

# FINANCIAL INFORMATION FORUM

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New York, New York 10004

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212-422-8568

March 1, 2017

Mr. Robert W. Errett  
Deputy Secretary  
Securities and Exchange Commission  
100 F Street, NW  
Washington, D.C. 20549-1090

Re: SR-FINRA-2017-03, FINRA's Rule Filing to incorporate the Consolidated Audit Trail; FINRA Rule 4590

Dear Mr. Errett,

The Financial Information Forum<sup>1</sup> ("FIF") appreciates the opportunity to provide comments to the Commission on the referenced FINRA filing to incorporate the Consolidated Audit Trail into its rules ("FINRA CAT rule filing").

The FIF CAT Working Group ("WG") supports the exemptive relief request submitted by the CAT Participants, including FINRA, to commence clock synchronization rules for systems that do not capture time in milliseconds on February 19, 2018. This exemptive relief request would align the Consolidated Audit Trail requirement with FINRA 4590 and FINRA Regulatory Notice 16-23, dated July 2016, which staged the FINRA implementation of reducing clock synchronization tolerances.

We request clarification that the exemptive relief extends to time stamps required for Allocation Reports, so that only the required business servers need to be impacted by the clock synchronization requirements on March 15, 2017, which should provide sufficient time for the Plan Processor and the Operating Committee to define the term "time of allocation." We do not think it is possible to require clock synchronization of servers capturing timestamps for Allocation Reports until such time as that term has been defined.

In addition, there are differences between the approved FINRA clock synchronization Rule 4590 and FINRA's CAT rule filing which should be addressed. Lack of harmonization between FINRA 4590 and FINRA CAT rules will be especially problematic during the period of duplicative regulatory reporting to both OATS and CAT, which is required by the CAT NMS Plan for an unspecified period of time. The FIF CAT WG is requesting modifications to the proposal and conforming changes to FINRA Rule 4590 as well as clarification on the clock synchronization language in the FINRA CAT rule filing. Finally, FIF requests that the Commission clarify the definition of 'firm designated identifier' and manual order processing. Each of these topics are discussed more fully below.

## **Manual Order Processing and Clock Offset**

FINRA's CAT rule filing specifies that Industry Members shall record and report the time in seconds when a Manual Order has been received and must also record and report when that order has been captured electronically in their order handling and execution systems ("Electronic Capture Time") in milliseconds. In addition, FINRA Regulatory Notice 16-23, referring to FINRA 4590, states that firms have until February 19,

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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 financial technology 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.

2018 to apply the new 50 millisecond standard to impacted system clocks that do not capture time in milliseconds. FINRA 4590 does not address the scenario where a manual order is captured using a computer-based manual ticketing system (rather than a manual time stamp machine) and then subsequently releases or transfers the order to an Order Management System (“OMS”) that will process that order. However, the CAT Exemptive Relief Request<sup>2</sup> (Appendix A, Example 2) describes this scenario in detail, and distinguishes the manual order receipt time from the electronic capture timestamp (even though each may be captured on a computer system clock with differing capabilities). FIF respectfully requests that FINRA make conforming changes to FINRA Rule 4590 to match the exemptive relief granted to CAT that requires 1) capture of both a manual order receipt time in seconds and an electronic capture time in milliseconds; and 2) business clocks used solely for manual order events and time of allocation on Allocation Reports can be synchronized within a one second tolerance of the time maintained by NIST.

The Exemptive Relief Request<sup>3</sup> and the CAT NMS Plan captured a broader definition of manual order processing, citing a few of the many scenarios employed by Industry Members in handling manual orders. It is our understanding that “time of receipt of a manual order” occurs when all of the specific details of the order are captured, understood and approved, if required. That order is then sent to an OMS, with the “Electronic Capture Time” being the time stamp recorded by the OMS on receipt of the acknowledged order. Both of these events must be recorded and reported to CAT. The manual order receipt, even though captured in a computer based electronic ticketing system, should only be required to be captured based on the CAT requirements to the precision of seconds (and therefore is only subject to one second clock synchronization requirement). FIF CAT WG respectfully requests that the FINRA CAT rule filing clarify when the time stamps on manual orders and electronic capture of manual orders need to be captured, which can accommodate the different scenarios cited in the Appendix A of the Exemptive Relief Request.

