FINANCIAL INFORMATION FORUM

5 Hanover Square
New York, New York 10004

212-422-8568

June 22, 2017

Robert W. Errett, Deputy Secretary
Securities and Exchange Commission
100 F Street, NE,
Washington, DC 20549-1090

Re: SR-FINRA-2017-013 - Proposed Rule Change Relating to Elimination and Modification of Duplicative Rules After Implementation of the Consolidated Audit Trail

Dear Mr. Errett,

FIF[1] appreciates the opportunity to comment on the FINRA OATS and EBS retirement plans[2]. These comments would also apply to the other Participants' retirement plans[3] that refer to the FINRA retirement plans as base criteria for retirement of their Consolidated Audit Trail (CAT) duplicative systems and rules. The FIF CAT Working Group (WG) throughout the evolution of the CAT NMS Plan, has consistently commented that the most critical and costly element of the Consolidated Audit Plan was the requirement of duplicative reporting until systems/rules that would be duplicative to CAT can be retired or amended, of which OATS, EBS and Large Trader Rule were prioritized by FIF as the most critical.

While there are elements of the proposed FINRA retirement plans which represent reasonable requirements for retiring OATS and EBS and are consistent with FIF's recommendations contained in its comment letter on the CAT NMS Plan[4], there are some elements with which the FIF members do not agree and for which FINRA has not provided adequate justification. Each of FINRA's requirements for retiring OATS and EBS are discussed below. In addition, FIF notes where the FINRA filing is not clear, and requests clarification where needed.

---

[1] FIF (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.

[2] SR-FINRA-2017-013

[3] SR-BatsBZX-2017-37; SR-BX-2017-025; SR-BOX-2017-17; SR-NASDAQ-2017-050; SR-Phlx-2017-38

[4] Letter to Brent Fields, Secretary, SEC, from Mary Lou VonKaenel, Managing Director, Financial Information Forum, (July 18, 2016); Re: SEC Release No. 34-77724; File No. 4-698; Consolidated Audit Trail National Market System Plan

Small Industry Members

FIF CAT WG supports the FINRA proposal to move up the date for start of CAT reporting for the Small Industry Member who are OATS reporters from CAT Effective Date plus 36 months to CAT Effective Date plus 24 months. This is consistent with FIF's Comment Letter on the CAT NMS Plan[5]. FIF recognizes that this may place additional burden on the Small Industry Members who are OATS reporters, even for those members that will likely use third party providers for their CAT reporting obligations, because these reporters ultimately bear supervisory responsibility for the OATS and CAT regulatory reporting. However, FIF believes that the economic trade-off of a significantly earlier date for OATS retirement for the entire industry versus the additional burden of earlier CAT reporting placed on the Small Industry Members who are OATS reporters justifies FIF's support of this FINRA proposal.

180-day Trial Period

Although FIF CAT WG would prefer a shorter trial period, it recognizes the need for a CAT evaluation period prior to the retirement of OATS, so that FINRA can evaluate the quality of the reported data, including parallel testing with reported OATS and EBS data, to ensure that surveillance can still be effectively maintained. FIF supports a defined period of evaluation, versus an open-ended plan; however, this support must be accompanied with qualifiers to make it a reasonable and cost-efficient plan for the industry:

- During this trial period, there should only be one regulatory reporting system of record (OATS/EBS, not CAT). While CAT error corrections would still be required during this period, there should be no CAT penalties, archiving requirements or regulatory inquiries associated with CAT reporting before the end of the Trial Period.
- If individual firms achieve the quality criteria by the end of the 180-day Trial Period, but the industry has not achieved the quality criteria, those qualifying firms would automatically be granted an OATS and EBS exemption from reporting until those systems can be retired/amended. This is discussed in more detail in the "Single Cut-over" Section.
- The 180-day Trial Period should represent a "rolling" metric, i.e., if the industry does not meet the quality criteria by the end of the first 180 days after start of CAT reporting, then it should use a "rolling" metric, resetting the 180-day period each day and recalculating the metrics each day with the previous 179 days of measurements.
- It is important that FINRA take a daily accounting of the measurements, and to communicate both the aggregate measurements and the individual Industry Member measurements so that all parties are regularly updated regarding the current state. This allows Industry Members to make corrections, if necessary, to achieve the measurement goals. It should also allow FINRA and the Plan Processor to assess the industry's achievement of the measurement goals, and determine if the measurements indicate any unexpected problems.
- Depending on the progress of the industry as a whole or individual firms meeting the quality criteria, consideration could be given to shorten the Trial Period if all criteria have been met prior to the end of the 180-day period.

