September 22, 2020

By electronic mail to rule-comments@sec.gov

Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090
Attn: Secretary

Re: SR-FINRA-2020-024: Proposed Rule Change to Delete the FINRA Order Audit Trail System (OATS) Rules

Dear Secretary,

The Financial Information Forum (FIF)[1] appreciates the opportunity to comment on SR-FINRA-2020-024 (Proposed Rule Change to Delete the FINRA Order Audit Trail System (OATS) Rules)[2] submitted by Financial Industry Regulatory Authority, Inc. (FINRA). We refer to SR-FINRA-2020-024 as the "rule filing".

FIF participants support FINRA's proposal to sunset the Order Audit Trail System (OATS). The two most important concerns for FIF members relating to the rule filing are:

- Ensuring the retirement of OATS on an expedited basis to address the current duplication of firm resources
- Having sufficient advance notice of the retirement date so that firms can plan appropriately.

FIF members are concerned that certain conditions set forth in the rule filing could impact the retirement of OATS on an expedited basis and make it difficult for firms to plan in advance for the retirement of OATS. In this letter we provide comments on the conditions proposed by FINRA for sunsetting the OATS reporting system.

[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] Securities Exchange Act Release No. 89679 (August 26, 2020), 85 FR 54461 (September 1, 2020).

Regulation NMS and the CAT NMS Plan

Under Rule 613 of Regulation NMS adopted by the Securities and Exchange Commission (the Commission), the national securities exchanges and national securities associations are required to file a "national market system plan with the Commission to govern the creation, implementation, and maintenance of a consolidated audit trail and central repository…." (the CAT NMS plan).[3] The CAT NMS plan is required to include "a plan to eliminate existing rules and systems (or components thereof) that will be rendered duplicative by the consolidated audit trail, including identification of such rules and systems (or components thereof) …."[4]

As noted by the Commission in the adopted release for the Consolidate Audit Trail:

> "The Commission believes that the implementation of a plan to eliminate duplicative existing rules, systems, and/or components of such rules and systems, will result in increased efficiency to market participants who need to comply with the disparate reporting requirements for orders and with repeated requests for data by regulators who cannot obtain the data they need from existing sources of information."[5]

Under the Limited Liability Company Agreement of Consolidated Audit Trail, LLC (referred to as the CAT NMS Plan), the Participants (as defined in the CAT NMS Plan) provide "a plan to eliminate rules and systems (or components thereof) that will be rendered duplicative by the consolidated audit trail, including identification of such rules and systems (or components thereof) …."[6]

The CAT NMS Plan discusses the conditions for the retirement of OATS:

> "Although FINRA is committed to retiring OATS in as efficient and timely a manner as practicable, its ability to retire OATS is dependent on a number of events. Most importantly, before OATS can be retired, the Central Repository must contain CAT Data sufficient to ensure that FINRA can effectively conduct surveillance and investigations of its members for potential violations of FINRA rules and federal laws and regulations, which includes ensuring that the CAT Data is complete and accurate. Consequently, one of the first steps taken by the Participants to address the elimination of OATS was an analysis of gaps between the informational requirements of SEC Rule 613 and current OATS recording and reporting rules."[7]

The CAT NMS Plan further provides:

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[3] 17 CFR 242.613(a)(1).
[4] 17 CFR 242.613(a)(1)(ix).
[5] Securities Exchange Act Release No. 67457 (July 18, 2012), at p. 286. 77 FR 45722 (August 1, 2012).
[6] See page C-95 of the CAT NMS Plan. The Commission initially approved the CAT NMS Plan in Securities Exchange Act Release No. 79422 (November 29, 2016).
[7] CAT NMS Plan, pp. C-100 to C-101.

> "… it is anticipated that Reporting Members will have to report to both OATS and the Central Repository for some period of time until FINRA can verify that the data into the Central Repository is of sufficient quality for surveillance purposes and that all reporting requirements meet the established steady state Error Rates set forth in Section A.3(b). Once this is verified, FINRA's goal is to minimize the dual-reporting requirement."[8]

Proposed conditions for sunsetting OATS

In the rule filing, FINRA proposes the following conditions for sunsetting the OATS reporting system:

- The CAT achieves the specific accuracy and reliability standards described in the rule filing.
- FINRA has determined that its usage of the CAT data has not revealed material issues that have not been corrected.
- FINRA has confirmed that the CAT includes all data necessary to allow FINRA to continue to meet its surveillance obligations.
- FINRA has confirmed that the Plan Processor is sufficiently meeting its obligations under the CAT NMS Plan relating to the reporting and linkage of Phase 2a Industry Member Data.[9]

We refer to the first condition as the "error-rate condition" since it is tied to specific error-rate thresholds, as set forth in the rule filing; we refer to the other conditions as the "non-error-rate conditions".

