of the cost and other concerns raised by CAT LLC.

CAT LLC also objects to the Commission’s mandates to expand processing requirements relating to the reporting of port settings and linkage of representative orders.⁵⁶ These issues are discussed in detail below.

G. The Commission should direct the CAT Plan Participants to analyze various changes to CAT processing requirements that could reduce CAT operating costs; based on this analysis, appropriate amendments to the CAT NMS Plan should be considered

As adopted, the CAT NMS Plan specifies that linked and error-corrected CAT data will be available to the Commission and CAT Plan Participant regulatory staff on a T+5 basis.⁵⁷ FIF and SIFMA members understand that this target has generally been met since inception. The Plan also lays out various

⁵⁰ Ibid.

⁵¹ Id. at 15.

⁵² 689 Brief, at 1.

⁵³ Ibid.

⁵⁴ Id. at 9.

⁵⁵ Id. at 10.

⁵⁶ 688 Brief, at 15-20.

⁵⁷ CAT NMS Plan, at C-16.

interim processing times for when initial linkages are completed, when error reports are sent to industry members, and when industry member need to provide corrected data.⁵⁸ The Plan provides that the Commission and CAT Plan Participant regulatory staff shall have open access to any intermediate data as available.⁵⁹

As the mass of data reported to CAT has far exceeded what was expected in the CAT economic analysis, and the complexity of message records (and their linkages) has far exceeded the more general framework that was specified in Rule 613 and the CAT NMS Plan, meeting interim processing times has proven to be extremely costly and inefficient. The CAT Plan Participants have written that “The significant and increasing overall CAT costs are driven by the requirements in the CAT NMS Plan to process record data volumes in accordance with complex reporting and linkage requirements, within the narrow timeframes required by the SEC.”⁶⁰

FIF and SIFMA members recommend that the Commission push-back various CAT processing timelines and other CAT processing requirements in light of the fact that the actual CAT operating costs have been significantly higher than projected in the CAT NMS Plan and the fact that the recent annual rates of increase in CAT costs are not sustainable over the long-term. The Commission should direct the CAT Plan Participants to conduct and publish an analysis of how various changes from the current CAT processing requirements (for example, requiring that the CAT system complete initial data validation, lifecycle linkages, and communication of errors to CAT reporters by T+2 or later in the day on T+1 instead of by noon on T+1) would impact CAT costs. The analysis should also discuss how these processing changes would impact the ability for the Commission and the CAT Plan Participants to conduct market surveillance. The Commission, industry members and the public should have transparency into relevant data underlying this analysis, including the financial details of the contract with AWS. Based on this analysis, appropriate amendments to the CAT NMS Plan should be considered and submitted for comment. As discussed below, FIF and SIFMA members believe that this type of process is required based on the wording of Rule 613 and the CAT adopting release.

H. The Commission has mandated, or has indicated its intent to mandate, additional reporting requirements for CAT that will be costly to implement; at a minimum, these additional reporting requirements should be subject to an appropriate cost-benefit analysis

As discussed in this section, the Commission has mandated, or has indicated its intent to mandate, additional reporting requirements⁶¹ for CAT that will be costly to implement. In many cases, as discussed below, FIF and SIFMA members do not consider these reporting requirements to be within the scope of

⁵⁸ See, for example, CAT NMS Plan, at D-18.

⁵⁹ See, for example, CAT NMS Plan, at D-19.

⁶⁰ Consolidated Audit Trail Industry Webinar: Proposed Funding Model (Apr. 6, 2022), available at https://catnmsplan.com/sites/default/files/2022-04/04.06.22-CAT-April-2022-Industry-Webinar-on-Fee-Model_0.pdf.

⁶¹ We use the phrase “additional reporting requirement” or “new reporting requirement” to mean that market participants are not currently subject to this reporting requirement. With respect to reporting of request messages (discussed below), “additional” or “new” refers to the fact that this reporting was not required as part of the initial launch of CAT.

Rule 613 and the CAT NMS Plan. Whether or not the Commission agrees with this view, FIF and SIFMA members are further concerned that these reporting requirements will be very costly to implement and that there are serious questions as to whether the surveillance value of these additional reporting requirements justifies the additional costs that will be imposed on market participants (and potentially passed through to customers). Accordingly, FIF and SIFMA members recommend that the Commission, even if it considers these additional reporting requirements to be within the scope of Rule 613 and the CAT NMS Plan, grant exemptive relief with respect to these requirements.