---

[5] *Id.*

Single Cut-over

The FIF CAT WG strongly disagrees with FINRA's proposal of a single cut-over from OATS or EBS to CAT. FINRA has not provided any cost/benefit analysis to justify this position. Industry Member firms need certainty in planning their duplicative reporting obligations and resource requirements, and the single cut-over proposal does not provide that. Firms that quickly and consistently meet/exceed quality standards are severely penalized with this plan. E.g., each "Insourcer" (126 broker/dealers who implement their own regulatory reporting) spends, on average, $725,615/mo. for current regulatory reporting obligations (includes OATS, EBS, Large Trader and others)[6], of which OATS and EBS constitutes a significant portion of that cost. The spend rate for these 126 firms to maintain duplicative reporting because the rest of the industry has not met the retirement reporting criteria is more than $20M/month[7]. This is a significant "unnecessary" expense if those Insources meet the quality requirements but cannot be exempted from OATS and EBS reporting because FINRA resists investment in an interim methodology to allow dual database reporting integration.

Neither has FINRA provided sufficient technological rationale to explain their opposition to a single cut-over proposal. FINRA, in the initial and approved CAT NMS Plan[8], raised the possibility of firm-by-firm exceptions from duplicative reporting to OATS; it must have completed sufficient analysis to determine feasibility. FINRA states that "the primary [beneficiary] is the investing public" of this retirement plan, because "technology to merge OATS and CAT would be technologically costly and difficult and could introduce errors that didn't exist before integration"[9]. We disagree, because there are multiple possible approaches that could be used to integrate CAT and OATS data allowing FINRA to effectively surveil the market, especially if FINRA and the Plan Processor work jointly on a cooperative solution. For example, the Plan Processor could route all CAT reports and error corrections from exempted firms to FINRA for conversion and input into OATS. This may require unique OATS information to be added to CAT reports that could be ignored by CAT but passed to OATS to support firm-by-firm exemptions. In this case, the current OATS database and OATS logic should only be nominally impacted and the risks that FINRA is concerned with can be minimized or eliminated.

More sophisticated data merge solutions are possible with a reasonable investment by FINRA and the Plan Processor. The CAT NMS Plan requires that all Participants within fourteen (14) months after the Effective Date, implement enhanced surveillance system(s) using the CAT data.[10] By start of Industry Member reporting at Effective Date +24 months, FINRA would have a working surveillance system based on CAT, and it must have developed mapping logic to compare the OATS and CAT data to verify Industry Member data quality. Surely, this work should allow data views that span the two data sets which would provide the foundation for firm-by-firm exemption support.

---

[6] SEC Release No. 34-79318, File No. 4-698, November 15, 2016; Joint Industry Plan: Order Approving the National Market System Plan Governing the Consolidated Audit Trail, Table 4, p. 657.

[7] Monthly current regulatory reporting costs for Insources is $45.7M, of which OATS and EBS is assumed to represent half of that spend.

[8] Ibid, Exhibit A (CAT NMS Plan), Appendix C.9 Order Audit Trail System ("OATS")

[9] *Supra* note, 2.

[10] *Supra* note, 6 - Exhibit A, Section 6.10.a

Because the EBS retirement plan proposes to extract any data available in CAT before requesting from firms' historical data or data for asset classes not covered by CAT, this means that the Participants can effectively merge CAT data and existing EBS data to meet its surveillance obligations. Therefore, there should be no technological or economic barriers that prohibit firm-by-firm exemptions from duplicative reporting to EBS once firms meet the data quality criteria.

FIF is volunteering to work with FINRA to resolve any identified technological challenges that might impede a firm-by-firm exemption solution. The broker-dealer costs are so significant for each extra month of duplicative reporting that it should easily justify some FINRA and Plan Processor investment. Allowing firm-by-firm exemptions represents a justified economic trade-off among broker-dealer costs, FINRA costs and Plan Processor costs.

Accuracy and Reliability Standards

The FIF CAT WG has a number of clarifying questions regarding the standards, because the FINRA proposed retirement plan was not specific about many aspects of the metrics. The underlying assumption is that only data required by OATS or EBS rules today should be included in the accuracy and reliability metrics for the OATS or EBS retirement plans. Any CAT report or data element not required by OATS/EBS (e.g., Market Making activities, additional order attributes) should be outside the scope of the OATS/EBS retirement plans.

