

# FINANCIAL INFORMATION FORUM

February 29, 2024

**By electronic mail**

Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090  
Attn: Mr. Sai Rao

**Re: Linkage of representative to customer orders; linkage of order fulfillments to representative and principal orders**

Dear Mr. Rao,

Financial Information Forum (“FIF”) is submitting this letter in response to the November 2, 2023 Order (the “November 2023 Order”) by the Securities and Exchange Commission (“Commission”) granting exemptive relief to the Participants (the “CAT Plan Participants”) of the National Market System Plan Governing the Consolidated Audit Trail (the “CAT NMS Plan”) with respect to certain requirements of the CAT NMS Plan.<sup>1</sup> In the November 2023 Order, the Commission rejects the request by the CAT Plan Participants to grant further exemptive relief “... related to lifecycle linkages between customer orders and representative orders ....”<sup>2</sup> In rejecting this request by the CAT Plan Participants, the Commission writes:

The Commission believes that the relief provided in the 2023 Order<sup>3</sup> gives Industry Members sufficient time to make any necessary systems changes to implement the required functionality, especially because the technical specifications and/or scenarios documents relating to the reporting and linkage of all “representative” orders have

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<sup>1</sup> Securities and Exchange Act Release No. 34-98848 (Nov. 2, 2023), 88 FR 77128 (Nov. 8, 2023) (Order Granting Conditional Exemptive Relief, Pursuant to Section 36(a)(1) of the Securities Exchange Act of 1934 (“Exchange Act”) and Rule 608(e) of Regulation NMS under the Exchange Act, from Certain Requirements of the National Market System Plan Governing the Consolidated Audit Trail) (“November 2023 Order”).

<sup>2</sup> Id. at 15.

<sup>3</sup> The 2023 Order refers to an Order issued by the Commission on May 19, 2023 granting exemptive relief to the CAT Plan Participants for various requirements under the CAT NMS Plan. Securities Exchange Act Release No. 97530 (May 19, 2023), 88 FR 33655 (May 24, 2023) (Order Granting Temporary Conditional Exemptive Relief, Pursuant to Section 36 of the Securities Exchange Act of 1934 (“Exchange Act”) and Rule 608(e) of Regulation NMS under the Exchange Act, from Certain Requirements of the National Market System Plan Governing the Consolidated Audit Trail).

already been promulgated by the Participants. Therefore, the Commission does not believe it is necessary to issue any additional extension of exemptive relief in connection with these requirements.<sup>4</sup>

The Commission's rejection of this request for relief by the CAT Plan Participants is based on the assertion that "... the technical specifications and/or scenarios documents relating to the reporting and linkage of all 'representative' orders have already been promulgated by the Participants."<sup>5</sup> FIF members consider this assertion to be inaccurate. As discussed in further detail below, the Commission, the CAT Plan Participants and FINRA CAT LLC ("FINRA CAT") have not provided written guidance with respect to various fundamental scenarios relating to the reporting of representative order linkages. We describe below three fundamental scenarios where written guidance is required. FIF submitted the first two scenarios to FINRA CAT in writing in May 2022. Commission representatives, through their participation in CAT Operating Committee meetings, would have been aware of this submission by FIF. FIF submitted the third scenario to Commission representatives during September 2022 (see discussion below).

Given the lack of guidance with respect to these fundamental scenarios, FIF members do not believe that a January 31, 2025 implementation date for reporting all lifecycle linkages between representative and customer orders is either reasonable or feasible. On January 10, 2023, FIF, on behalf of FIF members, submitted a draft exemptive request relating to representative order and order fulfillment linkage. FIF, on behalf of FIF members, plans to submit an exemptive request in final form relating to this issue.

### **Scope of the exemption that is required**

Before describing the three fundamental reporting scenarios, FIF would like to clarify the scope of the exemption that is required. In the November 2023 Order, the Commission describes the exemption as relating to "lifecycle linkages between customer orders and representative orders."<sup>6</sup> Based on a review of the CAT Technical Specifications for Industry Members ("CAT Industry Member Technical Specifications"), FIF members would further define the scope of the required exemption as relating to the following three types of linkage:

- Linkage of representative to customer orders
- Linkage of order fulfillments to representative orders; and
- Linkage of order fulfillments to principal orders.<sup>7</sup>

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<sup>4</sup> November 2023 Order, at 15.