If the Commission does not decide to grant exemptive relief with respect to these new reporting requirements, at a minimum, the Commission should require an amendment to the CAT NMS Plan for each of these additional reporting requirements. Even if the Commission believes that these additional reporting requirements are within the scope of Rule 613 and the CAT NMS Plan, it is clear that these reporting requirements were not considered as part of the cost estimates in the CAT NMS Plan. Accordingly, based on the wording of Rule 613 and the CAT adopting release (see the discussion in the next section of this letter), the implementation of any of these additional reporting requirements should be subject to the CAT Plan Participants submitting, and the Commission approving, a CAT NMS Plan amendment that sets forth the costs and benefits of imposing these additional reporting requirements.

In the remainder of this section, we discuss various additional reporting requirements that FIF and SIFMA members do not consider to be within the scope of Rule 613 and the CAT NMS Plan. To the extent that these additional reporting requirements are found to be within the scope of Rule 613 and the CAT NMS Plan, FIF and SIFMA members still do not believe that the significant costs for implementing these requirements are justified.

Requiring CAT reporting of verbal (unstructured) activity

On November 12, 2020, the Commission granted the CAT Plan Participants temporary exemptive relief, through July 31, 2023, from the requirement to require industry members to report certain verbal activity to CAT, including “telephone discussions between an Industry Member and a client that may involve firm bid and offer communications” and “unstructured electronic and verbal communications that are not currently captured by Industry Member order management or execution systems.”⁶² On July 28, 2023, the Commission extended this exemptive relief to July 31, 2026.⁶³

The CAT Technical Specifications require the reporting of all orders, even those that are generated from a manual process, such as a phone call or a chat-based messaging system.⁶⁴ It is not clear at this time the scope of additional reporting that will be required when the current exemption for certain verbal activity expires, but FIF and SIFMA members are concerned that significant additional reporting will be

⁶² Initial Verbal Activity Exemption, at 13-14.

⁶³ Exchange Act Release No. 98023 (July 28, 2023) (Order Granting a Temporary Conditional Exemption Pursuant to Section 36(a)(1) of the Securities Exchange Act of 1934 and Rule 608(e) of Regulation NMS Under the Exchange Act, Relating to the Reporting of Certain Activities on the Floor of National Securities Exchanges and Certain Activities by Industry Members Off Exchange Floors, as Required by Section 6.4(d) of the National Market System Plan Governing the Consolidated Audit Trail).

⁶⁴ April 2023 CAT Technical Specifications, at 34.

required. On December 16, 2022, FIF submitted a letter to the Commission identifying specific concerns if this exemption were to expire.⁶⁵ In the December 2022 letter, FIF members discuss why, based on the wording of the Rule and the CAT NMS Plan, the verbal activity that would be reportable if this exemption were to expire should not be reportable to CAT. In the December 2022 letter, FIF members estimate an annual cost in excess of \$4.4 billion for the reporting that would be required if this exemption were to expire.⁶⁶ This estimate only relates to the costs for reporting certain upstairs verbal activity that is not currently reportable to CAT and does not consider costs for reporting certain floor-based verbal activity that is not currently reportable to CAT. This cost estimate assumes that industry members continue their current trading activity, but FIF members note in the December 2022 letter that “Because of the significant cost that would be involved to capture and interpret verbal activity, it is likely that industry members will curtail their current verbal activity, resulting in reduced execution quality for customer orders and reduced market liquidity.”⁶⁷

The FIF December 2022 letter focuses on CAT reporting of “upstairs” verbal activity (i.e., verbal activity that does not occur on an exchange floor) and does not focus on CAT reporting for certain floor-based verbal activity that would be required if the current exemptions for reporting verbal activity to CAT were to expire. Other market participants have expressed concerns about certain floor-based verbal activity that firms would need to report to CAT if the current exemptions for reporting verbal activity to CAT were to expire. FIF and SIFMA members agree with the concerns identified by these other market participants.

Broker-dealer representatives have been engaged in active communication with Commission representatives as to the practical impossibility of what the Commission would be requiring. Though FIF and SIFMA are pleased that the Commission has just issued an order exempting these new reporting requirements until July 2026, the Commission should either make the exemption permanent, or confirm that Rule 613 and the Plan do not in fact require verbal activity that is the subject of the exemptive order to be reported to CAT. This is because the current extension still risks imposing huge increases in CAT costs in the near future: the scope of this requirement is so enormous that well before the expiry of the three-year exemption, industry members would need to begin building systems to translate and process unstructured discussions between counterparties, and CAT would need to begin developing and implementing a plethora of new specifications to handle the idiosyncratic nature of unstructured communications.

Requiring CAT reporting of non-executable RFQ responses

Commission Rule 613 requires the reporting of order events. As fully described in the Plan Participants’ original version of the CAT Technical Specifications⁶⁸ and associated FAQs, non-executable RFQ (request

⁶⁵ FIF has posted this letter in the public section of the FIF website at the following location: <https://fif.com/index.php/working-groups>.

⁶⁶ Id. at 3, 6-8 and 20-21.

