FINANCIAL INFORMATION FORUM

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By electronic mail

Brandon Becker
CAT NMS Plan Operating Committee Chair

Shelly Bohlin
President and Chief Operating Officer, FINRA CAT

Re: Reporting of non-executable RFQ responses to CAT

Dear Mr. Becker and Ms. Bohlin,

FIF and our members would like to thank the CAT NMS Plan Operating Committee and FINRA CAT for the March 22, 2023 presentation on Electronic RFQ Responses (the "RFQ Response Presentation") and for providing FIF members the opportunity to review and comment on the reporting of non-executable RFQ responses to CAT. It is very important to have a dialogue on these significant proposed changes to CAT reporting to ensure the most efficient implementation of these changes and that unintended effects are avoided.

This letter focus on the details of CAT reporting for non-executable RFQ responses. Simultaneously with this letter FIF is submitting a letter to representatives of the Securities and Exchange Commission (the "Commission"). In the FIF letter to the Commission, FIF members discuss why non-executable RFQ responses should not be reportable to CAT as they are neither orders nor bids or offers as defined under Commission Rule 613. The points in this letter apply if the Commission mandates reporting of non-executable RFQ responses. This letter references the Commission letter in certain cases, and the two letters should be read in conjunction with each other.

Terminology

Before proceeding to our substantive comments below, we want to focus on terminology. Precise terminology is very important to ensure that industry members are clear as to the reporting that is being proposed and the scenarios where reporting will be required. It is also important that the Commission, the Participants in the National Market System Plan Governing the Consolidated Audit Trail (the "Plan Participants") and FINRA CAT, LLC ("FINRA CAT") use consistent terminology.

FIF members recommend that the Plan Participants and FINRA CAT use the term "tradeable" or "executable" to classify RFQ responses instead of the term "actionable". More specifically, an RFQ response is tradeable (or executable) if the RFQ solicitor can execute the RFQ response without a further affirmative action by the RFQ responder. Conversely, an RFQ response is non-tradeable (or non-executable) if the RFQ solicitor cannot execute the RFQ response without a further affirmative action by the RFQ responder. This terminology corresponds to the terminology used in FIX Tag 537 (QuoteType), where a value of '1" represents that an RFQ response is tradeable and a value of '0' represents that an RFQ response is indicative (i.e., not tradeable).[1]

The term "actionable" creates unnecessary confusion because the Commission uses this term with a different meaning as compared to how this term is used by the Plan Participants and FINRA CAT in the CAT documentation. If a non-executable RFQ response includes a symbol, side, price and quantity, it could be actionable under the Commission's definition of "actionable indication of interest" in Rule 600(b)(1) of Regulation NMS but not actionable as the term is used by the Plan Participants and FINRA CAT (because it cannot be executed by the solicitor). It is important that the Commission and the Plan Participants use consistent terminology.

In the discussion below we use the terms "executable" and "non-executable", rather than the terms "actionable" and "non-actionable", to classify RFQ responses.

A. **Non-executable RFQ responses should not be reportable on a Quote event; a field for a firm to report a non-executable RFQ response as an indicative RFQ response should be provided**

If the Commission determines that non-executable RFQ responses must be reported to CAT, as currently proposed in the RFQ Response Presentation, industry members would be required to report these RFQ responses to CAT on Quote events even though, as discussed in detail in the FIF letter to the Commission, industry members do not consider these RFQ responses to be quotes. This could potentially prejudice a firm's position with respect to other regulations, such as the ones identified in the FIF letter to the Commission.

Given this concern, FIF members recommend that non-executable RFQ responses be reportable on a CAT event that is not labeled as a Quote event. For example, the event could be labeled as a Non-Executable Price Indication event or a Non-Executable RFQ Response event. In addition, whether or not these events are reportable on a Quote event, the Commission and the Plan Participants should provide a field in the applicable CAT event where a firm can identify the event as being an indicative RFQ response (for example, based on FIX Tag 537 having been communicated as '0' (indicative) in the non-executable RFQ response that is being reported to CAT).