<sup>5</sup> Ibid.

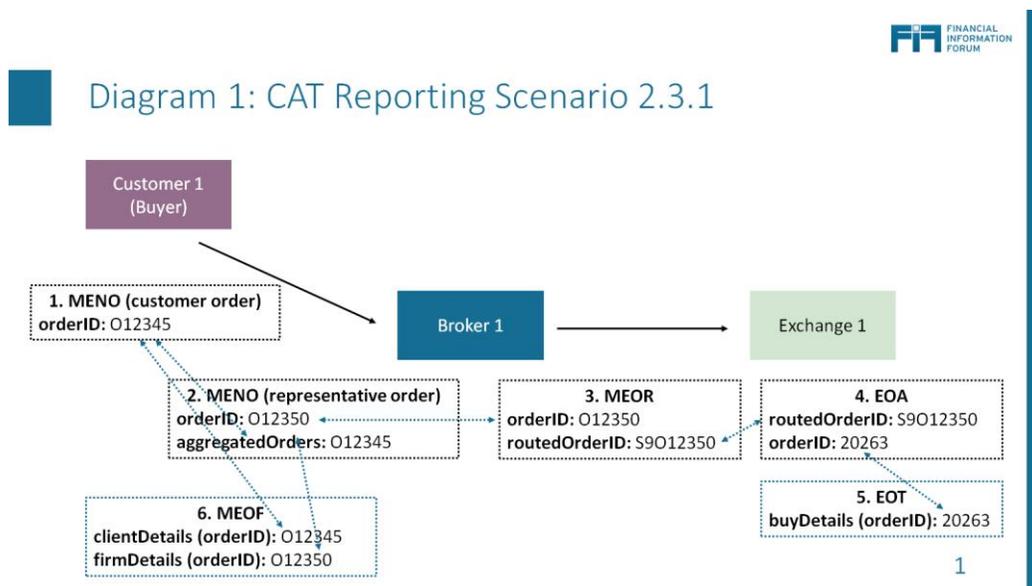
<sup>6</sup> Ibid.

<sup>7</sup> See, CAT Reporting Technical Specifications for Industry Members, Version 4.1.0 r1 (Jan. 26, 2024), available at [https://catnmsplan.com/sites/default/files/2024-01/1.26.24\\_CAT\\_Reporting\\_Technical\\_Specifications\\_for\\_Industry\\_Members\\_v4.1.0r1\\_CLEAN.pdf](https://catnmsplan.com/sites/default/files/2024-01/1.26.24_CAT_Reporting_Technical_Specifications_for_Industry_Members_v4.1.0r1_CLEAN.pdf) ("CAT Industry Member Technical Specifications"), at 365-371.

In addition, the scope of the required exemption is limited to the scenarios where the “YE” value would currently be reported in the representativeInd or fulfillmentLinkType field.<sup>8</sup> In other words, (a) for linkage of representative to customer orders, the scope of the exemption is limited to the scenario where the reporting firm does not maintain in its books and records linkage between a representative order and a customer order, and (b) for linkage of order fulfillments to representative or principal orders, the scope of the exemption is limited to the scenario where the reporting firm does not maintain in its books and records linkage between an order fulfillment and a representative or principal order. As previously discussed by FIF members with Commission representatives, in many cases firms do not maintain in their books and records linkage of order fulfillments to representative or principal orders because their order fulfillments are made from a pool of trade executions as opposed to being made from an individual trade execution and a specified associated representative or principal order.

### Linkage of representative and customer orders

CAT Reporting Scenario 2.3.1 (Fill of a Single Customer Order on a Riskless Principal Basis) (“RS 2.3.1”) illustrates the required linkage of representative and customer orders in CAT.<sup>9</sup> In RS 2.3.1, Broker 1 receives a customer buy order (O12345). Broker 1 creates a principal buy order (O12350) and routes the principal order to the market. Diagram 1 illustrates the required CAT linkage:



As illustrated by Diagram 1, Broker 1 reports a New Order (MENO) event for the customer buy order. Broker 1 also reports a MENO for the representative order. The two orders are linked in CAT through the aggregatedOrders field in the MENO for the representative order. Broker 1 also reports an Order Route (MEOR) event. Exchange 1 reports an Order Accepted (EOA) event and an Order Trade (EOT) event.