⁶⁷ Id. at 3.

⁶⁸ See, for example, CAT Reporting Technical Specifications for Industry Members, Version 4.0.0 (June 30, 2020), available at <https://catnmsplan.com/sites/default/files/2020-08/6.30.2020->

for quote) responses are not orders and, thus, should not be reportable to CAT.⁶⁹ These original versions provided explicit guidance on when the response to an RFQ would itself be considered an order and needed to be reported to CAT. The original guidance made clear that non-executable RFQ responses are not reportable to CAT. Rather, reporting would only begin if and when an order was generated as the result of a mutual agreement between parties engaged in an RFQ process.⁷⁰

However, subsequent to the industry fully implementing the approved Technical Specifications for Phases 2c and 2d, the Commission has insisted that non-executable RFQ responses now be reported to CAT.⁷¹ As discussed by FIF in a letter submitted to the Commission on June 1, 2023, these requirements are inconsistent with the approved Technical Specifications and explicit guidance from the participants.⁷² The Commission also is insisting that the solicitor report these non-executable RFQ responses.⁷³ In the interim the CAT Plan Participants have asked for temporary exemptive relief for this new requirement to allow the CAT Plan Participants the necessary time to create new technical specifications, and for the industry to develop new systems to comply.⁷⁴ For many firms, this new requirement will be very costly to implement. There are also potential implications for books-and-records and various NMS rules if the Commission were to re-interpret the meaning of an order and quote simply to force the reporting of non-executable RFQ responses to CAT.⁷⁵

Regardless, the Commission has directed the CAT Operating Committee and FINRA CAT, LLC (“FINRA CAT”), the plan processor for CAT, to create specifications for industry members to report non-executable RFQ responses to CAT. This effort has required, and will continue to require, an unknown number of staff hours: to meet, discuss, and draft specifications; to present the draft to industry and gather feedback; and to re-draft and finalize the specifications. In turn, this action by the Commission has cost, and will continue to cost, the industry countless person-hours to analyze the impact and plan implementation. If the Commission continues to mandate this expansion of CAT, the industry will incur significant implementation costs and potentially be required to change trading workflows.

FIF and SIFMA recommend that the Commission not extend the reporting requirements of CAT beyond Rule 613 and the approved Plan by requiring the reporting of non-executable RFQ responses and the

[CAT Reporting Technical Specifications for Industry Members v4.0.0 CLEAN.pdf \(“June 2020 CAT Technical Specifications”\)](#), at 31. This is the original version of the CAT Technical Specifications for Phase 2d.

⁶⁹ For additional information on this issue, please refer to the letters on non-executable RFQ responses submitted by FIF to (i) the Commission (“FIF June 2023 Letter to SEC on RFQ Responses”), and (ii) the CAT Plan Participants and FINRA CAT on June 1, 2023. FIF has posted these letters in the public section of the FIF website at the following location: <https://fif.com/index.php/working-groups>.

⁷⁰ Ibid.

⁷¹ This change in requirements is evidenced by the letter dated May 23, 2023 submitted by Brandon Becker, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Securities and Exchange Commission (“Request for Exemption from Certain Provisions of the National Market System Plan Governing the Consolidated Audit Trail Related to Electronic RFQ Responses”), available at <https://catnmsplan.com/sites/default/files/2023-05/05.23.23-Exemption-Request-Regarding-Responses-to-Electronic-RFQs.pdf> (“RFQ Responses Exemptive Request”).

⁷² See FIF June 2023 Letter to SEC on RFQ Responses.

⁷³ See RFQ Responses Exemptive Request.

⁷⁴ Ibid.

⁷⁵ See FIF June 2023 Letter to SEC on RFQ Responses, at 10-12.

receipt of such responses. Changes in these areas will be especially costly for both broker-dealers and CAT itself since the reporting of RFQ data has already been fully addressed by the CAT Plan Participants and FINRA CAT as part of the conclusion of Phase 2d: the CAT Plan Participants and FINRA CAT issued FAQs providing detailed guidance;⁷⁶ the CAT Plan Participants and FINRA CAT developed detailed Technical Specifications with input from industry members;⁷⁷ the industry and CAT have completed implementing the specifications; and the industry has been reporting in accordance with the specifications and guidance from the CAT Plan Participants and FINRA CAT since the launch of CAT in 2020. Forcing the CAT Plan Participants and the industry to dramatically expand reporting of new RFQ data not required by the Plan would seem inconsistent with the goals of addressing CAT's ever-rising costs.

