

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 88750 / April 27, 2020

Admin. Proc. File No. 3-19766

In the Matter of the Application of

SECURITIES INDUSTRY AND FINANCIAL MARKETS
ASSOCIATION

For Review of Action Taken by

CAT LLC AND CERTAIN SELF-REGULATORY
ORGANIZATIONS

ORDER GRANTING EXTENSION OF TIME

On April 22, 2020, the Securities Industry and Financial Markets Association (“SIFMA”) filed an application for review of action taken by certain self-regulatory organizations (“SROs”) “that prohibits and limits access by SIFMA members . . . to the Consolidated Audit Trail (‘CAT’) System, which is operated and managed by the SROs through Consolidated Audit Trail, LLC (‘CAT LLC’).” That same day, SIFMA also filed a motion requesting that “the challenged SRO action limiting access to the CAT System be stayed until the Commission has an opportunity to consider and rule on SIFMA’s Application.” SIFMA included a certificate of service that indicated it served CAT LLC via email on April 22, 2020.

On April 23, 2020, CAT LLC filed a letter stating that it intended “to file an opposition to the Stay Motion within 30 days of service, unless directed otherwise.” CAT LLC stated that it did “not believe there is any exigency to justify a shorter deadline for CAT LLC’s opposition” because to comply with current deadlines for reporting to the CAT System “industry members need not commence testing with live transaction data until . . . June 8, 2020.” CAT LLC also stated that a 30-day period was “consistent with the Commission’s recent order issued in light of the ongoing pandemic, which provides that ‘all reasonable requests for extensions of time will not be disfavored.’” CAT LLC stated further that “logistical issues caused by the COVID-19 pandemic would make complying with a shorter deadline, which we do not believe applies, challenging.” In its letter, CAT LLC suggested that a 30-day period for opposing the stay motion was justified in light of Commission Rule of Practice 450.¹

¹ 17 C.F.R. § 201.450.

On April 24, 2020, SIFMA filed a letter stating that Commission Rule of Practice 154 “governs the timing of the opposition to the stay motion” and provides that oppositions “shall be filed within five days after service of the motion” and replies “within three days after service of the opposition.”² SIFMA stated that “the extension sought by CAT LLC is not reasonable under the circumstances” in light of the “June 8, 2020 deadline for CAT testing with live transaction data” because such an extension would “defeat[] the purpose for which the stay motion was filed: to prevent . . . limits on access to the CAT System from causing Industry Members to miss CAT deadlines.” SIFMA did “not object to a schedule that would effectively triple the applicable filing deadlines by extending the five-day opposition deadline to fifteen days after service of the motion” with “reply papers due nine days after service of the opposition.”

On April 26, 2020, the parties jointly requested that “that the Commission permit CAT LLC to file its opposition on May 12 and permit SIFMA to file its reply on May 22.” The parties stated that this “proposed schedule is reasonable in light of, among other things, the nature of the Stay Motion and the ongoing pandemic, and would provide for the motion to be fully-briefed approximately two weeks prior to the June 8 deadline for CAT testing with live transaction data, and one month prior to the June 22 deadline for CAT equity reporting.”

Rule of Practice 401 provides that motions for stays shall be filed, as was SIFMA’s, “pursuant to Rule 154.”³ As a result, Rule 154 governs the timing for filing an opposition to the stay motion. Rule 450 discusses the timing for filing briefs on the merits.

Rule 154 provides, as SIFMA states, that an opposition to a motion shall be filed within five days after service of the motion and a reply shall be filed within three days after service of the opposition. But Rule 160 provides further that in computing any period of time prescribed in or allowed by the Rules of Practice “Saturdays, Sundays, and Federal legal holidays shall be excluded from the computation when the period of time prescribed or allowed is seven days or less.”⁴ As a result, absent an extension, CAT LLC’s opposition to SIFMA’s motion for a stay would be due five business days from service of the motion.

We construe CAT LLC’s April 23, 2020 letter as a request for an extension of time to file its opposition to SIFMA’s stay motion. Rule 161 provides that the Commission “may, for good cause shown, extend or shorten any time limits prescribed by these Rules of Practice for the filing of any papers.”⁵ Good cause does not exist for an extension of the length CAT LLC seeks in its April 23, 2020 letter. An extension of the length CAT LLC seeks in its April 23, 2020 letter does not appear reasonable in light of the impending deadlines that the parties reference in their letters. Nonetheless, some extension of the time to oppose the stay motion appears reasonable in light of the circumstances mentioned in CAT LLC’s April 23, 2020 letter and SIFMA’s statement in its April 24, 2020 letter that it “does not object to a brief extension.”

² 17 C.F.R. § 201.154.

³ 17 C.F.R. § 201.401.

⁴ 17 C.F.R. § 201.160.

⁵ 17 C.F.R. § 201.161.

Under the circumstances, we will double the time periods provided in Rule 154 for filing oppositions to motions and replies to oppositions while retaining the exclusion of weekends and holidays provided in Rule 160. CAT LLC's opposition will be due May 6, 2020, and SIFMA's reply will be due May 14, 2020. This schedule provides CAT LLC with two weeks from its receipt of the stay motion to file its opposition. It provides SIFMA more than one week from the filing of CAT LLC's opposition to file any reply. In light of the impending deadlines that the parties reference, completing briefing on the stay motion by May 14, 2020 appears warranted.

Therefore, it is ORDERED that the time for CAT LLC to file an opposition to SIFMA's stay motion is extended to May 6, 2020, and the time for SIFMA to file any reply to CAT LLC's opposition to the stay motion is extended to May 14, 2020.

For the Commission, by its Secretary, pursuant to delegated authority.⁶

Vanessa A. Countryman
Secretary

⁶ 17 C.F.R. § 200.30-7(a)(4).