<sup>8</sup> Id. at 365 and 367.

<sup>9</sup> CAT Industry Member Reporting Scenarios, Version 4.10 (Oct. 21, 2022), available at [https://catnmsplan.com/sites/default/files/2022-10/10.21.22\\_Industry\\_Member\\_Tech\\_Specs\\_Reporting\\_Scenarios\\_v4.10\\_CLEAN.pdf](https://catnmsplan.com/sites/default/files/2022-10/10.21.22_Industry_Member_Tech_Specs_Reporting_Scenarios_v4.10_CLEAN.pdf) (“CAT Reporting Scenarios”), at 25-28.

Broker 1 also reports an Order Fulfillment (MEOF) event. Diagram 1 illustrates how the MEOF reported by Broker 1 is linked to the EOT event reported by Exchange 1. Note that the Broker 1 identifiers in Diagram 1 are taken from RS 2.3.1 while the Exchange 1 orderID for the EOA and EOT is taken from Section 7.2 of the CAT Reporting Technical Specifications for Plan Participants.<sup>10</sup>

### **Scenario 1: Dealer trades as riskless principal without creating principal order**

The previous section describes the standard CAT linkage for representative orders and order fulfillments. We now discuss three fundamental reporting scenarios presented by FIF during 2022 where guidance is required.

The following is the sequence of events for Scenario 1:

- Dealer 1 (D1) receives a not held sell order from Customer 1 (C1)
- While working the order from C1, D1 receives a not held buy order from Customer 2 (C2)
- D1 trades as principal against C1 (from firm book with firmDesignatedID of ABCD); as per the CAT documentation, there is no order created by D1 when it trades against C1 as principal; specifically, the MENO in Step 2 of the baseline scenario in Diagram 1 above **does not exist in this scenario**<sup>11</sup>
- D1 trades as riskless principal against C2 (from same firm book)
- D1 reports the trade with C1 to the NYSE or Nasdaq Trade Reporting Facility (“TRF”) as a media report (i.e., the trade will be disseminated to the public)
- D1 reports the trade with C2 to the TRF as a non-media report (i.e., the trade will not be disseminated to the public).

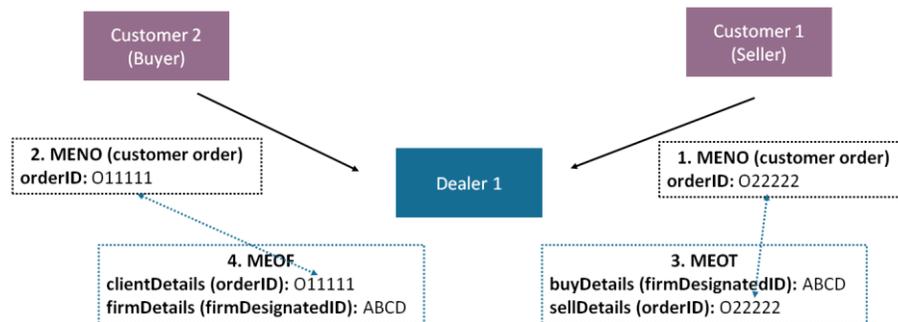
The following Diagram 2 illustrates this scenario:

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<sup>10</sup> CAT Reporting Technical Specifications for Plan Participants, Versions 4.1.0-r20 (Sept. 25, 2023), available at [https://catnmsplan.com/sites/default/files/2023-09/9.25.2023-CAT\\_Reporting\\_Technical\\_Specifications\\_for\\_Participants\\_4.1.0-r20.pdf](https://catnmsplan.com/sites/default/files/2023-09/9.25.2023-CAT_Reporting_Technical_Specifications_for_Participants_4.1.0-r20.pdf), at 166-170.

<sup>11</sup> See, for example, CAT Reporting Scenarios, at 23-25.