Requiring CAT reporting of request messages

Commission Rule 613 enumerates an explicit set of events that must be reported to CAT, such as the generation of a new order, the routing of such order, the receipt of a route, and the cancellation, modification, of execution of an order.⁷⁸ When first implemented, the CAT Plan Participants developed specifications to reflect the specific events enumerated in Rule 613. Over time, the Commission has insisted on a more expansive view requiring intermediate messages to be reported to CAT, where the messages do not reflect CAT events identified in Rule 613. This includes, for example, requiring a reporting firm to report when it sends or receives a cancel request. A cancel request is the precursor message that would either lead to (or not lead to) the cancellation of an order. The cancellation of an order is reportable to CAT, but the precursor cancel request should not be reportable to CAT. CAT was not originally designed to be a duplicate of the entire message bus of each broker-dealer and exchange, but based on direction from the Commission, CAT requirements have greatly expanded to include two-sided duplicate reporting of underlying messages that may lead to, but are not themselves, CAT-reportable events as defined in Rule 613. In fact, had CAT originally been intended to capture every message sent between two firms or venues, the industry might have recommended a very different architecture and implementation, using common FIX standards as the data format, and deriving industry members' CAT reports from their FIX engines, rather than their downstream "ticket" systems. The Commission's change in perspective about this critical issue, after the initial design, caused enormous confusion and re-work.

These expanded requirements have already been implemented at significant additional costs to broker-dealers, as well as to the central repository that now needs to capture, store, and process many more messages. The Commission should clarify that request messages are not subject to CAT reporting. This would help to address rising CAT costs by reducing internal firm processing and storage costs and reducing processing and storage costs for the CAT system.

⁷⁶ See, for example, CAT FAQ B45, available at <https://catnmsplan.com/faq>.

⁷⁷ See, for example, June 2020 CAT Technical Specifications, at 31.

⁷⁸ 17 CFR §242.613(c)(7).

Requiring that an order recipient report rejections to CAT

Commission Rule 613 enumerates an explicit set of events that need to be reported to CAT, such as the generation of a new order, the routing of such order, the receipt of a route, and the cancellation, modification, or execution of an order.⁷⁹ On December 16, 2020, the Commission granted the CAT Plan Participants temporary exemptive relief, until July 31, 2023, from “the requirement in Section 6.3(d) of the CAT NMS Plan that requires the Participants to report rejected orders.”⁸⁰ On July 8, 2022, the Commission extended this temporary exemptive relief until July 31, 2024.⁸¹ On May 19, 2023, the Commission further extended this temporary exemptive relief until January 31, 2025.⁸²

Under Rule 613, a firm that does not generate an order is only required to report the order to CAT if it successfully receives the order in its systems. There are numerous instances where a broker-dealer or exchange routes an order to another broker-dealer or exchange, and the other broker-dealer or exchange does not accept the order. Instead, the order is rejected by the other party before it ever enters that party’s order-processing workflow. This can occur for numerous reasons, such as a malformed order message, an order for an unknown symbol, an order with an unknown participant ID, or an outage in various places in the two parties’ or their vendors’ technology stacks.

Today, as specified in the CAT Technical Specifications, when an order is routed from one party to another, that route is reported to CAT, even if the order is rejected by the receiving party (in which case the sending party includes a flag on the CAT report indicating the rejection).⁸³ Today, if the receiving party accepts the order, it must also report the order to CAT. But today, this is only true if the receiving party accepts and does not reject the order. When the Commission’s current exemption for rejected orders expires, it is unclear whether broker-dealers would be required to report to CAT orders that they reject, or if only exchanges would be subject to this reporting.

If the Commission intends to impose this obligation on broker-dealers (i.e., the obligation to report to CAT any orders that the receiving party has rejected at its gateway, even if it never reaches the order management system of the receiving party), this would be a very expansive and ill-defined requirement because it would require broker-dealers to create completely new systems that “accept” rejected orders simply for the purpose of reporting such rejections to CAT. Had Rule 613 required this type of reporting, industry members might have recommended a whole different approach to CAT from the beginning, deriving data from FIX logs instead of “ticket” systems. Such reporting also would be duplicative since CAT already knows the original order was rejected based on the route report from the sending party.

FIF and SIFMA recommend that the Commission not extend the reporting requirements of CAT beyond Rule 613 or the approved Plan by requiring that firms report events related to orders that are never accepted and are typically not part of a firm’s books and records. If the Commission were to refrain from imposing this requirement, this would significantly help to avoid further exacerbating rising CAT costs by

⁷⁹ Ibid.

⁸⁰ December 2020 Exemption, at 11-12.

⁸¹ July 2022 Exemption, at 36-39.

⁸² May 2023 Exemption, at 9.

⁸³ April 2023 CAT Technical Specifications, at 31.

reducing the requirement that firms build completely new systems to “accept” orders for CAT purposes that they otherwise would have rejected, as well as reducing processing and storage costs for the CAT system itself.

