

FINANCIAL INFORMATION FORUM

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New York, New York 10005

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March 16, 2020

Mr. Michael Simon,
CAT NMS Plan Operating Committee Chair

Re: FIF Request for an Immediate Pause of initial CAT Phase 2a and CAT Phase 2b Milestones

Dear Mr. Simon,

The Financial Information Forum's ("FIF")¹ Consolidated Audit Trail ("CAT") Committee ("Committee") is respectfully requesting an immediate pause of at least 60 days ("immediate relief" or "pause") from near-term CAT Phase 2a and Phase 2b milestones in response to the recent outbreak of COVID-19 ("COVID-19" or "Coronavirus").² Immediate relief is critical given the accelerated deterioration of normal business activity observed across the industry during the week of March 9, 2020. CAT Reporters are now focused upon implementing novel business resiliency and BCP measures designed to mitigate the growing threat of COVID-19. Even if the severity of the current situation dissipates in the coming weeks, the drastic shifting of priorities in response to the extraordinary facts and circumstances surrounding recent events has all but eliminated any reasonable opportunity for many CAT Reporters to fully complete preparations leading up to Phase 2a and Phase 2b Go-Live.

The COVID-19 pandemic has fundamentally changed nearly all facets of life in a matter of days. The rapid and ongoing deterioration of regular social and business activity is unparalleled to any modern crisis and represents a unique and substantial *force majeure* event that requires a colossal shift of priorities across all sectors society. FIF urges the Regulators³ to provide CAT Reporters with immediate relief, the form and function of which is described below. Immediate relief is necessary to allow CAT Reporters' additional bandwidth to continue the reallocation of resources required to adequately implement the resiliency measures designed to counteract the substantial systemic risks COVID-19 poses to: 1) the health and welfare of the general public; 2) the continued strength of the U.S. economy and Capital Markets; and 3) the financial security of individual and institutional investors.

1. The Regulators grant the industry an immediate delay of all initial CAT Phase 2a/2b compliance milestones of at least 60 days. The pause would shift the Industry Member and CAT Reporter Agent ("CRA") Production Readiness Certification deadline to June 5, the CAT Phase 2a Production Environment "Go Live" compliance date for Equity file submission and data

¹ Established in 1996, FIF is an industry trade group comprised of over 100 brokers, exchanges, and vendors. FIF seeks to address and resolve open implementation issues that impact the securities industry. FIF working groups provide our members with a collaborative environment to discuss critical issues amongst a broad range of subject matter experts. FIF activities help our members gain a better understanding of the implementation impact of new initiatives and assists in their development of low-cost solutions. FIF frequently informs the regulators of the implementation impact of new initiatives and offers alternative solutions through formal comment letters and in-person meetings.

² The scope of FIF's relief request applies to all compliance dates and requirements pertaining to initial Industry Member CAT Phase 2a reporting obligations, inclusive of: 1) the April 6 Industry Member and CAT Reporter Agent Production Readiness Certification deadline; 2) CAT Phase 2a Production Environment "Go Live" for file submission and data validation; and 3) error remediation.

³ For the purpose of this letter, Regulators refers to the Securities and Exchange Commission ("Commission") and the CAT NMS Plan Participants ("Self-Regulatory Organizations" or "SROs").

validation to June 22 and the CAT Phase 2b Production Environment “Go Live” compliance date for Electronic Options file submission and data validation to July 20. We believe a minimum of 60 days is required to provide the Regulators time to assess the facts and circumstances surrounding the pandemic as well as to allow CAT Reporters sufficient time to ramp-up to normal business operations once the threat of COVID-19 dissipates.

