_____ __, 2023

By Email

Vanessa A. Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 205499–1090

Re: **Request for exemption from the requirement that an industry member report linkage between a representative order and a customer order, and from the requirement that an industry member report linkage between an order fulfillment for a customer and a representative or principal order, for specified unlinked workflows**

Dear Ms. Countryman:

On behalf of our member firms that are defined as "Industry Members" under the national market system plan governing the creation, implementation, and maintenance of a consolidated audit trail (the "CAT NMS Plan"),[1] the Financial Information Forum ("FIF") requests that the Securities and Exchange Commission (the "Commission") grant such firms exemptive relief pursuant to the Commission's authority under Section 36 of the Securities Exchange Act of 1934 ("Exchange Act")[2] and Rule 608(e) of Regulation NMS under the Exchange Act[3] from certain reporting requirements under the CAT NMS Plan. Specifically, FIF requests exemptive relief from the following reporting requirements under the CAT NMS Plan, as discussed in further detail below: (i) for unlinked representative order workflows (as described below), the requirement that an Industry Member report linkage between a representative order and a customer order; and (ii) for unlinked fulfillment workflows (as described below), the requirement that

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[1] Limited Liability Company Agreement of Consolidated Audit Trail, LLC (July 24, 2020), available at https://catnmsplan.com/sites/default/files/2020-07/LLC-Agreement-of-Consolidated-Audit-Trail-LLC-as-of-7.24.20.pdf ("CAT NMS Plan"). Capitalized terms not otherwise defined in this letter have the same meaning as they do in the CAT NMS Plan.

[2] 15 U.S.C. §78mm(a)(1) provides, in relevant part, that the "Commission, by rule, regulation, or order, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of this title or of any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors."

[3] 17 CFR §242.608(e) provides that "[t]he Commission may exempt from the provisions of this section, either unconditionally or on specified terms and conditions, any self-regulatory organization, member thereof, or specified security, if the Commission determines that such exemption is consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets and the removal of impediments to, and perfection of the mechanisms of, a national market system."

an Industry Member report linkage between (A) an order fulfillment for a customer and (B) a representative or principal order. For the reasons discussed in this request, FIF members believe the requested exemptive relief is "necessary or appropriate in the public interest, and is consistent with the protection of investors," and is "consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets and the removal of impediments to, and perfection of the mechanisms of, a national market system."[4]

I. For unlinked representative order workflows, request for exemption from the requirement that a CAT Reporter report linkage between a representative order and a customer order

A. Background

Rule 613(e)(1) of Regulation NMS requires the CAT system to "… store and make available to regulators data in a uniform electronic format, and in a form in which all events pertaining to the same originating order are linked together in a manner that ensures timely and accurate retrieval of the information" for all reportable events for that order.[5] Section 3 of Appendix D to the CAT NMS Plan provides that

> By using the daisy chain approach the Plan Processor must be able to link all related order events from all CAT Reporters involved in the lifecycle of an order. At a minimum, the Central Repository must be able to create the lifecycle between:
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> …
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> Customer orders to "representative" orders created in firm accounts for the purpose of facilitating a customer order (e.g., linking a customer order handled on a riskless principal basis to the street-side proprietary order)….[6]

On December 16, 2020, the Commission, pursuant to Section 36(a)(1) of the Exchange and Rule 608(e) under the Exchange Act, granted the Participants in the CAT NMS Plan (the "Participants") temporary exemptive relief, until July 31, 2023, from "the requirement in Section 3, Appendix D of the CAT NMS Plan that the Participants create the lifecycle between customer orders to representative orders created in firm accounts for the purpose of facilitating a customer order…"[7] On July 8, 2022, the Commission extended this temporary exemptive relief until July 31, 2024.[8]

B. Request for exemption

FIF, on behalf of our members that are Industry Members, requests exemptive relief from the requirement for Industry Members to link customer orders to representative orders. This request for exemption only applies for scenarios that involve an unlinked representative order workflow. An

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[4] 17 CFR §242.608(e).
[5] 17 CFR §242.613(e)(1).
[6] CAT NMS Plan, Appendix D, Section 3.
[7] Securities and Exchange Commission, Release No. 34-90688 (Dec. 16, 2020).
[8] Securities and Exchange Commission Release No. 34-95234 (July 8, 2022).