Requiring an order sender to report venue (order recipient) port settings

Rule 613(c)(7) of Regulation NMS requires that the “material terms” of an order be reported to CAT in connection with the receipt, origination, routing, modification or cancellation of the order.⁸⁴ Rule 613(j)(7) of Regulation NMS 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.⁸⁵

On December 16, 2020, the Commission granted the CAT Plan Participants temporary exemptive relief, until July 31, 2023, from “the requirement ... of the CAT NMS Plan that the Participants report, and amend their Compliance Rules to require Industry Members report the Material Terms of an Order that are communicated in port-level settings or instructions.”⁸⁶ On July 8, 2022, the Commission extended this temporary exemptive relief until July 31, 2024.⁸⁷ On May 19, 2023, the Commission further extended this temporary exemptive relief until January 31, 2025.⁸⁸

The CAT Plan Participants and FINRA CAT developed specifications to achieve reporting of the material terms of an order, including adding to CAT the special handling instructions that FINRA had developed for the Order Audit Trail System over the decades. The Commission has insisted that broker-dealers report to CAT every possible parameter and potential condition related to how an order might be processed. This includes parameters that are not specific to any order, but rather are general conditions applied collectively to all orders sent by a broker-dealer to an exchange (or other receiving firm), such as whether the exchange adds collars to unpriced orders to prevent a very large order from inadvertently plowing through many price levels all at once. These settings (referred to in the Commission’s exemptive orders as “port-level settings”) are not managed by a broker-dealer on an order-by-order basis, but rather are defaults applied, by the exchange or other venue, to all orders sent to the given port on a venue. To the extent that a broker-dealer wants to change the defaults for a port setting (such as turning on/off self-match prevention), this is done by a request sent to the venue verbally, or in email, or through the venue’s portal. These requests are not part of any individual order or its audit trail. The Commission is insisting that all port settings be included on every order and route record reported to CAT. There can be numerous settings, with no standards to how they are classified across different

⁸⁴ 17 CFR §242.613(c)(7).

⁸⁵ 17 CFR §242.613(j)(7).

⁸⁶ December 2020 Exemption, at 7-9.

⁸⁷ July 2022 Exemption, at 28-33.

⁸⁸ May 2023 Exemption, at 9.

venues. Many may not even be used (or known) by a broker-dealer. While the Commission has written that a sender would not be responsible for reporting a port setting if the sender is not informed of the setting,⁸⁹ this raises challenging questions as to what represents a sender being “informed” of a port setting and what level of diligence is required for a sender. For example, is a sender required to monitor in real-time updates that a venue posts to the venue’s website?

On January 10, 2023, FIF submitted to the Commission a draft exemptive request letter relating to CAT reporting of port-level settings by an order sender.⁹⁰ The following are some of the points discussed in this letter:

- Port settings are generally not part of FIX messages.
- The costs for adding such data to every CAT record will be enormous.
- The project to add such data to every CAT record will require enormous effort and a long timeline to coordinate across the industry. There will first have to be an agreement on the formats and standards for sharing such data between venues and routing firms across the industry. No such protocol exists today.
- The venue is already reporting the port setting, which limits the surveillance value of the order sender reporting the same setting; in fact, if the order sender reports a port setting this creates an inferior audit trail because surveillance personnel can no longer distinguish between an order-specific instruction transmitted by an order sender (for example, through FIX) and a default setting applied by a venue.

In conversation with the Commission staff, they expressed as an objective for this data that the Commission should be able to observe through the CAT data that the order sending firm is aware of the port settings on the receiving firm’s systems. Simply enabling systematic sharing and reporting of the port settings data between two firms does not demonstrate the knowledge of the sending firm’s order routing personnel. Rather, to discern what the staff seeks to know requires some form of human-level inquiry.

FIF and SIFMA members recommend that the Commission not require the CAT Plan Participants to extend the Technical Specifications by requiring an order sender to report port-level settings applied by a receiving firm. If the Commission were to refrain from imposing this requirement, this would very significantly help to avoid further exacerbating rising CAT costs, both for industry members as well as for the central repository that would need to process, store, sort and index an enormous amount of port-setting data.

Requiring CAT reporting of linkage of representative to customer orders and linkage of order fulfillments to representative and principal orders

Commission Rule 613(e)(1) requires that,

⁸⁹ July 2022 Exemption, at 30.