2. Following the initial 60-day pause, the Regulators should continue to assess the severity of the impacts of COVID-19 on Firms’ human resources and infrastructure and grant additional delays should conditions worsen. Additionally, depending on the progression and nature of the impacts to Firms’ Operations, an additional conformance period under which firms would not be held to the compliance standards for data accuracy or error corrections may be necessary, once the CAT implementation proceeds.
3. The Regulators allow CAT Reporters who may have completed all required initial Phase 2a/2b development, testing and certification the option of voluntarily reporting during the delay, provided the Regulators determine that the Plan Processor can ensure that the CAT Repository remains fully operational and secure during the crisis. If CAT reporters are permitted to optionally report, these firms should not be held to the accuracy or error correction standards as currently defined.

Executive Summary

The facts and circumstances stemming from the recent outbreak of COVID-19 are unprecedented in modern history. While America has suffered from several crisis⁴ over the past 75 years⁵ (e.g. September 11th terrorist attacks, 2008 financial crisis), none have resulted in the sweeping changes to our day-to-day life unimaginable even a few weeks ago. While this letter will focus upon the impacts of the Coronavirus on CAT implementation efforts, the following illustrates examples of how American life has changed:

- *Social Distancing*: Large scale movement toward social and workplace isolation, including the rapid implementation of new policies that require employees to work remotely and bans of gatherings over a certain (often low) threshold. Restrictions placed upon social gatherings tighten on a daily basis culminating in the blanket shutdowns of restaurants, bars, and schools in major U.S. cities.⁶ Notably, the implementation of ‘human-distancing’ necessarily designed to prevent the spread of the virus has to a large degree suspended on an indefinite basis non-essential human-to-human interaction, including events (sporting events, concerts, trade shows), the availability of public transportation, classroom based education (especially at universities), and the opportunity to dine in restaurants;
- *Negative Economic Impacts*: Even as of the end of February 2020, the significant economic

⁴ The facts and circumstances of COVID-19 differ from prior crisis due to the uncertainty surrounding the future state of the world. Recently published data forecasting best through worst cases scenarios estimate that hundreds of thousands of people will lose their lives from exposure to the virus. The world responded to this threat through the implementation of containment measures that have rapidly and dramatically changed the daily lives of people across the globe.

⁵ While the facts and circumstances are not directly comparable and should not be viewed as such, the most recent example of sweeping changes to the social and business behavior observed over first two weeks of 2020 occurred following the outbreak of World War II.

⁶ On Sunday March 15, Illinois Governor J.B. Pritzker announced that restaurants will be shut down indefinitely to promote social distancing. This news was followed by an announcement from New York City mayor Bill De Blasio on Sunday evening that schools, restaurants, and bars will likewise be closed indefinitely.

impacts of the Coronavirus could not have been rationally predicted.⁷ Notably, the fear and uncertainty surrounding the Coronavirus has resulted in extreme market volatility, unforeseen investor loss, and a slowdown in consumer spending and commerce;

- *Government Response:* The United States government has determined that the turmoil caused by the outbreak of the Coronavirus has reached the threshold of a national emergency. The fallout has and will continue to put in place additional measures to combat the impact of the virus. Currently, the U.S. has banned travel to Europe and several other foreign destinations and initiated spending bills to mitigate economic losses. Local governments have often gone much further as many cities and town have closed schools, limited social gatherings to all but small thresholds, and in some cases quarantined large areas.

Despite the growing crisis, investors continue to buy and sell securities on the public and private markets. CAT reporting broker-dealers serve a foundational role in the buying and selling of securities, which notability include the obligation to ensure they may continue to trade securities even in times of crisis. Due to the dependencies that CAT Reporters place upon human and technology-based resources, turbulent market conditions require significant attention. CAT Reporters to must devote their attention almost solely to tasks required to combat turbulent market conditions that have largely stalled non-mission critical work, including the final preparation for the initial “Go-Live” date of the CAT.