"unlinked representative order workflow" means a workflow where an order is communicated to a trader through an unstructured communication (for example by voice or chat) and the trader creates a representative order based on that unstructured communication.

In the discussion below, we refer to the system that records the creation of the customer order as "System 1", the "upstream system" or the "order management system" ("OMS"), and we refer to the system that records the creation of the representative order as "System 2", the "downstream system" or the "execution management system" ("EMS"). For this purpose, the relevant consideration is the function performed by the system (i.e., System 1 records the creation of the customer order, while System 2 records the creation of the representative order) as opposed to how the system is labeled. For example, Systems 1 and 2 could be separate modules within the same system where System 1 records the creation of the customer order and System 2 records the creation of the representative order.

<blockquote>

i. **Requiring the linkage of representative to customer orders for unlinked representative order workflows will require changes to trading workflows and result in reduced execution quality for customer orders**

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One potential solution for Industry Members to link representative orders to customer orders for unlinked representative order workflows is a manual solution. With this solution, the System 2 trader, when creating an order that is representative of an order previously created in System 1, is required to manually input the System 1 order identifier (and other applicable order-related information) into System 2. An order identifier can be 15 or more characters in length. A representative order also can be associated to multiple customer orders, which would require the trader using System 2 to manually input each associated customer order along with the number of shares of each customer order that are represented by the representative order. For each associated customer order, the trader using System 2 would need to manually input an order identifier of 15 or more characters and an associated quantity.

Requiring this manual input involves the following challenges:

- Delays in routing and execution of customer orders will result in investors being disadvantaged, particularly in fast moving markets
- Risk of a trader input error
- Disruption to the high-touch trading process.

Based on the challenges described above, the manual solution is not a realistic solution for many firms. Instead, for many firms, an automated solution will be required.[9] With this solution, System 1 must electronically send a customer order (including an order identifier) to System 2, and System 2 must be able to receive, record and process the customer order (including an order identifier) automatically. This is sometimes referred to as "staging". As a result of this CAT reporting requirement, a significant portion of current trading activity that is handled through unstructured communications would now need to transition to an automated process. This will have the following adverse impact:

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[9] As a clarification, the manual solution described in this section would involve some level of automation of System 2 because System 2 would need to provide a workflow for the trader to manually input customer order identifiers. System 2 also would need to process and store this new data element.

- The unstructured communications associated with unlinked representative order workflows facilitate the efficient handling of customer orders. Impeding these workflows will result in less efficient handling of customer orders, including reduced liquidity for customer orders.
- Because of the challenges involved with implementing this linkage, it is likely that some firms will decide to trade these customer orders (i.e., customer orders that they currently can trade as riskless principal) as agent. This means that upstream (customer-facing) desks will have less ability to seek liquidity from downstream principal trading desks and will have to rely more on agency desks to execute large orders. If market makers reduce the liquidity that they provide for these orders, this will mean reduced customer execution quality. This also will mean a reduction in displayed liquidity in the market because market makers are more likely to display orders as compared to firms routing on an agency basis.
- More specifically, upstream desks will be less likely to provide accumulate and print and guaranteed pricing for customer orders. "Accumulate and print" means that a firm creates a representative order to purchase or sell shares in the market based on a discussion with the customer and, after completing the purchase or sale, transacts with the customer. Based on the executions attained by the firm and subsequent communication between the firm and the customer, the firm will trade as either riskless principal, if the customer agrees to the price obtained by the firm in the market, or as principal, if the customer does not agree to the price obtained by the firm in the market. "Guaranteed pricing" (which is a type of accumulate and print) means that a firm agrees to provide the customer either the guaranteed price agreed between the parties or the price achieved by the broker-dealer in the market, based on which price is better for the customer. If firms do not provide the accumulate and print and guaranteed pricing services, this will mean reduced execution quality for customer orders. Firms will trade as agent, and customers will forego the opportunity for a principal fill at a better price.
- To maintain information barriers that protect customer trading information, firms often seek to limit the communication of information across different desks. A requirement for firms to provide linkage for unlinked representative order workflows will mean that, in certain cases, additional information will be communicated to a trader at a downstream desk about customer orders created at an upstream desk. As one example, a downstream desk will now need to know whether an order from an upstream desk represents a customer or firm order. As a second example, a downstream desk will now need to know whether the orders sent from an upstream desk represent one or multiple customer orders. As a third example, a downstream desk would need to know the quantity of each component customer order rather than knowing an aggregate quantity communicated by the upstream desk. As a fourth example, there could be challenges with filtering certain customer order information at the parent order level (such as the full parent order quantity) from the downstream desk.