⁹⁰ FIF has posted the draft letter in the public section of the FIF website at the following location: <https://fif.com/index.php/working-groups>.

the central repository shall store and make available to regulators data in a uniform electronic format, and in a form in which all events pertaining to the same originating order are linked together in a manner that ensures timely and accurate retrieval of the information ... for all reportable events for that order.⁹¹

Appendix D, Section 3, of the CAT NMS Plan provides additional detail relating to CAT linkage requirements.⁹² On December 16, 2020, the Commission granted the CAT Plan Participants temporary exemptive relief, until July 31, 2023, from “the requirement in Section 3, Appendix D of the CAT NMS Plan that the Participants create the lifecycle between customer orders to representative orders created in firm accounts for the purpose of facilitating a customer order...”⁹³ On July 8, 2022, the Commission extended this temporary exemptive relief until July 31, 2024.⁹⁴ On May 19, 2023, the Commission further extended this temporary exemptive relief until January 31, 2025.⁹⁵

In granting the original exemption in December 2020, the Commission wrote:

The Commission understands that the Participants do not currently have the ability to create lifecycles in certain representative order scenarios, particularly because of the difficulty of linking representative orders for Industry Members with separate order management systems and execution management systems that do not currently have a systematic or direct link between them.⁹⁶

Based on the statement above, the CAT Technical Specifications and other CAT documentation, FIF and SIFMA members understand that the current exemption applies where a firm does not maintain linkage in its systems.⁹⁷ While not expressly stated in the three Commission exemptive orders identified above, FIF and SIFMA members understand based on updates by the CAT Plan Participants and FINRA CAT to the CAT Technical Specifications and other CAT documentation,⁹⁸ that the Commission will require three types of linkage as of February 1, 2025:

- Linkage of representative to customer orders
- Linkage of order fulfillments to representative orders
- Linkage of order fulfillments to principal orders.

As a result, the Commission is requiring firms to report CAT linkages that firms themselves do not utilize or maintain in their own systems. FIF and SIFMA members do not believe that the Commission is authorized under Commission Rule 613 to mandate that firms provide these linkages in scenarios where firms do not maintain these linkages in their systems. While Rule 613(e)(1) requires linkage of “all

⁹¹ 17 CFR §242.613(e)(1).

⁹² CAT NMS Plan, at D-7 to D-10.

⁹³ December 2020 Exemption, at 9-11.

⁹⁴ July 2022 Exemption, at 33-36.

⁹⁵ May 2023 Exemption, at 9.

⁹⁶ December 2020 Exemption, at 9-10.

⁹⁷ April 2023 CAT Technical Specifications, at 330-336.

⁹⁸ Ibid.

events pertaining to the same original order,” a representative order is not the same order as a customer order. The required linkages for order fulfillments also are not “pertaining to the same original order” where a firm does not maintain these linkages in its systems and provides fulfillments from a pool of executed orders without reference to a specific executed order.

In the original CAT Technical Specifications approved by the CAT Operating Committee, the CAT Plan Participants provided practical mechanisms for firms to report events where order-by-order linkages do not exist,⁹⁹ but the understanding of FIF and SIFMA is that the Commission is requiring that these mechanisms be retired in the future.¹⁰⁰

To reduce the costs to industry members that would otherwise have to report to CAT order-by-order linkages that do not exist, as well as to reduce the costs to CAT stemming from the additional resources needed to process these additional linkages, FIF and SIFMA members recommend that the Commission confirm that linkages for events across unlinked systems are not in fact required to be reported to CAT. This would help to address rising internal member CAT costs and rising CAT operating costs. Alternatively, if the Commission does not agree with the legal determination above, the Commission could address rising CAT costs by making the current exemptions with respect to these linkages permanent.

There are numerous broker-dealer workflows where firms do not maintain linkage between representative and customer orders or between order fulfillments and representative or principal orders. In many cases, there is no direct one-to-one mapping between downstream and upstream events. Based on the current CAT Technical Specifications and other CAT documentation, broker-dealers are required to identify these scenarios through various flags and indicators on CAT records indicating general, but not order-by-order, linkages as needed. However, as of February 1, 2025, the Commission will mandate that broker-dealers, without exception, be able to link and report order-by-order linkages to CAT even if such linkages do not exist. At the direction of the Commission, the CAT Plan Participants and FINRA CAT have updated the CAT Technical Specifications and other CAT documentation to reflect the Commission’s mandate that linkages be reported in every instance, regardless of whether broker-dealer workflows in fact contain such linkages.¹⁰¹

On January 10, 2023, FIF submitted to the Commission a draft exemptive request letter relating to linkage of representative orders to customer orders and linkage of order fulfillments to representative and principal orders.¹⁰² FIF concluded as follows with respect to linkage of representative orders to customer orders:

Requiring the linkage of representative to customer orders for unlinked representative order workflows will require changes to order handling workflows, which was not the

⁹⁹ See, for example, [June 2020 CAT Technical Specifications](#), at 258-264. This is the original version of the CAT Technical Specifications for Phase 2d.

¹⁰⁰ See, for example, April 2023 CAT Technical Specifications, at 330-336.

¹⁰¹ Ibid.

