

FINANCIAL INFORMATION FORUM

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Via Electronic Delivery

February 12, 2014

Ms. Elizabeth M. Murphy
Secretary
U. S. Securities and Exchange Commission
100 F Street, NE,
Washington, DC 20549-1090

Re: Release No. 34-70892, File Number 4-668, Proposed National Market System Plan Governing the Process of Selecting a Plan Processor and Developing a Plan for the Consolidated Audit Trail

Dear Ms. Murphy,

The Financial Information Forum (FIF)¹, on behalf of our Consolidated Audit Trail (“CAT”) Working Group (“Working Group”) is submitting this third comment letter² with respect to recent filing of the NMS Plan Governing the Process of Selecting a Plan Processor and Developing a Plan for the Consolidated Audit Trail (“Selection Process NMS Plan”).³ The Working Group has reviewed the SRO response to comment letters⁴ (“SRO Response”) and would like to address that response at this time.

Scope of NDA Fails to Meet SRO Objective of Obtaining Broad Industry Input

FIF Comment Letter II recommended that anonymized bid information be outside the scope of the NDA and that information should be provided to DAG at the same level of detail that will be presented in the CAT NMS Plan subject to public review. The SRO Response acknowledges the importance of broad industry input but restricts access to anonymized bid information to those DAG members that sign a Non-Disclosure Agreement (“NDA”). While the SRO response states that, “*The SROs understand that broad industry input during the development of the CAT NMS Plan is critical to selecting optimal proposed solutions;*” the inability to share this anonymized information to a broader group of industry participants will materially impact the ability for the SROs to obtain the broad industry feedback that they agree is critical to the process.

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 trading and back office service bureaus, broker-dealers, market data vendors and exchanges. Through topic-oriented working groups, FIF participants focus on critical issues and productive solutions to technology developments, regulatory initiatives, and other industry changes.

² See Letter to Elizabeth M. Murphy, Secretary, Commission, from Manisha Kimmel, Executive Director, Financial Information Forum, dated December 23, 2013 (“FIF Comment Letter I”) as well as subsequent comment letter dated January 24, 2014 (“FIF Comment Letter II”).

³ Proposed National Market System Plan Governing the Process of Selecting a Plan Processor and Developing a Plan for the Consolidated Audit Trail, November 13, 2013, Release No. 34-70892, File Number 4-668

⁴ See Letter to Elizabeth M. Murphy, Commission, from Tamara Schademann, BATS Exchange, Inc., et al, dated January 31, 2014.

In reviewing the CAT RFP v2.0,⁵ FIF notes that the SROs have added a new section (Section 1.11.4) which discusses confidentiality of RFP responses. This section acknowledges that, “the NMS Plan, and related SEC filings in connection with SEC approval of the NMS Plan, will include descriptions of the RFP responses, which may be made anonymous and, in some cases, may be specific and include or imply the identity of a Bidder.” Clearly, information relevant to describing the RFP responses will be made public. Given that Bidders cannot change their bids until after the CAT NMS Plan is approved, we do not believe industry discussion of this level of detail as part of the CAT NMS Plan development in any way impairs the fairness of the process. On the contrary, by allowing DAG members to consult with other industry participants we ensure that critical issues are raised and addressed in the CAT NMS Plan.

If it is not possible to share Bidder information even in an anonymized fashion without an NDA, FIF recommends that the scope of the NDA be limited to proprietary information provided by the Bidders. Specifically, all DAG discussions that are not related to proprietary Bidder information should not be subject to the NDA and instead be subject to confidentiality guidelines established at the inception of DAG.⁶

Additionally, a process should be established by which key issues can be further abstracted from proprietary Bid information in order to be brought to a broader group of industry participants. The CAT RFP v2.0, Section 1.11.4(3) supports such a process in that it allows for Bidder proprietary information to be reclassified at SRO request. If need be, a dialogue with Bidders could be established prior to releasing abstracted information.