A separate and independent reason as to why non-executable RFQ response events should not be reportable on a Quote event is that reporting these events based on the current template for reporting Quote events will create unnecessary complexity. We discuss this in detail in Section C below. In Section B we discuss specific scenarios where additional guidance is required for firms to understand how these

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[1] See https://btobits.com/fixopaedia/fixdic50-sp1/index.html?tag_537_QuoteType.html.

scenarios should be reported to CAT. These scenarios are then referenced in Section C to explain how including non-executable RFQ responses in Quote events would create unnecessary complexity.

B. **Need for guidance with respect to various RFQ response scenarios**

Need for guidance

If the Commission determines, notwithstanding the points set forth in the FIF letter to the Commission, that non-executable RFQ responses must be reported to CAT, industry members will require additional guidance from the Commission, the Plan Participants and FINRA CAT with respect to when a non-executable RFQ response would be reportable and when a non-executable RFQ response would not be reportable. This guidance is necessary because of the current lack of guidance on this point and also to ensure that firms (and the CAT Transaction Reporting system) do not end-up with linkage errors resulting from soliciting and responding firms adopting different interpretations as to when a non-executable RFQ response is reportable to CAT.

The RFQ Response Presentation provides:

> All RFQ responses, even those not selected, communicated in standard electronic format (e.g., FIX) that are not immediately actionable ("NIA") (i.e., further manual or electronic action is required by the responder providing the quote to execute or cause a trade to be executed) will be required to be reported to CAT.

This statement, by encompassing all electronic RFQ responses as reportable to CAT, is an inaccurate interpretation of Rule 613 and directly contrary to the Commission's express rejection, in the CAT adopting release, of a recommendation from a commenting party to include indications of interest in CAT reporting.[2] This statement from the RFQ Response Presentation also contradicts the following statement from the May 23, 2023 request for exemption submitted by the Plan Participants to the Commission relating to the reporting of certain RFQ responses to CAT (the "Plan Participant RFQ Exemption Request"): "Because indications of interest and non-firm indications of a willingness to buy or sell a security are not 'orders,' 'bids' or 'offers' under SEC rules, they have no reportable events under the CAT NMS Plan."[3]

Accordingly, further guidance is required.

Complexity and diversity of RFQ workflows

As the scenarios presented below in this section will demonstrate, there is a diversity of RFQ workflows. These workflows can be complex. While the workflows described below relate to RFQ systems,

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[2] Exchange Act Release No. 67457 (July 18, 2012), 77 FR 45721 (Aug. 1, 2012) (Consolidated Audit Trail), available at https://www.sec.gov/rules/final/2012/34-67457.pdf ("CAT Adopting Release"), at 45747.
[3] Letter dated May 23, 2023 from Brandon Becker, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Securities and Exchange Commission, available at https://catnmsplan.com/sites/default/files/2023-05/05.23.23-Exemption-Request-Regarding-Responses-to-Electronic-RFQs.pdf ("Plan Participant RFQ Exemption Request"), at 3.

individual firms sending and responding to RFQs outside of an RFQ system could have additional workflows not described below. Workflows also will continue to evolve over time. Workflows also could change if the Commission adopts its proposed amendments to Rule 3b-16 (please see discussion in the letter to the Commission). The diversity and complexity of these workflows will make it challenging for the Commission, the Plan Participants and FINRA CAT to provide guidance on when RFQ responses are reportable to CAT, the specific CAT event types that should be reported for each step in each workflow, how each field should be reported for each CAT event, and which linkage validations will be applied. At the same time, clear guidance will be necessary to minimize linkage errors, as these linkage errors require the expenditure of significant resources by FINRA CAT and industry members.

