

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-90396; File No. SR-FINRA-2020-029)

November 12, 2020

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change Relating to Granularity of Timestamps in Trade Reports Submitted to FINRA's Equity Trade Reporting Facilities

I. Introduction

On September 17, 2020, the Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to require member firms, in accordance with a Commission order granting exemptive relief from certain requirements of the Consolidated Audit Trail ("CAT") NMS Plan,³ to report time fields, in trade reports submitted to an equity trade reporting facility ("FINRA Facility"),⁴ using the same timestamp granularity that they use to report to the CAT. The proposed rule change was published for comment in the Federal Register on September 29,

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 89051 (June 11, 2020), 85 FR 36631 (June 17, 2020) ("Facility Data Exemption Order" or "Order"). The Commission approved the CAT NMS Plan, as modified, on November 15, 2016. See Securities Exchange Act Release No. 79318 (November 15, 2016), 81 FR 84696 (November 23, 2016) ("CAT NMS Plan Approval Order").

⁴ The FINRA Facilities are the Alternative Display Facility ("ADF"), the FINRA/Nasdaq Trade Reporting Facilities ("TRFs"), the FINRA/NYSE TRF, and the OTC Reporting Facility ("ORF"). Member firms use the ORF to report transactions in OTC Equity Securities and use the other facilities to report transactions in NMS stocks.

2020.⁵ The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposal

A. Background

Currently, FINRA’s equity trade reporting rules require a member to report all time fields—including time of trade execution and, if applicable, time of trade cancellation—to a FINRA Facility in milliseconds, if the member’s system captures time in milliseconds; otherwise a report in seconds is permissible.⁶ However, FINRA’s CAT Compliance Rule⁷ requires an Industry Member⁸ to report a timestamp for a Reportable Event,⁹ including a trade execution, to the CAT’s Central Repository¹⁰ in milliseconds and, if the member’s system captures time in finer increments, to report in such finer increments up to nanoseconds (except as otherwise

⁵ See Securities Exchange Act Release No. 88973 (September 23, 2020), 85 FR 61044 (September 29, 2020) (“Notice”).

⁶ See FINRA Rules 6282.04 and 7130.01 (relating to the ADF); 6380A.04 and 7230A.01 (relating to the FINRA/Nasdaq TRFs); 6380B.04 and 7230B.01 (relating to the FINRA/NYSE TRF); 6622.04 and 7330.01 (relating to the ORF).

⁷ See FINRA Rule 6860(a). “Compliance Rule” is defined under Section 1.1 of the CAT NMS Plan to mean “with respect to a Participant, the rule(s) promulgated by such Participant as contemplated by Section 3.11.” FINRA’s CAT Compliance Rule is the FINRA Rule 6800 Series (Consolidated Audit Trail Compliance Rule).

⁸ “Industry Member” is defined under FINRA Rule 6810(s) to mean a “member of a national securities exchange or a member of a national securities association that is required to record and report information pursuant to the CAT NMS Plan and [the FINRA] Rule 6800 Series.”

⁹ “Reportable Event” is defined under Section 1.1 of the CAT NMS Plan and FINRA Rule 6810(kk) to include, “but is not limited to, the original receipt or origination, modification, routing, execution (in whole or in part) and allocation of an order, and receipt of a routed order.”

¹⁰ “Central Repository” is defined under Section 1.1 of the CAT NMS Plan and FINRA Rule 6810(j) to mean “the repository responsible for the receipt, consolidation, and retention of all information reported to the CAT” pursuant to Rule 613 of Regulation NMS and the CAT NMS Plan.

provided under FINRA Rule 6860 for Manual Order Events).¹¹ Thus, currently there is a difference between the timestamp granularity requirements applicable to member firms reporting to the FINRA Facilities (up to milliseconds) and to the CAT (up to nanoseconds).

On June 11, 2020, the Commission granted the CAT NMS Plan Participants (“Participants”) exemptive relief from, in pertinent part, Section 6.4(d)(ii)(B) of the CAT NMS Plan, which states that each Participant, through its CAT Compliance Rule, must require its Industry Members to record and report to the Central Repository a cancelled trade indicator for any trade that is cancelled. In their request for exemptive relief, the Participants explained that the FINRA Facility Data,¹² which would contain cancelled trade indicators, are required to be reported to the Central Repository in each instance currently required under the CAT NMS Plan. Industry Members would continue to be required to submit either a trade report or a trade cancellation with the requisite information to a FINRA Facility, in accordance with existing rules set by each Participant for its members. For a cancelled trade, an Industry Member would continue to be required to submit a trade cancellation to a FINRA Facility.

The Participants stated in their request for exemptive relief that they would require the Plan Processor¹³ to link the FINRA Facility Data to Industry Member execution reports

¹¹ “Manual Order Event” is defined under FINRA Rule 6810(x) to mean “a non-electronic communication of order related information for which Industry Members must record and report the time of the event.”

