

September 22, 2020

Via Email to rule-comments@sec.gov

Vanessa Countryman
Secretary of the Commission
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Proposed Rule Change to Delete the FINRA Order Audit Trail System (OATS) Rules | SR-FINRA-2020-024

Dear Ms. Countryman:

Refinitiv¹ Wealth Management welcomes the opportunity to provide the Securities and Exchange Commission (“SEC” or the “Commission”) comment on the Financial Industry Regulatory Authority (“FINRA”) proposal to delete the FINRA Order Audit Trail System (“OATS”) rules once the Consolidated Audit Trail (“CAT”) provides sufficiently accurate and reliable data (the “Proposal”).² Refinitiv Wealth Management’s BETA platform (hereinafter “Refinitiv BETA”)³ has a unique perspective as an OATS Order Sending Organization (“OSO”) and CAT Reporting Agent (“CRA”) on behalf of multiple FINRA members. As outlined in detail below: the decommissioning of OATS is urgent, the OATS decommission metrics should not extend beyond OATS activity, and FINRA’s readiness to operationalize CAT Data⁴ in its automated surveillances is critical to the timely decommissioning of OATS.

Decommissioning OATS is Urgent

Refinitiv BETA acts as an OSO on behalf of 121 OATS reporters, submitting on average approximately 350,000 OATS reportable events per day. As outlined in the economic impact analysis contained within the CAT National Market System Plan, OATS is costly and requires significant scarce expertise to operate.⁵ Specific to Refinitiv BETA, enhancements and ongoing maintenance of Refinitiv’s OATS program required approximately 3,600 tracked hours of technology and development resources in 2019. In addition, Refinitiv’s operation of its OATS program introduces additional costs related to system infrastructure, security, and maintenance as well as Refinitiv compliance staff’s time to interpret guidance

¹ Refinitiv provides leading data and insights, trading platforms, and open data and technology platforms that connect a thriving global financial markets community – driving performance in trading, investment, wealth management, regulatory compliance, market data management, enterprise risk and fighting financial crime. For more information visit: www.refinitiv.com.

² Securities Exchange Act Release No. 89679 (August 26, 2020), 85 FR 54461 (September 1, 2020).

³ BETA is a brokerage processing engine, commonly known as a “service bureau,” that provides core middle and back-office processing solutions.

⁴ Unless otherwise specified, capitalized terms used in this rule filing are defined as set forth in the FINRA CAT Compliance Rule Series (available at <https://www.finra.org/rules-guidance/rulebooks/finra-rules/6800>) or in the CAT NMS Plan (available at <https://catnmsplan.com/about-cat/cat-nms-plan>).

⁵ See CAT NMS Plan, Appendix C, Section B.(b)(ii)(C) Description of Cost to CAT Reporters Study Results, pages 51-56 (available at <https://catnmsplan.com/about-cat/cat-nms-plan>).

emanating from FINRA regarding OATS and assist OATS reporters with FINRA inquiries regarding OATS reporting through Refinitiv. These latter two categories introduce approximately an additional 25% of hours expended above the tracked hours (i.e., an additional 900 hours), totalling approximately 4,500 hours of highly skilled technology, development, regulatory, and compliance expertise in 2019 to run Refinitiv's OATS program.

Refinitiv BETA simultaneously acts as a CRA on behalf of 201 CAT Industry Members, submitting on average approximately 1,200,000 Phase 2a / 2b reportable events per day.⁶ In the last 12 months, Refinitiv has tracked approximately 32,500 hours of technology and development resources to build Phases 2a and 2b of CAT. Similar to OATS, Refinitiv incurs additional costs related to system infrastructure, security and configuration (e.g., Secure File Transfer Protocol ports, hard-line connections, etc.) as well as the time and expertise of Refinitiv compliance staff to interpret, socialize, and implement CAT requirements (e.g., weekly customer checkpoints, managing specification and guidance changes, FINRA Rule 6870(c) CAT user agreements, certification, etc.), which require approximately an additional 25% of hours expended above the tracked hours (i.e., an additional 8,125 hours). This totals approximately 40,625 hours of highly skilled technology, development, regulatory, and compliance expertise in the last 12 months to build Refinitiv's CAT program.

As the early phases of CAT and OATS focus on the same reportable activity, running OATS while building CAT creates significant competition for finite expertise. This is broadly true across the industry and specifically true in Refinitiv's case, as staff with the expertise and specialized knowledge to build CAT are the same experts necessary to maintain OATS.⁷ The hours of these experts cannot be double-spent. Separate from resource contention, each moment that CAT and OATS run in parallel for the same underlying reportable activity results in deadweight loss associated with maintaining OATS, the obsolete system. Refinitiv, and the industry broadly, believes in the goals and benefits of CAT. The sooner we can collectively focus our undivided attention on making CAT the best it can be, the better. This requires the urgent decommissioning of OATS.

Relevant Errors | OATS Only

Refinitiv generally agrees with the metrics set forth in the Proposal: a sustained error rate for Industry Member reporting in relevant categories (i.e., Rejection Rates and Data Validations; Intra-Firm Linkages; Inter-Firm Linkages; Order Linkage Rates) for a period of at least 180 days of 5% or lower, measured on a pre-correction or as-submitted basis, and 2% or lower on a post-correction basis (measured at T+5) (the "quantitative" metrics).⁸ However, the Proposal discusses the inclusion of certain CAT errors that do not have a parallel in OATS as part of the relevant error rate for decommissioning OATS. Specifically, the Proposal outlines the evaluation of linkage errors related to representative orders as relevant to decommissioning OATS:

While such linkages are not required in OATS today, FINRA believes that it is appropriate to evaluate them for purposes of retiring OATS. These linkages represent a significant enhancement to the data currently available in OATS and will enhance the quality of the equity audit trail.⁹

⁶ See CAT Phase 2a/2b Technical Specifications, (describing the contents of CAT phases 2a and 2b) (available at <https://catnmsplan.com/specifications/im>).