Non-error-rate conditions

For the second, third and fourth conditions listed above (the non-error-rate conditions), FINRA provides the following clarification:

> "Even if these error rate thresholds are met, FINRA must evaluate and confirm through incorporation of CAT Data into its automated surveillance program that the data is accurate and reliable. Thus, in addition to the maximum error rates and matching thresholds proposed above, FINRA's use of CAT Data must confirm that (i) there are no material issues that have not been corrected (e.g., delays in the processing of data, issues with query functions, etc.), (ii) the CAT includes all data necessary to allow FINRA to continue to meet its surveillance obligations and (iii) the Plan Processor is sufficiently meeting its obligations under the CAT NMS Plan relating to the reporting and linkage of Phase 2a Industry Member Data. FINRA notes that any errors in the CAT Data may manifest themselves only after surveillance patterns and other queries have been run. Thus, while the error rate thresholds may be met over a 180-day period, additional time may be required to reliably establish that usage of the CAT has not revealed material issues that have not been corrected and allow contextual analysis of the data to take

[8] CAT NMS Plan, p. C-102.

[9] Rule filing, at pp. 7-8.

place to uncover errors in reporting or processing that may not be apparent from more standardized data validation processes.[10]

FIF first notes that the non-error-rate conditions set forth by FINRA in the rule filing appear to go beyond the conditions set forth in the CAT NMS Plan. The conditions in the CAT NMS Plan (as cited above) are the following:

- The sufficiency of the CAT data for surveillance and investigation purposes
- That all reporting requirements meet the established steady state Error Rates set forth in Section A.3(b) of the CAT NMS Plan.

FINRA notes in the rule filing that "Phase 2a Industry Member Data includes all events and scenarios covered by OATS."[11] FIF further notes that the Plan Processors have already made all determinations relating to the scope of events and scenarios to be included in Phase 2a. This addresses the first point. The second point is addressed by the error-rate condition, discussed below.

Apart from whether the non-error-rate conditions are included in the CAT NMS Plan, FIF members have concerns about the open-ended nature of the non-error-rate conditions. The conditions set forth in clauses (i) and (iii) appear to be related to the processing of data by the plan processor and making this data available to plan participants.

When discussing the non-error-rate conditions, FINRA notes that these conditions might not be satisfied during the 180-day period for measuring the error-rate condition.[12] FIF members believe that satisfaction of the non-error-rate conditions can be determined early during this 180-day period (if not prior to the commencement of this 180-day period) and that these conditions should not extend the retirement of OATS beyond the 180-day period. In addition, any concerns should be identified and publicly communicated early-on in the process so that the plan processor and plan participants can work to address those concerns within the 180-day period. FIF also recommends that FINRA notify FIF members and other market participants of any determinations relating to the non-error-rate conditions early-on in the process so that FIF members can plan in advance for the sunsetting of OATS.

With regard to condition (ii), the specific test is whether CAT includes all events and scenarios covered by OATS, and FINRA has confirmed that this is the case.[13] FIF further notes that the Plan Processors have already made all determinations relating to the scope of events and scenarios to be included in Phase 2a.

Error-rate condition

FIF has the following comments on the first condition (the error-rate condition):

[10] Rule filing, at pp. 18-19.
[11] Rule filing, at p. 17.
[12] See the discussion below of the 180-day measurement period.
[13] Rule filing, at p. 17.