### **Log Records for Retention**

The approved CAT NMS Plan specified “To the extent the Participants find that a complete log of clock synchronization events is not required to effectively surveil for compliance with these standards, they may at a later date seek to amend the Plan to reduce the logging obligation as appropriate.”<sup>4</sup> FIF CAT WG continues to believe that retention of a complete log of clock synchronization events is an additional business cost without providing compensatory regulatory benefit. With Phase 1 of the FINRA Rule 4590 commencing in February, data will be collected that will allow FINRA to determine if this complete log of clock synchronization events is required to effectively surveil for compliance with clock synchronization standards.

FIF CAT WG respectfully requests that the Commission require that FINRA assess the effectiveness of the logging of all clock synchronization events after sufficient data has been collected from the start of FINRA 4590 Phase 1 implementation and recommend appropriate action on logging of all clock synchronization events for OATS. This assessment should also be evaluated by the CAT Participants and appropriately incorporated into the FINRA CAT rule filing prior to the start of CAT reporting by Large Industry Members.

### **Log Retention Period**

FINRA’s CAT rule filing specifies that Industry Members maintain their clock synchronization logs for a period of five years. FINRA Rule 4590 specifies that the log should be maintained for the period of time and accessibility specified in SEC Rule 17a-4(b)<sup>5</sup> and it should be maintained and preserved as specified under SEC Rule 17a-4(f). This represents a difference between the FINRA CAT rule filing and the current FINRA 4590 rule. The extra two years of log retention of fine grained clock synchronization events represents an additional business cost for storage and clock management.

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<sup>2</sup> Letter from CAT Participants to Mr. Brent Fields, January 30, 2015, Request for Exemptive Relief from Certain Provisions of SEC Rule 613 of Regulation NMS under the Securities Exchange Act of 1934, (“Exemptive Relief Request”)

<sup>3</sup> Exemptive Relief Request, Section E and Appendix A

<sup>4</sup> SEC Approval of CAT NMS Plan, November 15, 2016,p.369, Section IV.D.13.a.2

<sup>5</sup> SEC Rule 17a-4(b) specifies “Every member, broker and dealer subject to 240.17a-3 shall preserve for a period of not less than three years, the first two years in an easily accessible place:”.

If FINRA's CAT rule filing continues to require logging of all clock synchronization events, then the FIF CAT WG respectfully requests that the FINRA CAT rule filing comply to SEC Rule 17a-4(b), as specified in FINRA 4590, regarding log retention time.

### **Certification Schedules, Reporting Procedures and Documentation**

The FINRA CAT rule filing does not contain any definition of clock synchronization certification procedures and schedules, reporting procedures for violation notification or any specifics regarding documentation requirements. Lacking any definitions in the filing, it will be difficult for Industry Members to be in compliance with the documentation and reporting requirements as of the commencement date of March 15, 2017.

The FIF CAT WG respectfully requests that the date for compliance of these required procedures be delayed until Industry Members are notified of these procedures and sufficient time be allowed so that Industry Members can implement these procedures.

FIF CAT WG respectfully requests that the adoption of one set of procedures for clock synchronization management and reporting to regulators be adopted across FINRA and CAT. FINRA, through OATS, has a model of defined procedures for determining member compliance to clock synchronization requirements. These include compliance examinations, documentation requirements and testing of clock accuracy, which has been used by OATS-reporting industry firms for many years.

### **Firm Designated IDs**

The FINRA CAT proposed rule change defines firm-designated ids as "... a unique identifier for each trading account designated by Industry Members..." It further defines the customer definition process as "Each Industry Member shall submit to the Central Repository the Firm Designated ID, Customer Account Information and Customer Identifying Information for each of its Customers with an Active Account..." FIF CAT WG supports these definitions which are consistent with the Exemptive Relief Request on Customer Information Approach<sup>6</sup>. However, the commentary of the FINRA CAT Rule filing states "Under the Customer Information Approach, the CAT NMS Plan requires each Industry Member to assign a unique Firm Designated ID to each Customer." This distinction is important because broker-dealers may not have unique accounts for each customer (e.g. club accounts). As explained in the Exemptive Relief Request on Customer Information Approach<sup>7</sup>, a broker-dealer would define the club account as the firm-designated id and provide sufficient customer identifying information for each customer associated with that account during the CAT customer definition process so that the CAT could generate unique Customer Identifier(s) for each customer, as required by SEC Rule 613. It is our understanding that this is consistent with the FINRA CAT rule filing definition, where Customer "means (1) the account holder(s) of the account at an Industry Member originating the order; and (2) any person from whom the Industry Member is authorized to accept trading instructions for such account, if different from the account holder(s)."