## Diagram 2: Dealer trades as riskless principal without creating principal order



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As illustrated in Diagram 2, D1 cannot report in the MEOF in Step 4 the orderID of a principal or representative buy order that was created to fill the MENO from C2 because, as noted above, **there is no principal or representative order (i.e., the MENO from Step 2 in the baseline scenario in Diagram 1 above does not exist in this scenario)**. This is not a technical or system limitation, but rather just the outcome of reporting principal trades against incoming orders in accordance with the existing CAT documentation.<sup>12</sup> No amount of time can solve for a requirement to report to CAT the orderID of a MENO that, according to the CAT documentation, does not exist.<sup>13</sup>

FIF members previously submitted this scenario in writing to FINRA CAT on May 2, 2022.<sup>14</sup> Commission representatives would have been notified of this submission during that time period through their participation in meetings of the CAT Operating Committee.

### Scenario 2: Dealer trades as riskless principal where the side with the market uses a Quote event

The following is the sequence of events for Scenario 2:

- Dealer 1 (D1) receives a not held buy order in an OTC equity from Customer 1 (C1)
- D1 posts a firm buy quote on the OTC Link ATS (to represent the C1 order)
- Dealer 2 (D2) sends a sell order to D1 via OTC Link
- D1 executes the order from D2
- D1 executes the order from C1
- D1 reports the trade with D2 to the FINRA Over-the-Counter Reporting System (“ORF”) as a media report (i.e., the trade will be disseminated to the public)

<sup>12</sup> Ibid.

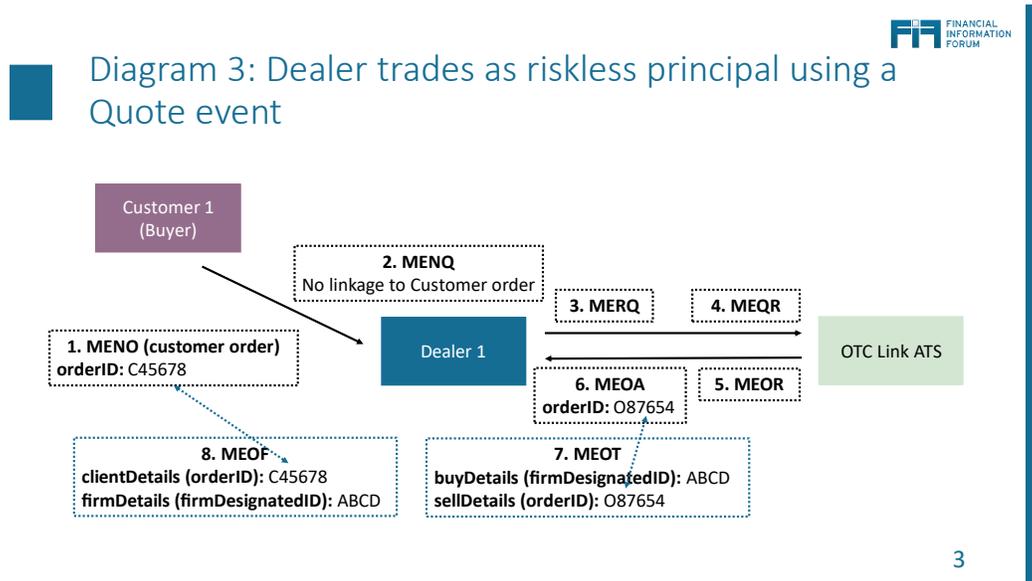
<sup>13</sup> Ibid.

<sup>14</sup> See Scenario 4A (Riskless crossing scenario) of the May 2, 2022 submission, on page 12.

- D1 reports the trade with C1 to the ORF as a non-media report (i.e., the trade will not be disseminated to the public).

Scenario 2 above is similar to CAT Reporting Scenario 2.8.4 (Customer Order Executed as a Result of an OTC Link ATS Message) (“RS 2.8.4”)<sup>15</sup> except that Scenario 2 differs from Step 9 in RS 2.8.4. In Scenario 2 D1 reports to CAT an MEOT to reflect D1 buying from D2 and an MEOF to reflect D1 selling to C1 on a riskless principal basis. This reporting is consistent with how D1 reports the transaction to the ORF.