¹⁰² FIF has posted the draft letter in the public section of the FIF website at the following location: <https://fif.com/index.php/working-groups>.

intent of CAT. As discussed above, this will result in reduced execution quality for customer orders and a reduction in displayed market liquidity. Requiring this linkage also will involve significant costs and work for Industry Members. Accordingly, FIF, on behalf of our members, requests that the Commission grant exemptive relief to Industry Members from the requirement to link representative orders to customer orders for unlinked representative order workflows.¹⁰³

FIF concluded as follows with respect to linkage of order fulfillments to representative and principal orders:

Requiring the linkage of order fulfillments to representative or principal orders for unlinked fulfillment workflows will result in Industry Members reporting linkages to CAT that do not accurately reflect the fulfillment processes of these Industry Members. Requiring this linkage also will involve significant work for firms to re-engineer their position management systems and the systems that interact with these position management systems. As a result of the time and cost involved, certain firms could choose not to implement this linkage and instead handle customer orders as agent. For the reasons discussed above, this would result in reduced execution quality for customer orders and a reduction in displayed liquidity. Accordingly, FIF, on behalf of our members, requests that the Commission grant exemptive relief from the requirement for Industry Members to link order fulfillments to principal or representative orders.¹⁰⁴

CAT Customer and Account Information system (“CAIS”)

The Commission has imposed various mandates with respect to CAIS reporting that have greatly increased internal industry costs. For example, the Commission has required firms to report certain data to CAIS for “Authorized Traders” when there is no regulatory obligation for firms to collect this data.¹⁰⁵ FIF has submitted in writing various recommendations that would assist firms in managing internal CAIS reporting costs:

- Providing an exemption from the requirement for a firm to report the prior firm’s CRD and FDID for “Mass Transfer” scenarios
- Removing “Material Inconsistencies” from CAIS
- Limiting the scenarios where the CAIS system rejects a record submission.

FIF and SIFMA members recommend that the Commission implement the recommendations above and similar industry member recommendations that would assist firms in managing internal CAIS reporting costs. These recommendations also would help to manage CAIS system processing costs.

¹⁰³ Id. at 5.

¹⁰⁴ Id. at 8.

¹⁰⁵ See, for example, CAT Reporting Customer & Account Technical Specifications for Industry Members, Version 2.0 r9.2 (Sept. 20, 2022), available at [https://catnmsplan.com/sites/default/files/2022-09/09.20.22-Full CAIS Technical Specifications 2.0 R9.2 CLEAN.pdf](https://catnmsplan.com/sites/default/files/2022-09/09.20.22-Full%20CAIS%20Technical%20Specifications%20R9.2%20CLEAN.pdf), at 29-30.

Other reporting requirements that the Commission has imposed

FIF and SIFMA members note that the Commission has imposed various other CAT reporting requirements that are beyond the scope of Rule 613 and the CAT NMS Plan. These include requirements relating to quoting activity on the OTC Link ATS operated by OTC Markets and the requirement to report to CAIS certain data for “Authorized Traders” when there is no regulatory obligation for firms to collect this data. FIF and SIFMA do not discuss these reporting requirements in detail because, while these requirements have been, and continue to be, costly for firms to implement, they have already been implemented.

I. Based on Rule 613 and the CAT adopting release, additional reporting requirements proposed by the Commission -- where the costs were not considered in connection with the Commission’s approval of the CAT NMS Plan -- should require a CAT NMS Plan amendment

FIF and SIFMA members are concerned that the additional reporting requirements being imposed by the Commission have not been subject to an appropriate cost-benefit analysis. Notably, the Commission did not conduct its standard cost-benefit analysis when it adopted CAT. Instead, Commission Rule 613(a)(1) requires the CAT NMS Plan to discuss:

(vii) The detailed estimated costs for creating, implementing, ***and maintaining*** [emphasis added] the consolidated audit trail as contemplated by the national market system plan, which estimated costs should specify:

(A) ***An estimate of the costs to the plan sponsors for establishing and maintaining the central repository*** [emphasis added];

(B) ***An estimate of the costs to members of the plan sponsors, initially and on an ongoing basis*** [emphasis added], for reporting the data required by the national market system plan;

(C) An estimate of the costs to the plan sponsors, initially and on an ongoing basis, for reporting the data required by the national market system plan; and

(D) How the plan sponsors propose to fund the creation, implementation, and maintenance of the consolidated audit trail, including the proposed allocation of such estimated costs among the plan sponsors, and between the plan sponsors and members of the plan sponsors;¹⁰⁶

The Commission writes as follows in the adopting release for CAT on the need for robust cost estimation for CAT and fulsome discussion of CAT costs:

¹⁰⁶ 17 CFR §242.613(a)(1)(vii).