¹² “FINRA Facility Data” was defined by the Participants in their request for exemptive relief to include the clearing number of the clearing broker and the canceled trade indicator. See Facility Data Exemption Order, 85 FR at 36631.

¹³ “Plan Processor” is defined under Section 1.1 of the CAT NMS Plan as “the Initial Plan Processor or any other Person selected by the Operating Committee pursuant to SEC Rule 613 and Sections 4.3(b)(i) and 6.1, and with regard to the Initial Plan Processor, the Selection Plan, to perform the CAT processing functions required by SEC Rule 613” and set forth in the CAT NMS Plan.

submitted to the Central Repository beginning on October 26, 2020. The Participants explained that the Compliance Rules would require an Industry Member to submit to the Central Repository an execution report submitted to a FINRA Facility for the corresponding trade report or trade cancellation, beginning on June 22, 2020. Industry Members would be required to report a unique trade identifier, beginning on October 26, 2020, that would be used by the Plan Processor to link the data, including the number of the clearing broker and cancelled trade information, with the Industry Member's execution report.¹⁴

Noting the current difference in the timestamp granularity requirements for Industry Members reporting to a FINRA Facility and Industry Members reporting to the Central Repository, the Participants stated in the request for exemptive relief that FINRA would seek to amend its rules and technical specifications to require the FINRA Facilities to accept timestamps to same level of granularity required by the CAT NMS Plan (which, as noted above, is nanoseconds) and to implement such changes by December 15, 2021, for the TRFs and ADF and by December 15, 2022, for the ORF.¹⁵ FINRA explained in the Notice that, given the difference in timestamp granularity requirements between firms reporting to the FINRA Facilities and to the CAT, it is possible that the CAT could receive the time of trade cancellation in milliseconds from FINRA, while the time of trade cancellation for the same event might have been expressed in increments finer than milliseconds, had the firm reported such information directly to the CAT. In such instances, the CAT would not receive the same data that it would have received absent the exemptive relief.¹⁶

¹⁴ See Facility Data Exemption Order, 85 FR at 36632.

¹⁵ See id.

¹⁶ For example, assume that a firm cancels a trade at 10:30:00.123456 and reports the cancellation to a FINRA Facility with a trade cancellation time of 10:30:00.123 (the timestamp is truncated at the millisecond level for reporting to the FINRA Facility). As a

B. Proposed Amendments to FINRA Facility Rules

To comply with the conditions set forth in the Facility Data Exemption Order, FINRA has proposed identical amendments to FINRA Facility rules¹⁷ that will require an Industry Member with an obligation to report an order execution event to the Central Repository pursuant to FINRA's CAT Compliance Rule to report the time field (including time of execution and time of cancellation, if applicable) in the trade report submitted to a FINRA Facility using the same timestamp granularity, as set forth in FINRA Rule 6860 (nanoseconds), that the member would use to report to the CAT.

Because almost all trades that must be reported to a FINRA Facility also must be reported to the CAT,¹⁸ a member firm with a trade reporting obligation under the FINRA Facility rules also has a CAT reporting obligation, and is therefore already subject to the timestamp granularity requirements of the CAT Compliance Rule. Given that a CAT Reporter¹⁹ must have systems that capture time in at least milliseconds to comply with CAT requirements, FINRA expects that firm to report to the appropriate FINRA Facility in milliseconds under FINRA's current trade

consequence of the Facility Data Exemption Order, the data in the CAT reflects the time of cancellation as 10:30:00.123, which is the time submitted in the FINRA Facility Data. Had the firm reported the trade cancellation directly to the CAT, the data in the CAT would reflect the time of cancellation as 10:30:00.123456. See Notice, 85 FR at 61045.

¹⁷ See FINRA Rules 6282.04, 6380A.04, 6380B.04, 6622.04, 7130.01, 7230A.01, 7230B.01 and 7330.01.

¹⁸ In the Facility Data Exemption Order, the Commission described four limited instances, outlined by the Participants, in which an Industry Member would be unable to provide a link between the execution reported to the Central Repository and the related FINRA Facility trade report. See Facility Data Exemption Order, 85 FR at 36632.

¹⁹ "CAT Reporter" is defined under Section 1.1 of the CAT NMS Plan to mean "each national securities exchange, national securities association and Industry Member that is required to record and report information to the Central Repository pursuant to SEC Rule 613(c)."

reporting rules.²⁰ Once the proposed rule change is implemented, any firm capturing and reporting time to the CAT in increments finer than milliseconds would be required to report time to the FINRA Facilities in such finer increments, up to nanoseconds.²¹

In accordance with the conditions of the Facility Data Exemption Order,²² FINRA has stated that the implementation date of the proposed rule change relating to the TRFs and ADF will be no later than December 15, 2021, and the implementation date of the proposed rule change relating to the ORF will be no later than December 15, 2022. FINRA has represented that it will provide advance notice of the implementation dates, including publication of a Regulatory Notice, as well as updated technical specifications and testing schedule, at least 120 days prior to the implementation dates.