The following Diagram 3 illustrates this scenario (to simplify Diagram 3, we do not include the messages between OTC Link and D2):



D1 reports an MEOT with D1’s FDID in the buyDetails and the orderID for the order from OTC Link in the sellDetails. D1 also reports an MEOF with D1’s FDID in the firmDetails and the orderID for the order from C1 in the clientDetails. As illustrated in Diagram 3, there is no way for D1 to link the fulfillment of C1’s order to a representative order because C1 did not create a representative order.

FIF members previously submitted this scenario in writing to FINRA CAT on May 2, 2022.<sup>16</sup> Commission representatives would have been notified of this submission during that time period through their participation in meetings of the CAT Operating Committee.

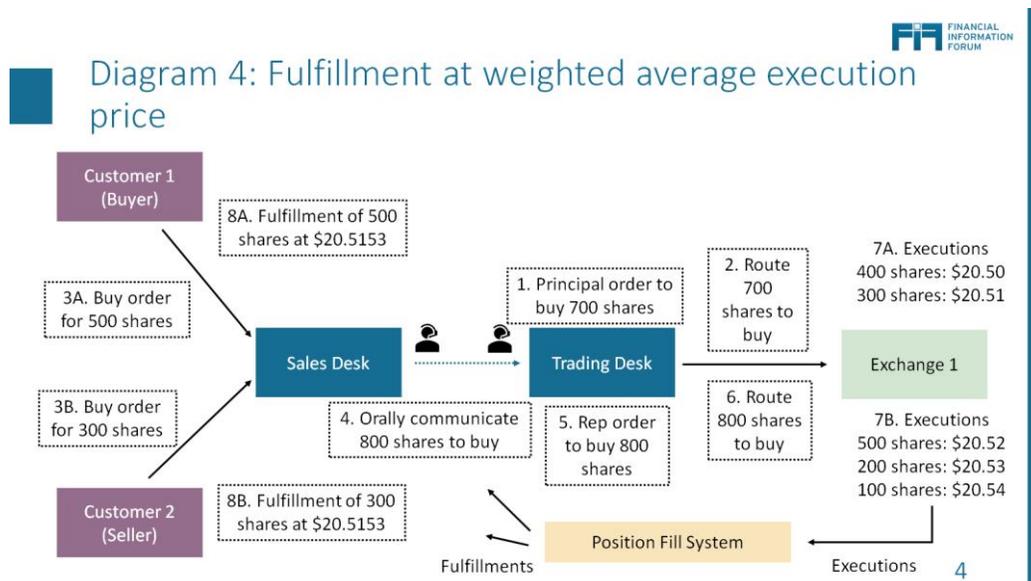
**Scenario 3: Dealer executes two customer orders and fills the orders through a position fill system**

Scenario 3 is a scenario that FIF submitted to Commission staff on September 15, 2022. At that time, FIF also sent this submission to the CAT Operating Committee and FINRA CAT.

<sup>15</sup> CAT Reporting Scenarios, at 248-254.

<sup>16</sup> See Scenario 2C (Manning fills (involving a firm’s OTC Quote); this is a disconnected OMS/EMS) of the May 2, 2022 submission, on page 6.

The following Diagram 4 illustrates the scenario that FIF submitted to the Commission on September 15, 2022 (please refer to that submission for additional detail):



Scenario 3 involves the following steps:

- Trading desk at Dealer 1 creates a principal order to buy for 700 shares
- Trading desk routes to Exchange 1 an order to buy for 700 shares
- Sales desk at Dealer 1 receives a buy order for 500 shares from Customer 1 and a buy order for 300 shares from Customer 2; all orders are for the same symbol
- Sales desk employee orally communicates the two customer orders to trading desk employee
- Trading desk employee manually inputs an order to buy for 800 shares
- Trading desk routes to Exchange 1 an order to buy for 800 shares
- Exchange 1 executes the orders at the prices indicated in Diagram 4 above
- Exchange 1 confirms the executions to Dealer 1's position fill system
- Trading desk personnel orally communicate the trade executions (shares and price) to sales desk personnel
- Sales desk personnel manually fulfill the customer orders.