The FIF CAT WG respectfully requests that the FINRA CAT rule filing capture the variations noted in Exemptive Relief Request on the Customer Information Approach to clarify that firm designated identifier could represent one or more customers; that one customer in a firm could be represented by multiple firm designated ids; and that a firm-designated id may not be an account number (e.g. entity id or relationship id in an institutional sales scenario as detailed in the Exemptive Relief Request)<sup>8</sup>.

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<sup>6</sup> Letter from CAT Participants to Mr. Brent Fields, January 30, 2015, Request for Exemptive Relief from Certain Provisions of SEC Rule 613 of Regulation NMS under the Securities Exchange Act of 1934, Section B and Appendix B

<sup>7</sup> Exemptive Relief Request, p. 15 "...that there are many instances in which multiple customers may be stakeholders in an order. For example, if an investment club has twenty members with each member being an owner of a single account and where each member is authorized to provide the broker-dealer with trading instructions for the club account, and the club places an order for that account with a broker-dealer...under the Customer Information approach, the broker-dealer would simply provide on its order report a firm-designated identifier for the account held by the investment club which the CAT Plan Processor would use to identify each Customer with an ownership interest in that account."

<sup>8</sup> "Exemptive Relief Request", Appendix B, Example 3

## Summary

The submission of FINRA's CAT rule filing has highlighted the clock synchronization rule differences between the FINRA CAT rule filing and FINRA Rule 4590. The harmonizing of these clock synchronization rules into a single and coherent set of rules and procedures imposed on the broker-dealers will help ensure consistent adherence to these rules by the industry as well as reduce industry cost, until OATS can be retired. Clarification of the manual order process and customer definition process is needed as the Plan Processor and Operating Committee embark on the implementation phase of CAT.

The FIF CAT WG recognizes that each Participant has filed similar rule filings<sup>9</sup> to incorporate the Consolidated Audit Trail into each Participant's rules. FIF CAT WG comments and suggestions apply equally to these rule filings. Adoption of consistent rules across FINRA Rule 4590 and all Participants' CAT rule filings would be required to achieve coherency of clock synchronization requirements.

FIF CAT WG wishes to thank the Commission for providing the opportunity to comment on FINRA's proposed rule change to adopt the FINRA Rule 6800 Series to implement the Consolidated Audit Trail.

Sincerely,



William H. Hebert  
Managing Director  
Financial Information Forum

cc: The Honorable Michael S. Piwowar, Acting Chair, SEC  
The Honorable Kara M. Stein, Commissioner, SEC

Heather Seidel, Acting Director, Division of Trading and Markets, SEC  
Gary Goldsholle, Deputy Director, Division of Trading and Markets, SEC  
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Peter Santori, Chicago Stock Exchange for CAT NMS Plan Participants: Bats BYX Exchange, Inc., Bats BZX Exchange, Inc., Bats EDGA Exchange, Inc., Bats EDGX Exchange, Inc., BOX Options Exchange LLC, C2 Options Exchange, Incorporated, Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., Financial Industry Regulatory Authority, Inc., International Securities Exchange, LLC, Investors' Exchange, LLC, ISE Gemini, LLC, ISE Mercury, LLC, Miami International Securities Exchange, LLC, MIAX PEARL Exchange, NASDAQ BX, Inc., NASDAQ PHLX, LLC, The NASDAQ Stock Market LLC, National Stock Exchange, Inc., New York Stock Exchange LLC, NYSE, Arca, Inc., NYSE MKT LLC, ("CAT NMS PlanParticipants")

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<sup>9</sup>SR-CBOE-2017-012; SR-C2-2017-007; SR-BOX-2017-07; SR-CHX-2017-03; SR-ISE-2017-08; SR-ISE-GEMINI-2017-04; SR-ISE-MERCURY-2017-03; SR-IEX-2017-04; SR-MIAZ-2017-03; SR-PEARL-2017-04; SR-Bats-BYX-2017-02; SR-Bats-BZX-2017-08; SR-Bats-EDGA-2017-03; SR-Bats-EDGX-2017-08; SR-NASDAQ-2017-08; SR-Phlx-2017-07; SR-BX-2017-007; SR-NYSEMKT-2017-02