The final 4-6 weeks leading up to the launch of any major new regulatory reporting regime are extremely critical. For several months, the collective industry has and will continue to be focused upon, *inter alia*: testing, compliance with production readiness standards (*i.e.* certification), testing and implementation of production-ready software, definition and implementation of final operational reporting procedures, and technology integration with CAT Reporting Agents (“CRAs”). CAT Reporters must continue to devote substantial resources to the initial roll-out of CAT to be able to ensure that CAT data will be submitted to the Plan Processor in a complete, secure, and accurate manner. CAT Reporters must also define the final operational reporting and exception handling procedures, train staff on these new procedures, and implement these procedures (alongside pre-existing BAU operations). Given the outbreak of the COVID-19 pandemic, these necessary final preparations have been severely curtailed in favor of the need to address the risks associated with the current period of extreme market volatility, in conjunction with unprecedented changes to internal operational processes due to the activation of BCP procedures.

The following sections describe in more detail the recent and unanticipated impact of the outbreak of COVID-19 upon CAT Reporters, the known and expected impact to the initial CAT implementation milestones, and the basis for FIF’s request for immediate relief.

⁷ Examples of the economic impacts following the outbreak of COVID-19 include: 1) historically rapid 20% drops in the value of securities indices (*i.e.* Dow Jones, S&P, FTSE). For example, the Dow Jones Index fell into a bear market (defined as a 20% drop from a recent high) on March 11 in just 20 days while the S&P Index fell into a bear market on March 12 in 21 days. The 20% drop represented the fastest plunge in the history of both indices by a wide margin (The Dow Jones and S&P indices dropped 20% in 36 and 42 days, respectively in 1929); 2) massive investor loss, including an average of over a 10% loss of individual investors’ IRA and 401K accounts in under 2 weeks; 3) increasing numbers of laid off or furloughed workers, especially in logistics, entertainment, and non-essential services industries; 4) drastic costs in non-essentially consumer spending due to growing fears of job loss and recession; 5) increased investor caution in the public and private capital markets resulting in the reduction or elimination capital commitments needed to support growth and innovation of businesses.

2020 Outbreak of COVID -19

COVID-19 is classified as an infectious disease caused by the most recently discovered coronavirus. COVID-19 is a new virus that had been previously unknown until the outbreak began in Wuhan, China in December of 2019.⁸ On January 31, 2020 the World Health Organization's ("WHO") International Health Regulations Emergency Committee for Pneumonia due to the Novel Coronavirus 2019-nCoV declared the outbreak of COVID-19 as a public health emergency of international concern following the rapid spread of the virus to 18 countries in a little over a month.⁹ COVID-19 has since spread to nearly 150 additional countries and has infected over 170,000 people worldwide¹⁰. More recently, the virus spread to the United States, resulting approximately 3,200¹¹ cases as of March 15. While the aggregate total of infected persons is remains low, COVID-19's doubling time approximated at 6 days¹² has resulted in the proliferation of confirmed cases both in the United States and abroad over the past two weeks. Given lack of a known vaccine and ongoing increase in the infection and mortality rates,¹³ the WHO characterized COVID-19 as a pandemic¹⁴ on March 11, 2020.¹⁵

Impact and Response CAT Reporter Response to COVID-19 CAT Reporters

The time between genesis of the outbreak of COVID-19 in December of 2019 through the identification of the first confirmed case in the United States in February 2020 resulted in increasing concern amongst broker-dealers should the virus broaden beyond Asia, the Middle East, and Europe. While the exact impact to the financial markets was and is difficult to predict, firms analyzed the known facts and forecasted impact of COVID-19 across U.S. and the globe. Given the unprecedented nature of the circumstances surrounding the coronavirus, initial analysis triggered the need for development of response plans tailored to various "threat levels." The rapid spread of the virus and the significant attention COVID-19 received across the globe accelerated the triggering of certain BCP procedures following the confirmation of initial cases of COVID-19 that were confirmed in the United States in late February and early March of 2020. The following sections describe the significant impact COVID-19 has imposed upon brokers-dealers over the past month. While the impacts described, *supra*, implicate BCP procedures to various degrees, not all sections will reference BCP explicitly.

⁹ <https://www.cdc.gov/coronavirus/2019-ncov/summary.html>

¹⁰ <https://www.worldometers.info/coronavirus/> (the hyperlink provided in this footnote provides a real-time accounting of the number of worldwide cases and associated deaths resulting from the coronavirus).