Requiring linkage of representative to customer orders for unlinked representative order workflows will require significant changes to trading workflows across many industry members. Because CAT was not intended to change trading workflows, and because of the reduced execution quality that would result from impeding the current industry workflows, FIF requests that the Commission provide Industry Members with an exemption from the requirement to link representative to customer orders for unlinked representative order workflows.

ii. **Requiring the linkage of representative to customer orders for unlinked representative order workflows will require significant time and cost for industry members**

A primary challenge with the automated approach discussed above is that certain downstream systems (corresponding to System 2) only provide for manual input of order information. It will be necessary for these systems to be upgraded to accept order messages from upstream systems electronically. For many impacted firms, a significant time period will be required for this upgrade, and there will be significant cost involved. Many vendors have competing priorities and are not regulated entities, which creates an additional challenge for reporting firms. Adding to this complexity is the number of vendor-provided and in-house developed OMSs and EMSs and the large number of updated OMS to EMS integrations that would be required. The work to define, design, build, test, implement and deploy upgrades to all these interfaces is significant. Many EMSs are manual entry. Requiring the transmission of an order from an OMS to an EMS means that the EMS must now take on OMS-like qualities to "accept" or "receive" orders. This is not insurmountable, but it is changing the behavior and the functionality of those EMSs.

For certain firms, even where an EMS currently allows for staging, integration with multiple OMSs would still be required. Some firms have indicated that they would need to implement system changes that restrict the ability of traders to manually enter order information into an EMS. Given the numerous methods that could be available to create an order directly in an EMS, this could involve significant work, including new validations and hard errors.

Because of the time and cost involved to implement these system changes, it is likely that some firms will decide to transition some or all of their riskless principal and principal business to an agency model. As discussed in the preceding sub-section, this would result in reduced execution quality for customer orders and a reduction in displayed market liquidity.

iii. **Conclusion**

Requiring the linkage of representative to customer orders for unlinked representative order workflows will require changes to order handling workflows, which was not the intent of CAT. As discussed above, this will result in reduced execution quality for customer orders and a reduction in displayed market liquidity. Requiring this linkage also will involve significant costs and work for Industry Members. Accordingly, FIF, on behalf of our members, requests that the Commission grant exemptive relief to Industry Members from the requirement to link representative orders to customer orders for unlinked representative order workflows.

II. **For unlinked fulfillment workflows, request for exemption from the requirement that a CAT Reporter report linkage between an order fulfillment for a customer and a representative or principal order**

A. **Background**

Rule 613(e)(1) of Regulation NMS requires the CAT system to "… store and make available to regulators data in a uniform electronic format, and in a form in which all events pertaining to the same originating order are linked together in a manner that ensures timely and accurate retrieval of the information" for all reportable events for that order.[10] Section 3 of Appendix D to the CAT NMS Plan provides that

> By using the daisy chain approach the Plan Processor must be able to link all related order events from all CAT Reporters involved in the lifecycle of an order. At a minimum, the Central Repository must be able to create the lifecycle between:
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> …
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> Order events for all equity and option order handling scenarios that are currently or may potentially be used by CAT Reporters, including:
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> …
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> Execution of customer order via allocation of shares from a pre-existing principal order….[11]

On December 16, 2020, the Commission, pursuant to Section 36(a)(1) of the Exchange and Rule 608(e) under the Exchange Act, granted the Participants temporary exemptive relief, until July 31, 2023, from "the requirement in Section 3, Appendix D of the CAT NMS Plan that the Participants create the lifecycle between customer orders to representative orders created in firm accounts for the purpose of facilitating a customer order…"[12] On July 8, 2022, the Commission extended this temporary exemptive relief until July 31, 2024.[13]

B.   Request for exemption

FIF, on behalf of our members that are Industry Members, requests exemptive relief from the requirement for Industry Members to link order fulfillments to representative or principal orders. This request for exemptive relief only applies for scenarios that involve an unlinked fulfillment workflow. An "unlinked fulfillment workflow" means a workflow where a firm maintains an aggregated pool of executions, provides order fulfillments from that pool of executions, and does not maintain in its books and records linkage between an order fulfillment and a specific principal or representative order. As one common example of this workflow, many firms maintain a "position management system" that aggregates executions across multiple desks or execution processes prior to fulfillment against customer orders. One function of a position management system is to track in real-time a firm's long or short position in individual securities.