RFQ responses that are followed by an exchange of chats prior to any execution

Attachment I provides four RFQ-responses scenarios. These scenarios all involve an RFQ and RFQ response that are followed by an exchange of Bloomberg chats prior to any execution. While the example provided involves Bloomberg chat, any chat system could be involved. In addition, any RFQ system (not limited to a Bloomberg RFQ system) could be involved. FIF members assume with respect to the Attachment I scenarios that any RFQ response sent prior to the chat, as well as the chat communications themselves, would not be reportable to CAT and request confirmation on this point. The statement quoted above from the RFQ Response Presentation raises questions about this assumption. Attempting to require the reporting of the RFQ responses sent prior to the chat would be directly contrary to the Commission's express rejection, in the CAT adopting release, of a recommendation from a commenting party to include indications of interest in CAT reporting.[4]

More generally, FIF members request that the Commission, the Plan Participants and FINRA CAT provide written guidance as to which of the RFQ responses in these scenarios (all of which are non-executable) are reportable to CAT and, if so, the specific fields that should be reported, how these fields should be reported, and any linkage requirements. The Commission, the Plan Participants and FINRA CAT also should identify the general principles that support this guidance.

RFQ workflows that involve a hit or lift message

Some RFQ systems provide the following workflow:

- Solicitor sends RFQ to multiple dealers
- Dealers respond with RFQ responses, which can include price and quantity
- Solicitor sends hit or lift message (hit when dealer is a buyer; lift when dealer is a seller)
- Dealer acknowledges or rejects hit or lift message
- If dealer acknowledges hit or lift message, solicitor creates and routes order to dealer
- Dealer can execute the order upon receipt.

FIF members assume that any RFQ response sent prior to the dealer acknowledgment of a hit or lift message would not be reportable to CAT. However, the statement quoted above from the RFQ Response Presentation raises questions about this assumption. FIF members also assume that the hit or

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[4] CAT Adopting Release, at 45747.

lift message from the solicitor would not be reportable to CAT. FIF members request confirmation on these points and, more generally, request guidance on how CAT reporting would apply for the scenario above. FIF members note that a dealer's acknowledgment of a hit or lift message would not typically have a price or quantity. Accordingly, the dealer, when reporting to CAT the acknowledgment of the hit or lift message, would need to incorporate the price and quantity from the last RFQ response that the dealer sent prior to acknowledging the hit or lift message. FIF members request further guidance on the expected CAT reporting for this scenario.

RFQ cancels and modifications

A number of RFQ systems provide for ongoing updates to non-executable RFQ responses. Specifically, a responder communicates updated responses to a solicitor on an ongoing basis, with updates to a non-executable RFQ response often sent multiple times per second. These responses typically would not have a time-in-force instruction. RFQ systems also allow for RFQ responses that have a time-in-force instruction (for example, through a ValidUntilTime or QuoteTimeout FIX tag).

The RFQ Response Presentation provides for new Option Quote, Option Routed Quote and Option Quote Received events, but the RFQ Response Presentation does not provide for Option Quote Cancel or Option Quote Modification events. The RFQ Response Presentation takes a similar approach for Multi-Leg Options. Presumably, this means that the Commission, the Plan Participants and FINRA CAT do not intend to require any reporting when a non-executable RFQ response for an option or a multi-leg option is cancelled. Presumably, this approach also would apply for equities. How would a modification to a non-executable RFQ response be reported? Would a modification be ignored? Alternatively, would a modification be reportable as a new non-executable RFQ response?

The RFQ Response Presentation provides that "[C]onsistent with current guidance, Solicitors and Responders are not required to report quote cancellation events for responses to an RFQ or other similar form of solicitation that were ultimately not selected." FIF members note that there are scenarios other than a responder not being selected where a non-executable RFQ response would be cancelled or modified (and, in fact, a responder would not necessarily cancel its response when another responder is selected because the selected responder could reject the solicitor's order). Accordingly, further guidance is required.

FIF members could have follow-up questions after the Plan Participants and FINRA CAT provide clarity on whether and, if so, how modifications and cancels of non-executable RFQ responses would be reportable to CAT.