⁷ Refinitiv stresses that it understands the same resource constraints and expenses to generally apply to the FINRA Members on whose behalf Refinitiv reports for to OATS and CAT.

⁸ See *supra* Note 2 at 54464.

⁹ *Id.*

Refinitiv does not believe the evaluation of errors related to CAT Data that have no analogue in OATS data is necessary or appropriate to decommission OATS. Stated simply, the decommissioning of OATS should depend exclusively on the ability of CAT Data to serve as a high-quality replacement for OATS data. OATS should not linger as a duplicative and obsolete regulatory reporting structure because CAT Data enhancements above and beyond OATS have yet to come online. As such, Refinitiv respectfully requests that FINRA narrowly tailor the evaluation of CAT Data for the purpose of decommissioning OATS to replicating the data quality of OATS.¹⁰

FINRA Readiness for CAT Data Use

Refinitiv believes FINRA's readiness to operationalize CAT Data in its automated surveillances is essential to the speedy decommissioning of OATS. The Proposal outlines several metrics for the decommissioning of OATS unrelated to the quantitative measures of CAT Data as evidenced in pre- and post-correction error rates. Of note, the Proposal states the following:

Even if [the 180-day 5% pre-correction and 2% post-correction industry average] error rate thresholds are met, FINRA must evaluate and confirm through incorporation of CAT Data into its automated surveillance program that the data is accurate and reliable.^{FN40}

^{FN40}For example, FINRA will need to transition all or substantially all of its automated surveillance patterns to CAT Data in order to evaluate the accuracy and reliability of the data.¹¹

The Proposal also outlines the potential for a "significant" time period in addition to the point at which CAT Data meets the quantitative error thresholds outlined in the Proposal before FINRA will permit the decommissioning of OATS:

[W]hile the error rate thresholds may be met over a 180-day period, additional time may be required to reliably establish that usage of the CAT has not revealed material issues that have not been corrected and allow contextual analysis of the data to take place to uncover errors in reporting or processing that may not be apparent from more standardized data validation processes.

Based on the proposed accuracy and reliability standards described above, FINRA anticipates that the time period for implementation for the deletion of the OATS Rules could be significant.¹²

It is reasonable and appropriate for FINRA to require confidence in the ability of its automated surveillances that currently use OATS data to use CAT Data prior to decommissioning OATS. However, the transformation of FINRA automated surveillances to ingest CAT Data and FINRA's evaluation of surveillance output is dependent on factors outside the control of Industry Members. Specifically, it is likely that FINRA must dedicate significant resources to retool its automated surveillances to accept CAT Data and additional resources to analyse, evaluate, and compare the output of automated surveillances with those using OATS data as a source.

¹⁰ Refinitiv recognizes that there may be instances where it is difficult for FINRA to parse the underlying cause of an error in a scenario unique to CAT (e.g., representative order errors unrelated to linkages). However, Refinitiv respectfully requests that FINRA exclude errors unique to CAT to the extent practicable.

¹¹ See *supra* Note 2 at 54465.

¹² *Id.*

As outlined in the above section regarding the urgent need to decommission OATS, the interests of FINRA and the industry are aligned around the goal of FINRA operationalizing CAT Data in its automated surveillances with the confidence necessary for FINRA to decommission OATS. To this end, and to assist Industry Members in end of life planning for OATS, Refinitiv respectfully requests FINRA provide significant transparency into its progress of integrating CAT Data into its automated surveillance program and its evaluation of the output of such surveillances for accuracy and reliability. This transparency should include regular industry checkpoints that describe the status of clearly defined mile markers on the path to decommissioning OATS (e.g., full transition of relevant automated surveillances to CAT Data, accuracy and reliability analysis percentage complete, etc.).¹³

Refinitiv Support for Trade Association Comments

Refinitiv recognizes and appreciates the high level of collaboration and discussion between the industry and regulators as it relates to building and implementing CAT. Trade associations, such as the Securities Industry and Financial Markets Association (“SIFMA”) and Financial Information Forum (“FIF”), bring subject matter experts from diverse business models together to assess and comment on impactful regulation, among other important topics. Refinitiv generally supports the more comprehensive SIFMA and FIF comments responsive to the Proposal.

Conclusion

As outlined above, the concurrent costs in time and expertise to run OATS while building CAT require the urgent decommissioning of OATS. Second, when calculating the relevant error rate for decommissioning OATS, FINRA should only measure the efficacy of CAT Data to replace OATS. Third, FINRA’s ability to operationalize CAT Data in its automated surveillances is critical to the decommissioning of OATS, which requires FINRA to provide transparency to the industry regarding its progress. Lastly, Refinitiv generally supports the more comprehensive SIFMA and FIF comments responsive to the Proposal.

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Refinitiv appreciates the opportunity to provide FINRA and the Commission its perspective on FINRA’s Proposed Rule Change to delete the FINRA OATS Rules. If you have any questions regarding our comments, please contact the undersigned at 332.205.2767.

Respectfully submitted,



William J. Leahey
Head of Regulatory Compliance
Refinitiv Wealth Management

cc Joseph Mrak, Managing Director, Global Head of Wealth Management, Refinitiv
Kieran Smyth, Chief Compliance Officer, Refinitiv

¹³ Refinitiv respects FINRA’s need to maintain confidentiality regarding the details of its automated surveillance programs. As such, Refinitiv requests overall OATS to CAT Data project status information, not granular information that could potentially compromise FINRA’s ability to protect investors and ensure market integrity.