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[10] 17 CFR §242.613(e)(1).
[11] CAT NMS Plan, Appendix D, Section 3.
[12] Securities and Exchange Commission, Release No. 34-90688 (Dec. 16, 2020).
[13] Securities and Exchange Commission Release No. 34-95234 (July 8, 2022).

i.   **Requiring linkage of order fulfillments to representative or principal orders for the unlinked fulfillment workflow would involve reporting of fabricated data**

In the unlinked fulfillment workflow, there is no logical link between the customer fulfillments and the principal and representative orders that resulted in the trade executions. This linkage is not required by any trading regulation, nor would it be informative to regulators; it would be a fabrication and could cause false results for anyone using the CAT data. When an Industry Member provides a fulfillment to a customer, the Industry Member is providing that fulfillment from a pool of executions at an average price; it is not providing a fulfillment from a specific representative or principal order. In many cases, the price at which a customer is fulfilled does not match the execution price of any specific representative or principal order because fulfillment is provided to the customer at an average price from a pool of executions, where the average price represents execution of multiple representative and principal orders. In this scenario, if the firm links an order fulfillment to a specific representative or principal order this linkage would be an inaccurate depiction of how the firm fulfilled the customer because the firm did not fulfill the customer based on a specific representative or principal order.[14]

ii.   **Requiring linkage of order fulfillments to representative or principal orders for the unlinked fulfillment workflow would require firms to undertake significant systems re-engineering work**

For many firms executions are reported by one or more EMSs to a position management system. The position management system, in turn, reports executions to one or more OMSs. This reporting today does not involve reporting of EMS order identifiers to the position management system. Creating this linkage across multiple OMS, EMS and position management systems to provide linkage on order fulfillments will be a significant challenge and will involve re-engineering of these position management systems and the systems that interact with these position management systems. Because of the challenges involved with implementing this linkage, some firms could decide to trade these customer orders (i.e., customer orders that they currently can trade as riskless principal) as agent, resulting in reduced execution quality for customer orders and a reduction in displayed market liquidity.

iii.   **In certain scenarios, linking an order fulfillment to a representative or principal order is not possible because no representative or principal order exists**

In certain scenarios, it is not possible to link an order fulfillment to a representative or principal order because no representative or principal order exists. For example, if a trading desk executes against a customer order and then receives a contra-side order from its sales desk where the contra-side order was received by the sales desk prior to execution of the first order, the trading desk could execute against the contra-side order as riskless principal without having previously created a representative or principal order. In this scenario, there is no representative or principal order that can be reported for the order fulfillment, which means that providing this linkage is not possible.

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[14] FIF members have previously provided Commission staff representatives with scenarios illustrating the points set forth in this paragraph.

iv.   Conclusion

Requiring the linkage of order fulfillments to representative or principal orders for unlinked fulfillment workflows will result in Industry Members reporting linkages to CAT that do not accurately reflect the fulfillment processes of these Industry Members. Requiring this linkage also will involve significant work for firms to re-engineer their position management systems and the systems that interact with these position management systems. As a result of the time and cost involved, certain firms could choose not to implement this linkage and instead handle customer orders as agent. For the reasons discussed above, this would result in reduced execution quality for customer orders and a reduction in displayed liquidity. Accordingly, FIF, on behalf of our members, requests that the Commission grant exemptive relief from the requirement for Industry Members to link order fulfillments to principal or representative orders.

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Thank you for your attention to this matter. Please contact the undersigned at _____ for further discussion of this request.

Very truly yours,

/s/ Howard Meyerson

Howard Meyerson
Managing Director, Financial Information Forum