Non-executable RFQ responses with pegged prices and spread-based prices

A non-executable RFQ response could communicate a pegged price or a spread-based price. The Plan Participants and FINRA CAT would need to provide a way for firms to report these types of RFQ responses. In particular, for an RFQ response with a pegged price, the Plan Participants and FINRA CAT would need to provide a way for a reporting firm to identify that the RFQ response has a pegged price rather than a fixed price. Reporting firms also would need guidance on whether they are required to report the type of peg (for example, pegged to the mid-point, the same-side NBBO, the opposite-side

NBBO, the close, NAV, VWAP, etc.) and, if so, how this should be reported. The Plan Participants also presumably would need to modify the validations that are currently applied for Fields 17 through 20 of the current Quote event (see discussion below) because these pegged non-executable RFQ responses presumably would not have explicit bid and offer prices (at least for any side that is pegged). It presumably also would be necessary for the Plan Participants and FINRA CAT to provide separate reporting of the data above for the bid and offer sides of an RFQ response because it is possible that one side could be pegged and the other side could be fixed, or both sides could be pegged with different reference pegs.

Similarly for an RFQ response with a spread price (for example, where the price communicated represents a price differential between two stocks), the Plan Participants and FINRA CAT would need to provide a way for a reporting firm to identify that the price communicated in the RFQ response represents a spread price. This again would presumably mean modifying the validations that are currently applied for Fields 17 through 20 of the current Quote event (see discussion below). It presumably also would be necessary for the Plan Participants and FINRA CAT to provide separate reporting of the data above for the bid and offer sides of an RFQ response (and for each component symbol). For example, a firm could communicate the following spread prices for two stocks (ABC and DEF) (assume that ABC is priced $10 higher than DEF):

- Buy ABC and sell DEF at $9.98 (components: buy ABC at $59.99; sell DEF at $50.01)
- Sell ABC and buy DEF at $10.02 (components: buy DEF at $49.99; sell ABC at $60.01).

This reporting would impact both the responder and the solicitor. FIF members request that the Plan Participants and FINRA CAT provide guidance on reporting for these scenarios.

RFQs for Percent FLEX Options

FIF members are aware of at least one RFQ system that handles RFQs for Percent FLEX options, and FIF members expect that other RFQ systems will handle this functionality in the future. Accordingly, if non-executable RFQ responses become reportable to CAT, it is important that the Plan Participants and FINRA CAT provide a method for firms to report non-executable RFQ responses for Percent FLEX options to CAT. The Plan Participants and FINRA CAT would need to provide a means for a reporting firm to report that an RFQ response relates to a Percent FLEX option. Further, the RFQ responder (and the solicitor) would not be able to report the optionID and the price until after the close when the price of the underlying has been determined. As the Plan Participants and FINRA CAT are aware, for Percent FLEX options the dealer communicates a price as a percentage of the price of the underlying index or stock, and the optionID and price are not determined until after the close. It is important to note that the responder could have transmitted and updated multiple Percent FLEX option percentages during the course of a trading day with the trade price based on the last percentage communicated. In many cases, this trade price would not be reflective of the prior percentages that were quoted by the responder, and it is not clear what price, if any, should be reported for these previously communicated percentages. FIF members request that the Plan Participants and FINRA CAT provide guidance on reporting for these scenarios.

Reporting Scenarios document

FIF members request that the Plan Participants and FINRA CAT incorporate the scenarios above in the CAT Reporting Scenarios document.

C. Creating separate CAT events for reporting non-executable RFQ responses would reduce the complexity for reporting these events

An independent reason to create a new CAT set of event types for reporting non-executable RFQ responses (as opposed to using the existing Quote events) is that one of the following applies to every field in the Quote event (excluding fields that apply to every CAT event):

- The field would never be reportable for non-executable RFQ responses.
- The field is a Boolean field that would always be reportable as true for non-executable RFQ responses.
- The field is a Boolean field that would always be reportable as false for non-executable RFQ responses.
- FINRA CAT will need to make changes to the CAT system to accommodate reporting of this field for non-executable RFQ responses.

