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June 23, 2017

Via Electronic Mail (rule-comments@sec.gov)

Mr. Brent J. Fields
Secretary
U.S. Securities & Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: File No. SR-FINRA-2017-013; Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.: Notice of Filing of Proposed Rule Change to Eliminate Requirements That Will Be Duplicative of CAT

Dear Mr. Fields:

The Securities Industry and Financial Markets Association (“SIFMA”)¹ submits this letter to the Securities and Exchange Commission (“Commission”) to comment on the above-referenced proposed rule changes filed by the Financial Industry Regulatory Authority (“FINRA”) to eliminate requirements that will be duplicative of the Consolidated Audit Trail (“CAT”). The elimination of duplicative systems is one of the CAT’s most critical issues, and we support FINRA’s proposal to eliminate the reporting rules for the Order Audit Trail System (“OATS”) and to amend the reporting rules for Electronic Blue Sheets (“EBS”). However, we do not agree with the standards that FINRA has proposed for determining when the OATS and EBS systems will be retired. Accordingly, as discussed further below, we believe the proposal should not be approved unless and until the standards for retirement are amended as we suggest in more detail below so that the duplicative systems are eliminated in an efficient and timely manner.

Accuracy and Reliability Standards

FINRA should amend the proposed accuracy and reliability standards so that the OATS and EBS requirements can be sunsetted in a reasonable time. Under the proposal, FINRA would require that, before OATS can be retired, the CAT would generally need to achieve a sustained error rate for Industry Member reporting of at least 180 days of 5% or lower, measured on a pre-

¹ The Securities Industry and Financial Markets Association (SIFMA) brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA’s mission is to support a strong financial industry, investor opportunity, capital formation, job creation and economic growth, while building trust and confidence in the financial markets. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit <http://www.sifma.org>.

correction or as-submitted basis and 2% or lower on a post-correction basis (measured at T+5).² The 5% pre-correction and 2% post-correction thresholds would be measured by averaging the error rate across the period, rather than establishing a 5% pre-correction and 2% post-correction maximum each day for 180 consecutive days.

While this standard may be reasonable, it is important that the pre- and post-correction measurements be limited only to those fields that are currently reported to OATS, and not include fields that will be added to the CAT. For example, CAT error rates related to the reporting of customer identification information should not have any bearing on the retirement of OATS, as FINRA does not rely on OATS for that information. Nor should error rates calculated in reference to market activities unrelated to OATS, such as options trading activity, hold up its retirement. It is important that disparities in error rate tolerance between CAT and OATS not serve as a pretext for prolonging the lifespan of duplicative systems where the disparities relate to information not reported to OATS. To facilitate the prompt retirement of OATS and other applicable systems, the Plan Participants should establish a test period to gather information prior to production reporting. This would enable CAT to go into production at a confidence level that allows its reporting systems to serve as many existing regulatory requirements and accompanying surveillance programs as possible.

Small Industry Member Data Availability

SIFMA supports a phased-in implementation for broker-dealer reporting to the CAT. However, the implementation should not be based on the size of the firm and whether a firm is deemed a “Large” or “Small” Industry Member. Rather, the first phase of reporting should be for current OATS reporters, with the subsequent phase-in for excluded members or non-reporting member firms. Today, there are a number of large broker-dealers that are exempt from reporting to OATS. Requiring such firms to implement the systems and reporting mechanisms for the CAT on a shortened timeframe simply due to their designation as a “Large Industry Member” may result in significant technological and operational challenges as they implement and refine new systems and processes to meet their CAT reporting requirements. A more practical solution would be for FINRA to exempt all excluded members or non-reporting member firms from the first phase of CAT reporting, regardless of whether they are large or small.

By bifurcating the CAT reporting requirements by excluded members or non-reporting member firms, FINRA and the Plan participants would be able to achieve their objective of accelerating OATS reporting for Small Industry Members,³ as the firms in the first phase already possess the systems and expertise associated with audit trail reporting. Additionally, this would minimize the burden on Large Industry Members that currently do not report to OATS and would prevent them from implementing systems and procedures to report to the CAT on a truncated timeframe. Accordingly, SIFMA recommends that the Plan Participants propose an

² See Securities Exchange Act Release No. 80783 (May 26, 2017), 82 FR 25423, 25424 (June 1, 2017).

³ *Id.* at 25425.

amendment to the CAT NMS Plan that expedites the retirement of OATS by mandating that all OATS reporters begin CAT reporting in November 2018, and seek Exemptive Relief for the requirement that delineates the implementation date by Large Industry Member versus Small Industry Member.

Individual Industry Member Exemptions

As we have stated previously, individual industry members should be permitted to phase out of OATS reporting as they reach accurate CAT reporting rates.⁴ As firms start successfully reporting to the CAT, they should not be required to continue to report to duplicative systems. Individual industry member exemptions will facilitate the timely retirement of duplicative systems and help mitigate the risk that the industry as whole is forced to continue to report to duplicative systems, regardless if they are successfully reporting to the CAT, due to the reporting accuracies of the “slowest” broker-dealers.