- Do measurements apply to all CAT Reporters or only Industry Members? The reporting metrics for Participant reporting should meet high quality standards by start of Industry Member reporting; otherwise, it is indicative of CAT reporting problems that should be addressed prior to start of Industry Member reporting.
- Do the accuracy and reliability metrics for the OATS retirement plan apply only to equities data?
- Are customer and account information accuracy standards (i.e., both rejections on any customer and firm-designated id definitions submitted to CAT and order reports which are rejected due to firm-designated id errors) excluded from the OATS retirement plan?
- Is the inter-firm linkage quality metric calculated as an aggregate measurement across all Industry Members (i.e., the match rate across all Industry Members for all orders routed between two Industry Member Reporters must achieve 5% pre-correction and 2% post-correction error rate)?
- Will the 2% post-correction error rate be an average error rate over the period calculated as the number of erroneous records, as measured on T+5 divided by the total number of records received?

In addition to the above questions on the accuracy and reliability standards, the FIF CAT WG has the following concerns with these standards:

- The EBS and OATS retirement plans require 5% pre-correction error rate and 2% post-correction rate in each of 5 categories (rejection rates, intra-firm linkages, inter-firm linkages, order linkage rates, exchange and TRF/ORF match rates). While FIF CAT WG appreciates the underlying rationale of maintaining good quality with each of these specific metrics, FIF requests that a more flexible approach be taken with minimum impact to data quality for surveillance purposes. FIF CAT WG requests that FINRA consider that the average pre-correction error rate across the 5 categories must achieve 5% but no single category could exceed 7% pre-correction error rate. Similarly, the average post-correction error rate across the 5 categories must achieve 2% but no single category could exceed a 3% post-correction error rate.

- Current OATS error correction timeframe requires corrections to be submitted by Business Day plus 6 days (T+6). The OATS retirement plan should not require a more stringent error correction timeframe than OATS requires today for FINRA to effectively use CAT data to perform its “equivalent” surveillance obligations. FIF CAT WG requests that the OATS retirement plan be modified to calculate the 2% post-correction error rate based on corrections submitted up to T+6.
- EBS current requires a 10-day error correction timeframe (T+10). The EBS retirement plan should not require a more stringent error correction timeframe than EBS requires today for Participants to effectively use CAT data to perform its “equivalent” surveillance obligations. FIF CAT WG requests that the EBS retirement plan be modified to calculate the 2% post-correction error rate based on corrections submitted up to T+10.

CAT System Requirements

The three system requirements listed in the FINRA OATS and EBS retirement plans (no material issues, includes all data necessary, meeting all obligations) are basic quality criteria that should be tested and validated prior to CAT “go-live”. The CAT system will have been in production for one year handling Participant CAT reporting prior to Industry Member reporting so basic quality criteria should have already been proven. All specific data and processing requirements unique to Industry Members should be part of the CAT test plan; the Operating Committee should demand nothing less before CAT is promoted to production for Industry Member reporting.

Prime Broker Transactions

FIF CAT WG requests that the CAT NMS Plan be clarified to specify that Prime Broker transactions are included in the CAT reporting requirements. This will enable a more complete set of transactions in the CAT audit trail and allow CAT to replace EBS as a more complete reporting source for this data.

Summary

There are many elements of FINRA’s OATS and EBS retirement plans that are well-reasoned and represent a practical approach for transitioning from OATS and EBS to CAT. Clarification is needed on both the accuracy standards and the 180-day Trial Period definition.

However, FIF disagrees with the Single Cut-over approach and requests re-evaluation based on the economic impact to the industry and technological alternatives available. The retirement plan should also require a swift enactment of retirement once the criteria is met. FIF recommends adoption for the retirement plans of equivalent error correction timeframes as enforced by OATS and EBS today and clarification that CAT Phase 1 reporting requirements include Prime Broker transactions to facilitate more timely replacement of EBS functionality with CAT.

We thank you for the opportunity to review and provide comments on the FINRA, and related

Participants' retirement plans and trust that the rationale and suggestions we have presented will be thoughtfully considered and incorporated in the final FINRA retirement plans.

Sincerely,

William H. Hebert
Managing Director
Financial Information Forum

cc: The Honorable Jay Clayton, Chair
The Honorable Michael S. Piwowar, Commissioner
The Honorable Kara M. Stein, Commissioner
Heather Seidel, Acting Director, Division of Trading and Markets
Gary Goldsholle, 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

Stephanie Dumont, Senior Vice President and Director of Capital Markets Policy, FINRA
Robert Walley, Principal, Deloitte
Michael Simon, CAT NMS Plan Operating Committee Chair, for CAT NMS Plan Participants: BATS Exchange, Inc., BATS Y-Exchange, Inc., BOX Options Exchange LLC, C2 Options Exchange, Incorporated, Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., International Securities Exchange, LLC, Miami International Securities Exchange, LLC, NASDAQ OMX BX, Inc., NASDAQ OMX PHLX, LLC, The NASDAQ Stock Market LLC, National Stock Exchange, Inc., New York Stock Exchange LLC, NYSE Arca, Inc., NYSE MKT LLC