Given the above, while non-executable RFQ responses could still be reported through Quote events, it would provide greater clarity, and reduce the complexity, for reporting firms if the Plan Participants and FINRA CAT were to provide a separate set of CAT events specific for non-executable RFQ responses. FIF members note that the current inclusion of IDQS and ADF events in the same set of Quote events creates a level of complexity that could have been avoided by using separate event types for these two distinct workflows. Adding a third type of activity (reporting of non-executable RFQ responses) would create additional complexity. Certain scenarios discussed above, including non-executable RFQ responses that have a pegged price or a spread-based price and non-executable RFQ responses that involve Percent FLEX options, will increase this complexity.

We note, in particular, that the ADF workflow that is subject to reporting using Quote events is fundamentally different from the workflow for non-executable RFQ responses. In the ADF workflow, an alternative trading system ("ATS") has received a CAT-reportable order from a dealer and is communicating that order to the ADF. The action taken by the ATS is dissemination of information about a pre-existing CAT-reportable order. In contrast, with non-executable RFQ responses there is no CAT-reportable order to disseminate.

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The following is a discussion of the various fields in the current CAT New Quote event for equities (MENQ) and how these fields would apply to, and require modification to accommodate, reporting of non-executable RFQ responses. We do not discuss Fields 1-8 and 11, which generally are applicable for all CAT events, and Fields 9-10, 13-15 and 24-25, which are retired.

seqNum (Field 12) and onlyOneQuoteFlag (Field 16)

These two fields are specific for IDQSs and are not relevant for non-executable RFQ responses.

bidPrice, bid Qty, askPrice, askQty (Fields 17-20)

FIF members have identified two issues relating to these fields that would need to be addressed.

First, the CAT Quote event does not currently allow for reporting of non-executable RFQ responses that have a pegged or spread-based price. This will require additional fields as discussed above. The Plan Participants and FINRA CAT also would presumably need to change the current validations that apply for Fields 17 through 20. For example, the unpricedInd field would not apply to a non-executable RFQ response that has a pegged price because a pegged price is still a price, but a bidPrice or askPrice (as applicable) would not be provided by the reporting party even though a bidPrice or askPrice (as applicable) would be required based on the current validation of these fields. Similarly, the unpricedInd would not apply to a non-executable RFQ response that has a spread price because a spread price is still a price, but a bidPrice or askPrice (as applicable) would not be provided by the reporting party even though a bidPrice or askPrice (as applicable) would be required based on the current validation of these fields.

Second, as discussed below, FIF members assume that a non-executable RFQ response would only be reportable if it has a price and quantity. However, the statement from the RFQ Response Presentation quoted above raises questions about this assumption. If a non-executable RFQ response without a price or quantity could be reportable to CAT, this would require changes to certain validations in Fields 17 through 20 beyond those described in the preceding paragraph.

firmDesignatedID (Field 21)

An RFQ response typically would not be generated out of a specific account. Accordingly, this field would need to be optional for non-executable RFQ responses.

accountHolderType (Field 22)

The same analysis applies as discussed above for Field 21. In addition, since any execution resulting from a response from a solicitor would be a principal execution, it is not clear what value reporting of this field would provide to regulatory and surveillance personnel.

unsolicitedInd (Field 23)

This field applies to IDQS activity and would not be applicable for non-executable RFQ responses.

unpricedInd (Field 26)

FIF members assume that a non-executable RFQ response would only be reportable if it included a price and quantity for at least one side (see discussion below). Assuming this is the case, the unpricedInd field

would never be applicable for non-executable RFQ response events. If this is not the case, validation changes to the CAT system presumably would be required because the Quote event currently requires reporting of the quantity when a price is reported.

manualFlag (Field 27)

The FINRA CAT March 22 presentation specifically applies to electronic RFQ responses, so this field would never be applicable for non-executable RFQ responses.

electronicTimestamp (Field 28)

This field only applies when the manualFlag is true, so this field also would never be applicable for non-executable RFQ responses.

representativeQuoteInd, askAggregatedOrders and bidAggregatedOrders (Fields 29-31)

These fields apply to ADF activity and would never be applicable to non-executable RFQ responses.