The Commission believes that the issues surrounding how the consolidated audit trail should be funded, and how costs in creating, implementing, and maintaining the consolidated audit trail should be allocated, are important, and the Rule requires information about those issues to be provided by the SROs in the NMS plan submitted to the Commission for its consideration. In response to comments and in recognition that an initiative of the size and scope of the consolidated audit trail necessarily will require substantial expenditures by the SROs and their members, the Commission is requiring, pursuant to Rule 613(a)(1)(vii), the SROs to include in the NMS plan, a discussion of costs and how such costs will be allocated. As discussed above, the Commission believes that the SROs will incur costs to create and maintain the central repository. Also, as discussed above, SROs and their members may need to make systems changes or to purchase new systems to record and report the data required by the NMS plan to the central repository. SROs and their members will incur upfront costs, as well as ongoing costs to record and report such information. Because, as noted above, these costs can only be analyzed once the SROs narrow the array of choices they have and develop a detailed NMS plan, the Commission believes that the most robust approach for estimating these costs is for the SROs to provide such cost estimates in conjunction with, and guided by, their development of the NMS plan. The Commission believes that a fulsome discussion in the NMS plan of the estimated costs to SROs and their members will aid commenters in providing useful comments that will further the Commission's understanding of the cost implications of the consolidated audit trail. In addition, a fulsome discussion will aid the Commission in its evaluation of whether to approve the NMS plan and in conducting its own analysis of the costs and benefits of the NMS plan.¹⁰⁷

The Commission states in the CAT NMS Plan Approval Order that "... a fulsome discussion in the NMS plan of the estimated costs to SROs and their members will aid commenters in providing useful comments that will further the Commission's understanding of the cost implications of the consolidated audit trail."¹⁰⁸ According to the Commission, this "fulsome discussion will aid the Commission in its evaluation of whether to approve the NMS plan and in conducting its own analysis of the costs and benefits of the NMS plan."¹⁰⁹ FIF and SIFMA members are concerned that none of the following reporting requirements discussed above were considered as part of the cost-benefit analysis that the Commission undertook in connection with the Commission's approval of the CAT NMS Plan in 2016:

- Requiring CAT reporting of verbal (unstructured) activity
- Requiring CAT reporting of non-executable RFQ responses
- Requiring CAT reporting of request messages
- Requiring order request recipients to report rejections to CAT
- Requiring order senders to report the port settings of order recipients (venues)
- Requiring CAT reporting of linkage of representative to customer orders and linkage of order fulfillments to representative and principal orders.

¹⁰⁷ CAT Adopting Release, at 45794.

¹⁰⁸ Ibid.

¹⁰⁹ Ibid.

Based on the wording of Rule 613(a)(1) and the Commission’s statements in the CAT adopting release, reporting requirements introduced subsequent to the Commission’s 2016 approval of the CAT NMS Plan that involve significant additional costs not contemplated at the time of CAT NMS Plan approval should require an amendment to the CAT NMS Plan. The amendment should include all required analyses and considerations of the costs and benefits of the new requirements, as well as an analysis to determine whether the scope of such requirements is consistent with those of Rule 613 itself.

Similarly, because the Commission’s proposed changes to the current CAT processing requirements would likely involve further significant increases in CAT operating costs, these proposed changes to processing requirements also should be subject to an appropriate cost-benefit analysis that is included as part of a CAT NMS Plan amendment. As discussed above, the CAT NMS Plan clearly does not contemplate the current level of CAT operating costs (i.e., the level of CAT operating costs based on the current processing requirements), so the Plan certainly does not contemplate (or provide a “fulsome discussion” of) the greatly increased CAT operating costs that would result from the Commission’s proposed changes to these processing requirements.

Finally, FIF and SIFMA members urge the Commission to act cautiously and not to impose any material new reporting requirements for CAT or material changes to the current CAT processing requirements until the Commission, market participants and the public have a better understanding of (i) the factors that have contributed to the significant increases in CAT operating costs over the past few years, (ii) the level of increases that can be expected in future years (based on current reporting and processing requirements), and (iii) whether, and the degree to which, the new CAT reporting requirements being proposed by the Commission and the Commission’s proposed changes to the current CAT processing requirements would further exacerbate these rising CAT operating costs.

* * * * *

FIF and SIFMA appreciate the opportunity to comment on the Commission’s Order. If you would like clarification on any of the items discussed in this letter or would like to discuss further, please contact jcorcoran@sifma.org, egreene@sifma.org or howard.meyerson@fif.com.

Very truly yours,

/s/ Joseph Corcoran

Joseph Corcoran
Managing Director, Associate
General Counsel, SIFMA

/s/ Ellen Greene

Ellen Greene
Managing Director, Equities &
Options Market Structure,
SIFMA

/s/ Howard Meyerson

Howard Meyerson
Managing Director, Financial
Information Forum