III. Discussion and Commission Findings

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.²³ In particular, the Commission finds that the proposed rule

²⁰ See Notice, 85 FR at 61045. Small Industry Members that do not currently report to OATS are not required to begin reporting to the CAT until December 13, 2021. See FINRA Rule 6830(a)(2)(E). Accordingly, FINRA would not require these non-OATS reporters to report to a FINRA Facility in milliseconds until December 13, 2021, unless their systems currently capture milliseconds.

²¹ Because the FINRA Facilities do not currently accept timestamps more granular than milliseconds, FINRA is unable to estimate, based on trade report information, how many firms capture or have the ability to report trade events in increments more granular than milliseconds. In the Notice, FINRA provided statistics with respect to the number and percentage of order execution events reported with a timestamp granularity finer than milliseconds. See Notice, 85 FR at 61045.

²² See 85 FR at 36632.

²³ In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

change is consistent with Section 15A(b)(6) of the Act,²⁴ which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

On June 11, 2020, the Commission issued the Facility Data Exemption Order, which among other things granted an exemption from certain provisions of the CAT NMS Plan relating to the reporting of cancelled trade indicators.²⁵ As a result of that Order, FINRA Facility Data submitted to the Central Repository can be the source of canceled trade indicators rather than records submitted to the Central Repository directly by Industry Members. However, the granularity of timestamps that the Industry Members are required to report to the Central Repository differs from the granularity that FINRA members are currently required to report to the FINRA Facilities. Therefore, the Commission conditioned the Order on FINRA amending the FINRA Facility rules to accept timestamps up to the granularity required by the CAT NMS Plan.²⁶

The Commission previously has found that the CAT NMS Plan is consistent with the Act because, among other things, it will help ensure that regulators can sequence order and execution events with a reasonable degree of accuracy.²⁷ When approving the CAT NMS Plan, the Commission stated that, given the speed with which the industry currently handles orders and executes trades, it is important that the CAT utilize a timestamp that will enable regulators to

²⁴ 15 U.S.C. 78o-3(b)(6).

²⁵ See Facility Data Exemption Order, 85 FR 36631.

²⁶ The Commission imposed other conditions in the Facility Data Exemption Order that are not germane to this proposed rule change.

²⁷ See CAT NMS Plan Approval Order, 81 FR at 84787-88.

reasonably sequence the order in which Reportable Events occur.²⁸ The Commission believed that timestamps in increments greater than a millisecond would undermine the improved ability to sequence events with any reasonable degree of reliability.²⁹ The Commission concluded that this approach will improve the accuracy of order event records, particularly those occurring rapidly across multiple markets, without imposing undue burdens on market participants.³⁰

The Commission finds that the proposed rule change is consistent with the Act because it satisfies a condition that the Commission imposed in the Facility Data Exemption Order. As a result of the proposed rule change, the granularity of time stamps reported to the FINRA Facilities will match the granularity of time stamps reported by Industry Members directly to the CAT. Thus, the proposed rule change will facilitate the sequencing event reports in the CAT, thereby improving the ability of SROs and the Commission to utilize the CAT to oversee the securities markets. By supporting the efficient implementation of the CAT NMS Plan, the proposed rule change furthers the principles of the Act identified by the Commission when approving the CAT NMS Plan.³¹

²⁸ For example, the ability to reconstruct market activity, perform other detailed market analyses, or determine whether a series of orders rapidly entered by a particular market participant is manipulative or otherwise violates SRO rules or federal securities laws requires the audit trail to sequence each order and event accurately. See id., 81 FR at 84788, n. 1632.

²⁹ See id., 81 FR at 84788.

³⁰ See id. The Commission recognizes that, as stated on Appendix C-25 of the CAT NMS Plan, an accurately-sequenced record of orders cannot be based solely on the timestamps provided by CAT Reporters.

³¹ See, e.g., id., 81 FR at 84698 (describing the background and impetus behind the Commission's adoption of Rule 613 of Regulation NMS).

The proposal also is consistent with the Act because the implementation schedule proposed by FINRA complies with Facility Data Exemption Order.³² Pursuant to the terms of that Order, FINRA has represented that the implementation date of the proposed rule change relating to the TRFs and ADF will be no later than December 15, 2021, and the implementation date relating to the ORF will be no later than December 15, 2022. Moreover, FINRA has represented that it will provide advance notice of the implementation date at least 120 days prior to the implementation date. This schedule appears reasonably designed to afford members sufficient time to come into compliance with the proposed rule change while adhering to the conditions set forth in the Facility Data Exemption Order.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,³³ that the proposed rule change (SR-FINRA-2020-029) is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁴

J. Matthew DeLesDernier
Assistant Secretary

³² See Facility Data Exemption Order, 85 FR at 36632.

³³ 15 U.S.C. 78s(b)(2).

³⁴ 17 CFR 200.30-3(a)(12).