

# FINANCIAL INFORMATION FORUM

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New York, New York 10005

212-422-8568

February 20, 2020

Mr. Michael Simon  
Chair, CAT NMS Plan Operating Committee

*RE: Request for Limited Extension of the CAT Phase 2a Requirement that Industry Member IDQS Subscribers Report Routes to Global OTC via New Order Events*

Dear Mr. Simon,

On behalf the FIF CAT OTC Equity Securities Subgroup and other similarly situated industry members, the Financial Information Forum (“FIF”)<sup>1</sup> respectfully requests an extension of the Phase 2a requirement that industry member IDQS subscribers report routes to Global OTC as orders. In support of our request, FIF is submitting the comments contained herein. In summary, our comments focus upon:

- *Descriptions of 1) the genesis of the current in-scope workflow; 2) the background of the industry’s understood Phase 2a reporting obligations; and 3) the technical and operational challenges/risks associated with an overly aggressive implementation of this requirement.*
- *Justification of our request for a limited Phase 2a reporting exemption of the requirement that Industry Member IDQS subscribers report routes to Global OTC in the form of an order. To ensure complete compliance with this requirement, FIF requests that the implementation date of this requirement be deferred to Phase 2c. If Phase 2c is untenable, an extension of a minimum of 6 months (on or after October 20, 2020) is necessitated.*

## Introduction

Since the inception of Rule 613, FIF has focused upon working with all CAT stakeholders in support of the complete, timely, and risk-adverse implementation of the Consolidated Audit Trail. The formation of the Industry Member Tech Spec Working Group (“CAT IMTS WG”) in January of 2018 provided FIF with the opportunity to work closely with the SROs, the Plan Processor and Industry Members in a collaborative and efficient environment. The cross-industry information sharing that occurred within the CAT IMTS WG allowed CAT stakeholders to more readily identify and develop solutions to several critical implementation challenges. The collective effort of all CAT IMTS WG

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<sup>1</sup> FIF ([www.fif.com](http://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.

Participants proved to be essential to the ongoing viability of CAT.<sup>2</sup> With less than two months remaining until CAT Phase 2a go-live, FIF remains confident that the significant time and resource allocation bourn by industry stakeholders (collectively the SEC, SROs, Plan Processor and Industry Members) will result the successful roll-out of CAT on April 20, 2020 and beyond.

FIF understands that our industry member firms have completed development and have begun testing for the vast majority of Phase 2a CAT requirements. Until recently, the industry believed that all Phase 2a requirements have been well-settled and have thus implemented CAT models that reflect the Phase 2a and Phase 2b IM Tech Specs. However, the Regulators (collectively the SEC and SROs) and FINRA CAT (“FINRA CAT” or “Plan Processor”) recently confirmed that full compliance with Phase 2a will require IDQS subscribers<sup>3</sup> to generate New Order (MENOs) and Order Route (MEOR) Events to represent and report OTC Link trade messages that are routed to Global OTC.<sup>4</sup> As will be described in greater detail, *infra*, routes to Global OTC are not sent in the form of an order today. Currently, Global OTC-displayed quotes may be accessed by an OTC Link subscriber sending an OTC Link trade message via OTC Link’s IDQS. Once such a trade message is sent, Global OTC may then execute the trade.

IDQS subscriber CAT Reporters (“IDQS subscribers”) were not provided adequate notice of the different treatment of trade messages sent to Global OTC and that Phase 2a will require the generation of a MENO to represent routes to Global OTC. Therefore, IDQS subscribers have developed and initiated testing for Phase 2a with an understanding that routes to Global OTC could be represented (and reported) in the form of an OTC Link message. This newly refined Phase 2a requirement deviates from current business practice and is unlikely to be implemented by a significant number IDQS subscribers prior to Phase 2a go-live. This Phase 2a requirement also deviates from the OATS-to-CAT mapping, the OTC equities-specific scenarios illustrated in the CAT Industry Member Reporting Scenarios Document (“Scenarios”), and CAT FAQ J2.<sup>5</sup> Furthermore, this requirement will result in several unnecessary operational and technical risks as most CAT Reporters’ technical and human resources are currently overextended.

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<sup>2</sup> The IMTS WG facilitated significant improvements to the roll-out of CAT through increased industry engagement via a cross-industry forum that allowed CAT Reporters to raise technical and operational concerns directly to the SEC, SROs, and Plan Processor. Examples of the benefits of the IMTS WG include: 1) markedly improved Industry Member Technical Specifications (“IM Tech Specs”); 2) the development of alternative CAT reporting approaches that alleviated costly and unnecessary systems and business process changes without associated data loss; and 3) information sharing that resulted in additional guidance and educational opportunities.

<sup>3</sup> For the purposes of this letter, IDQS Subscribers refer to brokers-dealers registered with at least one of the three available Inter-Dealer Quotation Systems (“IDQS”).