¹¹ <https://abcnews.go.com/US/coronavirus-live-updates-passengers-stuck-long-lines-airports/story?id=69602911>

¹² [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(20\)30260-9/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(20)30260-9/fulltext)

¹³ <https://www.pharmaceutical-technology.com/news/coronavirus-a-timeline-of-how-the-deadly-outbreak-evolved/>

¹⁴ The WHO defines pandemic as "A worldwide spread of a new disease. [in the context of the influenza virus] a pandemic occurs when a new influenza virus emerges and spreads around the world, and most people do not have immunity."

¹⁵ *Supra* note, 9. In its statement announcing the classification of COVID-19 as a pandemic, the WHO stated "WHO has been assessing this outbreak around the clock and we are deeply concerned both by the alarming levels of spread and severity, and by the alarming levels of inaction." The WHO's statement further noted that the term "pandemic is not a word to use lightly or carelessly. It is a word that, if misused, can cause unreasonable fear, or unjustified acceptance that the fight is over, leading to unnecessary suffering and death."

COVID-19 Impact - Initial Triggering of BCP Procedures

On March 6, 2020, following assessment of the current environment, FIF initiated a survey amongst member firms designed to assess impact of the coronavirus upon the viability of CAT Phase 2a and Phase 2b compliance obligations. To date, 31 firms responded to the survey, the data from which informed much of the basis for our request for immediate relief. The survey strongly emphasized that the fear and uncertainty surrounding the manifestation of COVID-19 that became evident in late February and early March increased the urgency of broker-dealers to hasten the activation of their initial business continuity procedures.

Aggressive activation of BCP procedures have and continue to be necessary to help mitigate the impact of COVID-19 to public health, operations, security and risk controls and disruptions to business. The facilitation of brokers-dealers' response to the threat of COVID-19 to date has resulted in the unanticipated and unprecedented reallocation of human and technology resources to ramp-up to full-on BCP mode, if necessary. While firms are currently at various stages of BCP activation procedures, no industry member has or will be immune from shifting priorities almost solely to the implementation of pandemic focused BCP procedures to protect BAU should worst case scenarios manifest.

COVID-19 Impact – CAT Reporter Technology and Operations Resources

Disruption to the efficacy of technology leveraged by broker-dealers, even minimal, requires expeditious remediation to mitigate unnecessary risk. The outbreak of COVID-19 and the associated response has resulted in material disruption to nearly all facets of technology that have and will continue to impact a significant portion of broker-dealer business operations.

- Human Resource/Staff Diversion – CAT Reporter reaction to Current Conditions: 29 of the 31 respondents to FIF's COVID-19 Impact Survey overwhelmingly cited that their firm has significantly diverted technology staff from non-essential efforts (*i.e.* development, QA, testing, etc.). The shift in focus away from CAT Production Readiness efforts towards mission critical tasks required to mitigate the impact of market volatility has and will continue to take precedence.
- Human Resource/Staff Diversion – CAT Reporter Development and Implementation of Controls Designed to Mitigate Impact of Increased COVID-19 Severity: The description of the recent diversion of resources, *infra*, focuses upon responses to current market conditions; however, firms also must focus resources upon the activation of BCP procedures to mitigate disruptions to the financial markets should the impacts of the Coronavirus become more severe. Many firms are currently engaged in novel efforts designed to maintain BAU in the event of full-scale quarantine. In some cases, this requires firms to relocate front office trading software to the residences of traders, transition to backup locations, and revise processes designed to facilitate normal business functions in a wholly new environment.
- Firm Mandated Remote Work Policies: The move to social distancing and workplace isolation to help mitigate the spread of the virus has manifested in wide-spread work-from-home policies across most CAT Reporters. In many cases, non-essential personnel are banned from entering their normal workplace and therefore must adapt to new procedures. For example, several CAT Reporters now require non-essential IT staff to work remotely, which has impacted firms' ability to respond quickly to resolve non-essential systems and technologies issues, and directly impacted Firms' ability to efficiently execute the remaining CAT testing and implement the required software changes. The lack of technology staff on the ground in