As described in the September 15 submission, the customer orders are not held orders. There are different ways that the reporting firm could fulfill the customer orders. In Scenario 3, the reporting firm fulfills the customer orders at the weighted average execution price for all trade executions. Specifically, the firm fulfills 500 shares to Customer 1, and 300 shares to Customer 2, at the weighted average execution price of \$20.5153. It is unclear how a firm should report this scenario to CAT if the "YE" fulfillmentLinkType is not available.

One option is for the reporting firm to report a single MEOF for 500 shares for the fulfillment to Customer 1 and a single MEOF for 300 shares for the fulfillment to Customer 2. If the firm adopts this

approach, it is unclear if the firm should report the fulfillmentLinkType as “YS” (customer/client order is filled from multiple representative orders) or “YP”(customer/client order is filled from a proprietary order or pre-existing quote that was originated prior to receipt of the customer/client order)?<sup>17</sup> Both values would appear to be applicable, but only one of these values can be reported. Accordingly, reporting a single fulfillment for Customer 1 or Customer 2 that meets the CAT reporting requirements (as described in the CAT Industry Member Technical Specifications)<sup>18</sup> is not possible based on the current CAT system.

Alternatively, the reporting firm could split the fulfillment and report fulfillment of Customer 1’s portion of the principal order executions (233.33 shares)<sup>19</sup> and separately report fulfillment of Customer 1’s portion of the representative order executions (266.67 shares).<sup>20</sup> However, this reporting does not accurately reflect the fact that the firm, in fact, provided a single fulfillment to Customer 1 as opposed to two separate fulfillments. Further, under this approach, the firm presumably would need to report the first fulfillment to Customer 1 at \$20.5043 (the weighted average price for the execution of the principal order) and the second fulfillment to Customer 1 at \$20.5250 (the weighted average price for the execution of the representative order). However, the reporting firm never provided a fulfillment at either of these prices, so this reporting would not reflect the actual books and records of the reporting firm.

### **Additional requests for clarification**

FIF members also request clarification on the following questions raised in the FIF May 2, 2022 submission:

- FIF members request clarification whether the “YP” value for the fulfillmentLinkType field will be available as of February 1, 2025 and whether a reporting firm should report “Y” or “YP” as the fulfillmentLinkType when an order fulfillment is linked to a principal order.<sup>21</sup>
- FIF members request clarification whether the “YE” value will be removed from the representativeInd and fulfillmentLinkType fields as of February 1, 2025.<sup>22</sup>
- FIF members request clarification whether the “YP” value for the representativeInd field (Representative order, pricing guarantee, no linkage required) will be available as of February 1, 2025 and, if so, whether this value should still be reported for a price guarantee scenario.<sup>23</sup>

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<sup>17</sup> See, CAT Industry Member Technical Specifications, at 367.

<sup>18</sup> Ibid.

<sup>19</sup>  $700 * (500 / 1,500) = 233.33$

<sup>20</sup>  $800 * (500 / 1,500) = 266.67$

<sup>21</sup> See, for example, Scenario 2A (Manning fills (involving a principal order route); integrated OMS/EMS) and Scenario 2B (Manning fills (involving a principal order route); disconnected OMS/EMS) of the May 2, 2022 submission, at 4-5.

<sup>22</sup> See, for example, Scenario 2C (Manning fills (involving a firm’s OTC Quote); this is a disconnected OMS/EMS scenario) of the May 2, 2022 submission, at 6.

<sup>23</sup> See, for example, Scenario 5E (Guaranteed price or better scenario; customer filled on a riskless principal basis; disconnected OMS/EMS) of the May 2, 2022 submission, at 17.

In addition to the equity trading scenarios presented above in this letter, FIF members also are discussing various options-related scenarios and might seek guidance on those scenarios in a subsequent letter.

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Please contact me at [howard.meyerson@fif.com](mailto:howard.meyerson@fif.com) after you and your colleagues have had an opportunity to review the scenarios and additional requests for clarification set forth in this letter.

Very truly yours,

/s/ Howard Meyerson

Howard Meyerson  
Managing Director, Financial Information Forum

Cc: Lily Bailey, Securities and Exchange Commission  
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