<sup>4</sup> For the purpose of this letter, routes to Global OTC, whether via another IDQS or otherwise, will be referred to as “routes.”

<sup>5</sup> As a general matter, based on the Participants current understanding of OTC Link functionality, the Participants consider the use of OTC Link messages to be negotiations since these messages are not immediately actionable and require trader intervention before a trade can occur. Therefore, no CAT reporting obligation exists until the terms and conditions of a trade have been agreed upon.

To meet this Phase 2a requirement, IDQS subscribers, OTC Link, and OMSs will need to adequately complete the following by April 20, 2020:

- Socialize across all IDQS subscribers, OMSs and CAT reporting vendors that Phase 2a will require all routes to Global OTC to be represented and reported to CAT as an order (via a New Order Event (MENO) and Route (MEOR));
- Develop logic that will allow IDQS subscribers to translate OTC Link message order attributes (*i.e.* material terms of the order) into a MENO. This represents re-working existing bespoke logic developed for OTC Link messages;
- Integrate MENOs representing routes to Global OTC into broader firm-wide CAT reporting systems;
- Test new logic and CAT reporting systems both internally and externally (CAT test environment);
- For vendors, new software releases will be required to support these changes, which will require testing by their clients to confirm downstream integration and regression of previously deployed (and certified) software;
- Ensure that all IDQS subscribers are positioned to report routes to Global OTC in Phase 2a, including those who use the OTC Link Dealer Platform. This will require OTC Link to register as a CAT Reporting Agent (“CRA”), develop a bespoke system to report routes to Global OTC on behalf of their subscribers to CAT, complete the onboarding process, and perform both internal and external testing.

Given the effort required to comply with Phase 2a’s understood mandate that routes to Global OTC are to be sent as orders; complete implementation will not be possible by April 20, 2020. Therefore, FIF requests an extension of the requirement that IDQS subscribers report routes to Global OTC in the form of an order to Phase 2c. If Phase 2c is untenable, an extension of a minimum of 6 months (on or after October 20, 2020) is necessitated to allow the industry an opportunity to fully comply with this requirement. FIF emphasizes that an extension of this Phase 2a requirement *by least 6 months* will ensure that all IDQS subscribers are positioned to report routes to Global OTC in conformance with the regulators’ expectations.<sup>6</sup> Relief will mitigate the risks associated with incomplete logic builds, testing, and integration of new CAT Reporter/CRA relationships without any loss of information reported today.

#### Background - OTC Link Dissemination of Messages to Global OTC

Today, OTC Link, FINRA (OTCBB) and Global OTC represent the only Rule 15c2-11(e)(2) defined IDQs. On May 19, 2016 Global OTC<sup>7</sup> began operating as an order-driven IDQS for quoting and trading OTC equity securities.<sup>8</sup> On November 21, 2016, Global OTC requested and was granted an

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<sup>6</sup> Initial estimations suggest that the development of required systems logic alone may exceed 2 months. Note this estimation does not include internal and external testing, integration, etc..

<sup>7</sup> Global OTC is operated by Archipelago Trading Services, Inc. and is a subsidiary of the New York Stock Exchange Group (“NYSE”).

<sup>8</sup> See [letter](#) from Ms. Sherry J. Sandler, Intercontinental Exchange to Mr. Stephen Luparello, Director, Division of Trading and Markets, SEC RE: *Request for Exemptive Relief with Respect to Rule 15c2-11*, November 21, 2016 at 1 FN 1.

exemption under Rule 15c2-11 that would allow Global OTC to leverage the “piggyback exception” to transfer quotations from one IDQS to another IDQS operated by another broker-dealer.<sup>9</sup> Global OTC ceased publishing quotes on OTC Link following the SEC’s grant of its exemptive relief request and instead began to operate its own IDQS.

To provide its subscribers with continued access Global OTC-displayed quotes, OTC Link implemented a plan to offer a consolidated data service containing Global OTC top-of-book data. The result of this plan has provided OTC Link subscribers with continued connectivity to Global OTC. In such a case, OTC Link will disseminate an OTC Link message on behalf of their subscribers to Global OTC, who may then execute the trade.<sup>10</sup>

### Phase 2a CAT Reporting Requirements

Pursuant to SEC Rule 613 and the CAT NMS Plan, the scope of Phase 2a OTC equity securities reporting obligations are the same as NMS securities. Therefore, all orders received or originated by a broker-dealer (“CAT Reporter”) whether proprietary or otherwise must be reported to CAT. Phase 2a requires an order-driven IDQSs (ATSs) to report all orders it receives from CAT Reporters. Likewise, CAT Reporters must *report all OTC equity orders routed to an order-driven ATS*.