emergency situations has slowed the time to resolution and should the effects of the virus continue, may result significant disruptions to CAT Reporters business operations. Even if the potential impact of the coronavirus to the health and wellness of individuals dissipates in the coming weeks and by extension current market conditions are calmed, firms likely will delay the integration of non-essential staff into their normal business environment. Therefore, while it may be possible to refocus efforts back to preparations around CAT Phase 2a/2b “Go-Live” readiness, the ability of staff to fully engage in the final production preparations essential to fine tuning CAT reporting infrastructures will be impaired.

- **Technology Freezes:** Due to the extraordinary market volatility and associated high volumes, many firms have initiated technology change freezes in order to ensure the safety and soundness of their production environments. These freezes have delayed previously scheduled, but non-essential, technology upgrades required for CAT. Technology freezes have been triggered by broker-dealers in an effort to maintain systems to counteract the significant stress placed upon technology during the ongoing period of extraordinary market volatility, substantial increase in trading volumes and unprecedented spikes in market data message rates¹⁶ triggered by uncertainty surrounding COVID-19. The proliferation of technology freezes has and will continue to prevent scheduled rollouts of new code designed to integrate logic modifications reflecting errors identified during the Phase 2a/2b testing process. In many cases, new versions of software must be installed in production in order to be able to certify with Production data by April 6th as well as further tested and released prior to the Phase 2a/2b go-live.
- **Trader Access to Trading Technology:** Some Broker-Dealer pandemic-focused BCP procedures require trading platforms to be installed in the residence of the trader(s) and other essential staff in the event that a pandemic results in quarantine (regardless of self or government mandated). The process required to adequately setup and test satellite workstations generally must be done quickly and requires IT staff who would normally be focused on CAT Production Readiness activities.
- **Development and Activation of Bespoke COVID-specific Pandemic Response Plans:** CAT Reporters have in place robust BCP and Disaster Recover procedures designed to counteract the implications of crisis situations. However, it would be unreasonable to expect any firm to have fully accounted for all of the facts and circumstances surrounding the COVID-19 pandemic. Simulations or tests of BCP activation procedures have allowed firms to put in place frameworks to transition to a new form of doing business in an expeditious and risk adverse manner. Despite this, the activation of BCP is not seamless.¹⁷ By its nature, BCP will

¹⁷ See e.g. *Sully*, directed by Clint Eastwood (Burbank, CA: Warner Bros, 2016)(The 2016 film “Sully” depicted the heroic actions of US Airways Pilot Chesley “Sully” Sullenberger and Co-Pilot Jeffery Skiles during the events surrounding US Airways Flight 1549. Shortly after takeoff from LaGuardia Airport, the Airbus A320 carrying 150 passengers struck a flock of Canadian geese causing the full shut-down of both engines. Rather than return to LaGuardia as instructed by air traffic control, the pilots’ knowledge of the exact circumstances at the time of the event informed them that the plane would likely crash before reaching LGA. Therefore, the pilots decided to stay the course towards an alternate airport and, after that was determined not to be an option, attempted a “hard landing” in the Hudson River. While the heroic actions of the pilots resulted in 155 lives being saved, the post-event investigation called into question whether the pilots placed the lives of passengers at greater risk by not turning back immediately to LaGuardia. Despite initial feedback from simulations indicating that had a safe return to LaGuardia would have been possible if the pilots turned back to LaGuardia immediately upon being struck by the flock of geese, *it was later determined that the simulation was unrealistic as: “the immediate turn made by the pilots during the simulations did not reflect or account for real-world considerations, such as the time delay required to recognize the bird strike and decide on a course of action.” A further simulation, in which a 35-second delay was inserted to allow for assessment and decision-making based upon a case of first impression, resulted in a crash).*

disrupt current business process as the activation of BCP must be tailored to the facts and circumstances of the crisis. In the case of the COVID-19 pandemic, the novelty and speed in which the impact of COVID-19 escalated required bespoke procedures to mitigate further risk once the full scope of potential implications began to manifest themselves. The creation and activation of COVID-19-based BCP leveraged the expertise of the technical and operations staff at firms to both design and implement additional protocols necessary for appropriate response to this new event. This effort has and continues to be a significant factor in the availability of resources to focus on CAT-related activities.