The importance of broad industry participation cannot be underestimated. DAG currently includes ten broker dealers, one front office service bureau, the OCC and three industry associations. Without the ability to discuss DAG materials with a broader group (including non-DAG members of the industry associations), it is not possible to understand the implications of CAT processor functionality on the myriad of business models and firm types. We will not be developing an industry solution or uncover relevant concerns without the ability to discuss these issues with additional industry participants.

Terms of NDA Require Clarification

The SRO response makes two comments with respect to functional separation that raise questions. First, they state:

In addition, it will be a requirement of the SROs that no member of the Advisory Committee nor DAG will have affiliations with bidding entities, unless such members have functional separation between their representatives on the DAG and their representatives involved with entities preparing or participating in a bid similar to those restrictions imposed on Bidding SROs under Section V(D) of the Selection Plan.

They also state:

Although Bidding SROs are required to maintain the functional separation suggested by the commenter, it will not be practical for all SROs to isolate their employees that participate in the bid evaluation and selection process, as varying skillsets will be required to fully evaluate the bids. Many SROs are faced with resource constraints and would be unable to wall off certain personnel without either decreasing the expertise available to evaluate bids or having inadequate resources to manage their business/commercial functions.

FIF requests clarification on the following:

- What is meant by the term “affiliations with bidding entities”?

⁵ Available at <http://catnmsplan.com/process/>

⁶ Current confidentiality guidelines require DAG members sharing information (within their firms or to association members) to label information as “for discussion purposes only and not intended for further distribution.” As noted in FIF Comment Letter II, much of the information shared at DAG has been produced by DAG industry members.

The ability of DAG members including individual firms and industry associations to comply with this requirement may be difficult given that DAG members may have a relationship with a Bidder or Material Subcontractor in some form, e.g, a minority ownership, supplier, customer, member, and/or event sponsor relationship. FIF would recommend a narrow definition of affiliation that restricts a DAG member from directly participating in the formation of a CAT Bid.

- Will the SROs provide a list of material subcontractors?

At this time, it is not possible to assess relationships with bidding entities without knowing all of the entities involved in bidding. Material subcontractor information is not public.

- If non-SRO participants are similarly resource constrained as described in the SRO response, will functional separation be required?

Finalize Key Functionality Issues Prior to Bid Submission

As noted in the SRO Response, DAG has discussed many topics some of which are ready for SEC review/approval. FIF would urge the SROs and the SEC to work together to finalize exemptive requests and communicate those decisions to bidders prior to bid submission so that RFP responses can more accurately reflect CAT functional requirements. Specifically, decisions regarding the Firm-Designated ID model and Options Market Maker Quote relief are key aspects of CAT Processor functionality that will have a material impact on Bid submissions.

The RFP process is at a critical juncture. SEC and SRO actions will have a direct impact on the quality and capabilities of the CAT processor. As Commissioner Stein stated in a recent speech, “All market participants should be involved in helping to develop the CAT—it is not, nor should it be, the exclusive province of the Commission and the SROs. And we must also move quickly.”⁷ We urge the Commission to act swiftly and work with the SROs to ensure transparency both to the Bidders and the industry.

Regards,



Manisha Kimmel
Executive Director
Financial Information Forum

cc: The Honorable Mary Jo White, Chairman
The Honorable Luis A. Aguilar, Commissioner
The Honorable Daniel J. Gallagher, Commissioner
The Honorable Kara M. Stein, Commissioner
The Honorable Michael S. Piwowar, Commissioner

John Ramsay, Acting Director, Division of Trading and Markets
James R. Burns, Deputy Director, Division of Trading and Markets
David S. Shillman, Associate Director, Division of Trading and Markets
David Hsu, Assistant Director, Division of Trading and Markets

⁷ Remarks before Trader Forum 2014 Equity Trading Summit, Commissioner Kara M. Stein, February 6, 2014.