Unlike NMS equities, OTC equity trades can be facilitated via both order-driven and quote-driven platforms (IDQSs). Further complexity (as described *supra*) is injected into this process as subscribers may access quotes listed on Global OTC’s order-driven platform within OTC Link’s quote-driven platform. As described above, this means OTC Link subscribers may use OTC Link’s OTC Dealer EMS to send an OTC Link trade message to access Global OTC top-of-book.

### Phase 2a Requirement that OTC Link Messages be reported as Orders in Some Circumstances

Prior to October of 2019, the industry understood that in Phase 2a, OTC Link subscriber interest in Global OTC-displayed quotes would be permitted to be routed and reported via an OTC Link message. Despite the order-driven nature of Global OTC’s IDQS, the industry believed that Phase 2a would not require subscribers to deviate from *status quo* (*i.e.* Phase 2a would not prevent subscribers from routing orders in Global OTC-displayed quotes via OTC Link messages). In other words, the industry believed that Global OTC would accept OTC link trade messages and subsequently generate a New Order Accepted Event (MEOA) based upon the information provided in the message.

In October of 2019, a small subset of the industry received indication from the regulators that CAT may require IDQS subscribers to generate a CAT New Order Event (MENO) to represent orders routed to Global OTC in Phase 2a. As discussed, *supra*, industry stakeholders informed the regulators that reporting routes to Global OTC via a MENO in Phase 2a would pose a significant challenge as the industry was not previously aware nor were given reason to believe subscribers would not be permitted to continue to route orders to Global OTC via OTC Link messages. At the

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<sup>9</sup> *Id.*

<sup>10</sup> OTC Link messages sent to Global OTC contain the terms of the order required by Global OTC to initiate the execution of the trade negotiated on OTC Link’s Dealer Platform.

time, the regulators suggested that OTC Link messages may not be permitted in Phase 2a to represent routes to Global OTC since CAT requires Global OTC to receive orders via a CAT MEOA. Once the subgroup became aware of this potential Phase 2a requirement, industry stakeholders engaged in several follow-up discussions expressing both the technical and operational impracticality of requiring all subscribers represent orders routed to Global OTC via the creation of a MENO and associated MEOR.

In January of 2020, *some* industry stakeholders received confirmation that IDQS subscribers will be required to generate and report to CAT a MENO and MEOR to represent routes to Global OTC in Phase 2a. This requirement poses significant technical and operational risks and may not be possible to implement fully prior to Phase 2a CAT “go-live” on April 20, 2020. The following section enumerates the challenges faced by the industry if this new reporting workflow is required in Phase 2a:

*Summary of Technical and Operational Efforts Required by IDQS Subscribers to Represent and Report Routes to Global OTC as Orders*

Routes to Global OTC reported via New Order and Order Route will likely not be implemented by many IDQS subscribers by the April 20, 2020 CAT go-live date. As previously discussed, the industry was not provided a reasonable opportunity to anticipate any deviation from current practice because: 1) any requirement that orders routed from OTC Link to Global OTC be sent as orders (as opposed to OTC Link messages as is permitted today) has not been explicitly nor implicitly articulated in the IM Tech Specs<sup>11</sup> or the companion scenarios document<sup>12</sup>; 2) this requirement deviates from current and prior published guidance elucidated in the OATS-to-CAT FAQ mapping and FAQ J2; and 3) the industry was not informed of a Phase 2a requirement that routes to Global OTC must be sent in the form of an order explicitly or implicitly in any other forum.

In the best-case scenario, industry members who leverage proprietary trading systems (OMSs) to interact with OTC Link’s Dealer Platform will be required to build-out novel logic within their OMS to capture routes to Global OTC as New Order Events. Firms who fall into this category are resource-rich broker-dealers/market makers that have dedicated in-house technology staff who

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<sup>11</sup> Phase 2a OTC equity specific reporting obligations as described in the IM Tech Spec is limited to the following: 1) Unlisted quotes (OTC Equity Securities) received by a broker-dealer operating an inter-dealer quotation system (e.g., Global OTC, OTC Link); 2) Quotes in OTC Equity Securities received by an Industry Member CAT Reporter operating an interdealer quotation system; 3) Quotes in OTC Equity Securities that meet the definition of bid or offer under the CAT NMS Plan sent by a broker-dealer to a quotation venue not operated by a CAT Reporter.