D. Non-executable RFQ responses that exclude a price or quantity

FIF members assume that a non-executable RFQ response would only be reportable if it includes both a price (either explicit or pegged) and quantity for at least one side. FIF members request that the Commission, the Plan Participants and FINRA CAT provide guidance on this point.

E. Proposed RFQScope field

The FINRA CAT Presentation proposes an RFQScope field for a solicitor to report on a Quote Received event whether the RFQ to which the reported RFQ response responds was sent to one or multiple recipients (more specifically, whether the RFQ was bilateral or multilateral). Whether an RFQ is bilateral or multilateral is a property of an RFQ. RFQs are not reportable to CAT. Accordingly, there is no basis under the CAT NMS Plan for the Commission to require the reporting of whether an RFQ is multilateral or bilateral.

F. Proposed RFQReceivedMethod field

The FINRA CAT Presentation proposes an RFQReceivedMethod field for a responder to report on a New Quote and a Routed Quote event and for a solicitor to report on a Quote Received event. According to the RFQ Response Presentation, this field signifies "… the format (e.g., electronic or verbal) in which the Responder received the RFQ." Whether an RFQ was sent electronically or verbally is a property of an RFQ. RFQs are not reportable to CAT. Accordingly, there is no basis under the CAT NMS Plan for the Commission to require the reporting of whether an RFQ was sent electronically or verbally.

G. Cost-benefit analysis

Given the fact that CAT operating costs are significantly higher than projected in the CAT NMS Plan, and given that Rule 613, Regulation NMS, the CAT NMS Plan and the proposing and adopting releases for CAT never discussed the reporting of non-executable RFQ responses, the Plan Participants, at a minimum, should update the CAT NMS Plan to analyze the costs and benefits of requiring the reporting of non-executable RFQ responses to the CAT system. This cost-benefit analysis should incorporate the fact that reporting firms would become subject to expanded books and records requirements.

H. Implementation time period for CAT reporting of RFQ responses

In a communication dated August 3, 2022, FIF members proposed an implementation time period of one year from the publication of reporting scenarios if the Commission were to require reporting of non-executable RFQ responses. The one-year period should not commence until the Commission, the Plan Participants and FINRA CAT have provided clear written guidance (through updates to the Technical Specifications and Reporting Scenarios documents) on all workflows identified by FIF members, including the applicable CAT events to be reported by each reporting firm for each step in the applicable workflow, the data elements to be reported for each CAT event for the applicable workflow, and applicable linkage requirements. FIF members also recommend that any requirement for reporting of non-executable RFQ responses be implemented in the following three phases:

- Phase 1: equities
- Phase 2: options (excluding multi-leg options)
- Phase 3: multi-leg options.

FIF members note that the tentative December 11, 2023 date proposed in the current CAT Scope and Schedule document[5] is not a realistic date for implementing reporting of non-executable RFQ responses. FIF members appreciate that the Plan Participant RFQ Exemption Request proposes a period of twelve months from publication of final technical specifications for implementation of CAT reporting of non-executable RFQ responses.[6] FIF members note that guidance from the Commission as discussed in this letter and the separate FIF letter to the Commission and guidance with respect to the scenarios set forth in this letter are necessary conditions for the commencement of the twelve-month implementation period.

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[5] Available at https://catnmsplan.com/sites/default/files/2023-03/03.27.23-Release-Plan-Transaction.pdf.
[6] Plan Participant RFQ Exemption Request, at 5.

FIF members appreciate the opportunity to provide input on CAT reporting for non-executable RFQ responses. 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

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