Request and Rationale for Immediate Phase 2a/2b Relief

Given the rapid and necessary shift in priorities of CAT Reporters away from preparations for CAT Phase 2a/2b “Go-Live,” FIF is requesting immediate relief from the compliance requirements pertaining to initial Phase 2a / 2b deliverables. Significant changes are typically necessary in the final run-up to a major new regulatory reporting launch (e.g., new software, new procedures and/or workflow changes required by Front Office staff to capture new information, changes to operational procedures to perform reporting and error correction). Given the activation of BCP procedures (including staff splitting initiatives) and the associated focus on maintaining BAU operations, the ability to complete the necessary CAT-related training and changes to procedures are significantly impaired. Current circumstances far exceed the scope of normal BCP requirements as the almost blanket eliminated of co-located staff. This and other forms of novel social distancing measures put in place by broker-dealer is taxing staff in unanticipated ways and has required rapid adoption of new work environments. The duration of these novel working environments is likely to be weeks, perhaps months, not days. These necessary measures impede the efficiency, collaboration and coordination that are essential during this critical pre-Go-Live ramp up period.

Scope and Timing of Requested Phase 2a/2b Relief

Given the unprecedented nature of the stresses to firm infrastructure, staff, and overall environment it is not an appropriate or reasonable time to make any changes to firm’s infrastructure or operational procedures. Therefore, FIF requests that the Regulators initiate an immediate pause of a minimum of 60 days pertaining all initial CAT Phase 2a / 2b milestones in order to allow the industry to fully focus efforts to the maintenance of market stability and investor protection. During the pause, the Regulators would assess the current state of the impact of the Coronavirus pandemic to determine if further delay is warranted.

A delay of at least 60 days of CAT Phase 2a/2b implementation milestones should have a minimal impact upon the ultimate CAT deliverable. This is because much of the development work and operational efforts required meeting the Phase 2a/2b compliance standards are nearly completed. In the weeks leading up to the events surrounding the manifestation of the potential catastrophic nature of COVID-19, FIF Member firms had been in the process of testing and integrating final enhancements to CAT reporting software and infrastructure. While most FIF Member firms are very close to the completion all technology and operational efforts, code freezes and the diversion of resources will likely not allow Firm’s to be able to complete the necessary changes to meet the near term CAT 2a/2b milestones as scheduled in April and May.

While it may be possible for some firms to meet Phase 2a/2b compliance standards without further releases of completed software into the Production Environment, the commencement of production

CAT reporting could have negative repercussions to existing operations and infrastructure and should be avoided. If the events associated with the Coronavirus dissipate quickly in the coming weeks, shifting the initial CAT 2a/2b milestones by 60 days or more should not materially impair the ultimate December 2022 completion date of all Phase 2a – Phase 2d milestones and is reasonable given the current circumstances surrounding the pandemic.

Conclusion

America has demonstrated a remarkable degree of resiliency during times of significant crisis and has always emerged stronger and more united. The current crisis will be no different as all Americans have in a matter of days collectively sacrificed their way of life and in some cases their livelihood in the effort to contain and reduce the spread of COVID-19. This effort requires the continued shifting of priorities to facilitate appropriate responses to known and unknown consequences of COVID-19. Therefore, given the unprecedented nature of the facts and circumstances surrounding the Coronavirus pandemic, a temporary pause of Phase 2a/2b implementation milestones until such a time that normal social and business activity resumes is appropriate.

Regards,



Christopher Bok, Esq.
Director, Financial Information Forum

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