- FIF agrees with FINRA that "the error rates should be measured solely for equity securities since options orders are not currently reported regularly or included in OATS."[14]
- FIF agrees with FINRA's proposal to set the pre-correction error-rate thresholds at 5% and the post-correction error-rate thresholds at 2%.[15]
- FIF agrees with FINRA's proposal to measure the post-correction error-rate thresholds at T+5.[16]
- FIF agrees with FINRA's proposal to determine compliance with the error-rate conditions based on an average over the 180-day measurement period.[17]
- The rule filing does not explicitly state the date on which the 180-day measurement period will commence. FIF notes that the industry could potentially meet the error-rate thresholds based on a 180-day measurement period commencing prior to October 26, 2020, as all the linkage validations will be running in production as of September 28, 2020. The 180-day average error-rate thresholds could potentially be achieved by March 2021 if the error rates are low enough during the post-conformance period to bring the 180-day average below the required thresholds. FIF would like clarification as to the earliest date that the 'counting' period can begin.
- FIF agrees with FINRA's determination that the CAT validations are substantially similar to the current OATS validations.[18]
- FIF agrees with FINRA's proposed error-rate categories.[19]
- FIF requests clarification on whether each error-rate category will be evaluated separately or whether all error-rate categories will be evaluated in the aggregate. For example, if the pre-correction rejection rate is 2% over the measurement period, the intra-firm pre-correction linkage rate is 98% over the measurement period, and the inter-firm pre-correction linkage rate is 98% over the measurement period, the aggregate pre-correction error rate (i.e., the percentage of submitted records that have at least one error) could potentially exceed 5%. FIF's interpretation of the rule filing is that this scenario would meet the required thresholds because the rule filing sets a separate threshold for each category of error. FIF requests clarification on this point.
- FIF agrees with FINRA's proposal to commence FINRA's review of error rates based on Phase 2a data and linkages since FINRA has determined that "Phase 2a Industry Member Data includes all events and scenarios covered by OATS".[20] For the same reason, FIF further agrees with FINRA's proposal to retire OATS "based solely on Phase 2a reporting".[21] Compliance with Phase 2c validations is not relevant to whether OATS should be eliminated because OATS does not include these Phase 2c validations.
- FINRA indicates in the rule proposal that "OATS will not be retired prior to commencement of Phase 2c reporting by Large Industry Members in April 2021, and there may be an initial increase in error rates immediately following implementation of the new Phase 2c reporting

[14] Rule filing, at p. 10.
[15] Rule filing, at pp. 10-11.
[16] Rule filing, at p. 11.
[17] Rule filing, at p. 11.
[18] Rule filing, at pp. 12-13.
[19] Rule filing, at pp. 13-17.
[20] Rule filing, at p. 17.
[21] Rule filing, at p. 17.

requirements."[22] FIF notes that if the 180-day measurement period runs from October 26, 2020 to April 23, 2020 (or as early as late September through late March), then the error rates for the 180-day measurement period would not be impacted by the Phase 2c go-live date. Therefore, FIF disagrees with the premise that OATS retirement necessarily must occur only after the Phase 2c go-live date.

- FIF would like to confirm that the discussion on page 18 of the rule proposal is consistent with the two preceding bullets. In other words, FIF would like to confirm that FINRA will not consider Phase 2c validations in determining compliance with the error-rate condition.
- FIF agrees with FINRA that error rates should be measured in the aggregate across the industry, rather than firm-by-firm.[23]
- FIF is concerned for the potential that "Named" linkage errors could result in double counting of errors in determining compliance with the error-rate condition (since both counterparties receive 'mirrored' reported and named error feedback). FIF therefore requests that FINRA confirm that a "Named" mismatch in the reporter portal would not count as an error as it would result in the double-counting of errors.
- FIF members have notified FINRA CAT of certain errors being generated in Phase 2a for scenarios that are not actual errors.[24] These false errors should not count as errors for purposes of determining compliance with the various error-rate thresholds.
- FIF requests that FINRA take into consideration a macro event such as a weather event that impacts market participants overall and clarify that errors or late filings results from such a macro event would be excluded in determining compliance with the error rate condition.

To date, FIF members have been proactive in identifying and fixing rejections and intra-firm and inter-firm linkage errors and will continue to be proactive in addressing these issues. FIF members have identified to FINRA CAT various enhancements to the CAT reporter portal and the error feedback process that will reduce some of the challenges currently faced by firms in identifying and correcting errors on a timely basis. We appreciate that FINRA CAT has incorporated certain of these enhancements and has plans to incorporate other enhancements in the future. These enhancements will be important for the industry in meeting the error-rate thresholds set forth in the rule filing.

FIF also requests that FINRA provide monthly updates regarding FINRA's computation of the applicable error rates for the preceding months so that industry participants can understand the current status relating to compliance with the error-rate condition.

[22] Rule filing, at p. 18.
[23] Rule filing, at p. 21.
[24] See, for example, FINRA CAT FAQ A33: "In Phase 2a, secondary events that occur after an IPO symbol's inclusion on the CAT Reportable Securities List that are reported to CAT and are marked unlinked for parent not found will not be considered a CAT Reporting violation if at the time of the parent event, the symbol was not on the CAT Reportable Securities List." Firms receive an unlinked error in this scenario even though the firms are reporting correctly.

Conclusion

FIF appreciates FINRA publishing the rule proposal and FINRA's initiative to retire OATS. FIF welcomes the opportunity to discuss the considerations raised in this letter. If you would like clarification on any of the items discussed in this letter or would like to discuss further, please contact me at howard.meyerson@fif.com.

Very truly yours,

/s/ Howard Meyerson

Howard Meyerson
Managing Director, Financial Information Forum