The proposal, however, is based on a single cut-over from OATS to CAT rather than one that is on a firm-by-firm basis.⁵ To justify this approach, FINRA states that “[a]lthough Technical Specifications for Industry Members are not yet available, FINRA believes it would be inefficient, less reliable, and costlier to attempt the marry the OATS and CAT databases for a temporary period to allow some FINRA member to report to CAT while others continue to report to OATS.”⁶ Additionally, FINRA states that “The primary benefit to a firm-by-firm exemptive approach would be to reduce the amount of time an individual firm is required to report to a legacy system (e.g., OATS) if it is also accurately and reliably reporting to the CAT.”⁷ Industry participants will bear the burden and cost of reporting to duplicative systems. Therefore, the benefits of a phased elimination that permits CAT reporters to cease reporting to OATS and other applicable systems once they are accurately and reliably reporting to the CAT outweighs the generalized and unsubstantiated justifications against such an approach as outlined in the proposal.

In our comment letter on the CAT NMS Plan, we recommended a potential framework for considering the elimination of duplicative systems that included a phased elimination of regulatory reporting requirements.⁸ FINRA itself in the initial and approved CAT NMS Plan raised the potential of a firm-by-firm exemption, which indicates that FINRA must have

⁴ See Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, SIFMA to Brent J. Fields, Secretary, Securities and Exchange Commission dated July 18, 2016 (“**SIFMA CAT Comment Letter**”).

⁵ See 82 FR 25425.

⁶ *Id.*

⁷ See 82 FR at 25426.

⁸ See **SIFMA CAT Comment Letter** at 7.

completed sufficient analysis to determine the feasibility of this.⁹ However, although the CAT technical specifications have not been published, FINRA now provides that it would be less efficient, less reliable, more costly to map CAT fields to OATS. SIFMA questions this assertion, particularly as the Plan Participants have committed to include the relevant fields in the initial phase of the CAT that would be required prior to decommissioning OATS.

Without a firm-by-firm solution, firms that manage their own regulatory reporting obligations will incur, on average, \$725,615¹⁰ in expenses per month to satisfy their current obligations, including OATS, EBS and Large Trader, with OATS and EBS a substantial percentage of the total cost. This is an unnecessary tax on the industry that will be imposed on firms by FINRA, regardless of their ability to generate CAT data which satisfies FINRA's requirements. Accordingly, SIFMA continues to recommend that once a broker-dealer meets accuracy thresholds in CAT, and the surveillance logic is recreated with the Central Repository, FINRA should utilize a subset of data from the CAT, and format it so that it effectively mimics what it would have received from OATS. This approach should allow FINRA to continue to fulfill their regulatory responsibilities, while allowing the industry to recognize some of the anticipated synergies of the CAT.

Automated Submission of Trading Data

SIFMA supports and agrees with the premise that "Once broker-dealer reporting to the CAT has begun, the CAT will contain much of the data the Participants would otherwise have requested via the EBS system for purposes of NMS Securities and OTC Equity Securities."¹¹ While SIFMA agrees with FINRA's conclusion and proposed rule change whereby FINRA will only make requests... if and only if the information is not otherwise available through the CAT,¹² there is a subset of data missing from the CAT NMS Plan that may prevent the regulators from utilizing CAT data as envisioned. SIFMA recommends that the Plan Participants amend the CAT NMS Plan and require that Prime Broker transactions be included in the CAT reporting requirements. This will fulfill the SEC's vision of creating "a comprehensive consolidated audit trail that would allow regulators to efficiently and accurately track all activity throughout the U.S. markets in National Market System (NMS) securities."¹³

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⁹ See Securities Exchange Act Release No. 79318 (November 15, 2016), 81 FR 84696 (November 23, 2016).

¹⁰ See Securities Exchange Act Release No. 77724 (April 27, 2016), 81 FR 30614 (May 17, 2016).

¹¹ See 82 FR at 25426.

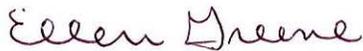
¹² *Id.*

¹³ See Securities Exchange Act Release No. 67457 (July 18, 2012), 77 FR 45722 (August 1, 2012).

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SIFMA greatly appreciates the Commission's consideration of the issues raised above and would be pleased to discuss these comments in greater detail with the Commission and the Staff. If you have any questions, please contact either me (at [REDACTED] or [REDACTED]) or T.R. Lazo (at [REDACTED] or [REDACTED]).

Sincerely,



Ellen Greene
Managing Director



Theodore R. Lazo
Managing Director and
Associate General Counsel

cc: The Honorable Jay Clayton, Chairman
The Honorable Michael S. Piwowar, Commissioner
The Honorable Kara M. Stein, Commissioner

Gary Goldsholle, Deputy Director, Division of Trading and Markets
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