<sup>12</sup> The IM [scenarios document](#) (2.8.1 and 2.8.2) contains two scenarios that describe industry member CAT reporting requirements for OTC equity securities. Both scenarios require CAT Reporters to generate New Order Events to report the trade event *following* trade negotiation through an IDQS in order to facilitate a CAT report that reflects the trade execution sent to the ORF. In other words, the Scenarios direct CAT Reporters to create a New Order Event following commencement of the executed trade. Thus, the New Order Event only reflects the post-trade requirement to report the trade to FINRA. In contrast, routes to Global OTC are a precondition to the execution of a trade and therefore, reporting obligations pursuant to routes from OTC Link to Global OTC are not reflected in the scenarios. Because the scenarios did not carve out Global OTC from the definition of an IDQS, the industry could not reasonably assume that New Order Events must be generated prior to a route to Global OTC. It is suggested that the IM scenario documented be updated so CAT Reporters are clear on the reporting requirements.

have built and therefore fully understand the mechanics of the applicable trading systems. However, even in the best-case scenario, this requirement is likely untenable prior to Phase 2a go-live as an aggressive implementation timeframe injects significant operational risks and may cause firms to deviate from their normal System Development Life Cycle processes. This is because the development of logic required to support a new concept will require 1) initial business analysis; 2) an iterative development cycle that will include coding and associated testing to ensure that system integrity; 3) integration and associated testing with the firm's CAT Reporting infrastructure; and 4) testing with CAT Repository's test environment to ensure the integrity of all reportable Phase 2a CAT data. FIF emphasizes that the aforementioned steps are premised upon revisions to the message routed to Global OTC that are transferrable to a CAT reportable MENO format; the mechanics of which have not yet been solidified.

Most IDQS subscribers do not fit the "best case scenario" as a significant percentage are broker-dealers of limited resources that lack in-house developers and subject matter experts. Today, many of these entities rely on outsourced technology (*i.e.* vendor OMS systems) to access an IDQS or may interact with the IDQS directly through the OTC Dealer EMS. Therefore, these entities will be especially challenged to comply with this requirement by April 20 as they are dependent on 3<sup>rd</sup> parties.

In some cases, IDQS subscribers will be required to identify and onboard 3<sup>rd</sup> party contractors with requisite expertise and knowledge of the workflow in order to develop technology to support this requirement. Identification of a viable 3<sup>rd</sup> party contractor alone may exceed Phase 2a go-live given the dearth of available human resources. In other cases, firms who rely on vendor OMSs to access and engage in trade negotiations in an IDQS will depend upon the OMS to develop logic to support this Phase 2a requirement. OMS systems are currently in the throes of testing for Phase 2a and 2b to support of a large base of CAT Reporters. While possible in a vacuum; in reality, vendor OMSs will be very unlikely to complete this development prior to CAT go-live.

#### *Summary of Technical and Operational Efforts Required by OTC Link*

To support subscriber compliance with this requirement, at minimum OTC Link will also be required to:

- 1) Communicate this requirement to all of their subscribers;
- 2) Engage in significant systems development;
- 3) Identify and integrate additional data into OTC Link messages;
- 4) Register as a CAT Reporting Agent;
- 5) Develop systems required to CAT report on behalf of some subscribers;
- 6) Onboard subscribers (which will include contractual agreements); and
- 7) Perform requisite internal and external testing.

The steps enumerated above represent the minimum foundational elements required by OTC Link to adequately support subscriber compliance with the requirement to route orders to Global OTC in the form of an order. On its own, the development effort required by OTC Link may not be possible prior to Phase 2a. However, the development effort described in conjunction with the anticipated time required to the complete significant operational challenges fundamental to support IDQS

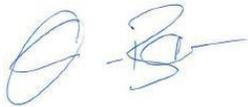
compliance with this requirement in Phase 2a will be untenable and introduce unnecessary risk upon industry stakeholders during the critical lead-up to Phase 2a and Phase 2b go-live.

Conclusion

We appreciate the opportunity to express our concern regarding the understood Phase 2a requirement that IDQS subscribers send routes to Global OTC in the form of an order. For the aforementioned reasons, we respectfully request a limited Phase 2a reporting exemption providing IDQS subscribers until Phase 2c to implement this requirement. If Phase 2c is untenable, an extension of a minimum of 6 months (on or after October 20, 2020) is required to allow IDQS subscribers and their vendors a reasonable opportunity to implement this requirement and mitigate unnecessary risks associated with an overly aggressive implementation timeframe.

We welcome the opportunity to provide additional information pertaining to our request for limited Phase 2a relief. Please feel free to contact me directly at 212-652-4485 or at [chris.bok@fif.com](mailto:chris.bok@fif.com) with any questions.

Respectfully,

A handwritten signature in blue ink, appearing to read 'Chris Bok', with a stylized flourish at the end.

Christopher Bok, Esq.  
Director, Financial Information Forum

CC: Ms. Stephanie Dumont, Senior Vice President and Director of Capital Markets Policy, FINRA;  
Mr. David Chapman, Director, Market Regulation, FINRA;  
Ms. Shelly Bohlin, COO, FINRA CAT, LLC;  
Ms. Manisha Kimmel, Senior Policy Advisor to Chairman Jay Clayton, SEC