

FINANCIAL INFORMATION FORUM

March 21, 2024

By electronic mail

U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549–1090
Attn: Vanessa A. Countryman, Secretary

Re: Request for exemption from the requirement for a Routing Firm to report to the consolidated audit trail Port Settings applied by a Receiving Firm that are not part of the Routing Firm’s books and records

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 Financial Information Forum (“FIF”) requests that the Securities and Exchange Commission (the “Commission”) grant such firms and other Industry Members 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 Act³ from the requirement for a Routing Firm to report to the consolidated audit trail (“CAT”) Port Settings applied by a Receiving Firm that are not part of the Routing Firm’s books and records.

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”).

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.” The reference to the Commission’s authority to grant exemptive relief to “any person” makes clear that the Commission is authorized to grant exemptive relief to Industry Members.

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.” The reference to the Commission’s authority to grant exemptive relief to “any ... member” of a self-regulatory organization makes clear that the Commission is authorized to grant exemptive relief to Industry Members.

The capitalized terms above have the following meanings for purposes of this exemptive request:

- “Routing Firm” refers to any CAT reporter that routes orders to any Receiving Firm and must report such route events to CAT.
- “Receiving Firm” refers to any CAT reporter (broker-dealer or exchange) that receives orders from a Routing Firm and must report such orders to CAT.
- “Port Settings” refer to any CAT-reportable, material terms of an order⁴ that are not known systematically to the Routing Firm but are applied to the order by the Receiving Firm. While we use the term “port” settings for brevity, there are many cases where a Receiving Firm applies various enhancements to an order that are not necessarily triggered by the “port” on which an order is received. For example, a Port Setting could include a setting that a Receiving Firm applies to every order; or it could include settings applied based on the sender’s MPID, FIX COMPID, or account number; or any combination of other factors.

Stated in another manner (but with the same intended effect), FIF members request that the Commission grant exemptive relief such that, for an order communicated electronically by a Routing Firm to a Receiving Firm, the Routing Firm is only required to report to CAT the material terms that are known systematically to the Routing Firm (i.e., the terms that are part of the Routing Firm’s books and records).

Today Receiving Firms must already report all material terms of an order to CAT, including any terms that are added to the order due to the Receiving Firm’s Port Settings. It is important to keep in mind that CAT already has 100% of the data to which this request for exemption applies. The only issue in question is whether the Commission will insist that such Port Settings data must be reported redundantly, by both parties.

FIF and 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.”⁵ FIF and FIF members have set forth in detail the rationale for this exemptive request in a letter submitted by FIF to the Commission on January 25, 2024.⁶ FIF is attaching the January 25, 2024 letter to this request for exemption and incorporates the terms of the January 25, 2024 letter into this request.

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Rule 613(c)(7) of Regulation NMS requires that the “material terms” of an order be reported to CAT in connection with the receipt, origination, routing, modification or cancellation of the order.⁷ Rule 613(j)(7) of Regulation NMS provides that the “material terms” of an order:

⁴ “Material terms” is defined in Rule 613(j)(7) of the Commission’s Regulation NMS. 17 CFR §242.613(j)(7).

⁵ 17 CFR §242.608(e).

⁶ Available at <https://fif.com/index.php/working-groups>.

⁷ 17 CFR §242.613(c)(7).

... shall include, but not be limited to, the NMS security symbol; security type; price (if applicable); size (displayed and non-displayed); side (buy/sell); order type; if a sell order, whether the order is long, short, short exempt; open/close indicator; time in force (if applicable); if the order is for a listed option, option type (put/call), option symbol or root symbol, underlying symbol, strike price, expiration date, and open/close; and any special handling instructions.⁸

Section 6.3(d) of the CAT NMS Plan similarly requires the Participants of the CAT NMS Plan (the “CAT Plan Participants”) to report the “Material Terms of the Order” to CAT in connection with the receipt, origination, routing, modification or cancellation of an order.⁹ Pursuant to Section 6.4(d)(i) of the CAT NMS Plan, each CAT Plan Participant, through its rules, is required to mandate this same reporting obligation for Industry Members.¹⁰

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 CAT Plan Participants temporary exemptive relief, until July 31, 2023, from “the requirement in Sections 6.3(d)(i)(F), (ii)(G), (iii)(F), (iv)(E) and 6.4(d)(i) of the CAT NMS Plan that the Participants report, and amend their Compliance Rules to require Industry Members report the Material Terms of an Order that are communicated in port-level settings or instructions.”¹¹ On July 8, 2022, the Commission extended this temporary exemptive relief until July 31, 2024.¹² On May 9, 2023, the Commission extended this temporary exemptive relief until January 31, 2025.¹³

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FIF members do not believe that the CAT NMS Plan requires a Routing Firm to report Port Settings applied by a Receiving Firm that are not part of the Routing Firm’s books and records because a Port Setting does not represent an action taken by a Routing Firm on an order. The Commission wrote as follows in the adopting release for CAT (emphasis added):

Thus, the Commission believes that every broker-dealer (and exchange) that touches an order must record the required data ***with respect to actions it takes on the order***, contemporaneously with the reportable event, to ensure that all relevant information,

⁸ 17 CFR §242.613(j)(7).

⁹ CAT NMS Plan, Sections 6.3(d)(i)(F), 6.3(d)(ii)(G), 6.3(d)(iii)(F) and 6.3(d)(iv)(E).

¹⁰ CAT NMS Plan, Section 6.4(d)(i). The definition of “Material Terms of the Order” in the CAT NMS Plan is equivalent to the definition of “material terms” of an order under Rule 613(j)(7) of Regulation NMS. CAT NMS Plan, Section 1.1. While Rule 613 and the CAT NMS Plan do not define the term “special handling instructions”, the CAT Reporting Technical Specifications for Industry Members enumerate certain special handling instructions that Industry Members must report to CAT. 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.

¹¹ Securities Exchange Act Release No. 90688 (Dec. 16, 2020), 85 FR 83634 (Dec. 22, 2020).

¹² Securities Exchange Act Release No. 95234 (July 8, 2022), 87 FR 42247 (July 14, 2022).

¹³ Securities Exchange Act Release No. 97530 (May 19, 2023), 89 FR 33655 (May 24, 2023).

including the time the event occurred, is accurately captured and reported to the consolidated audit trail (emphasis added).¹⁴

FIF members request that the Commission either grant the exemptive relief requested in this letter or provide written guidance that the CAT NMS Plan does not require a Routing Firm to report Port Settings applied by a Receiving Firm that are not part of the Routing Firm's books and records.

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Please contact the undersigned at howard.meyerson@fif.com if you would like clarification on any of the points set forth above. Thank you for your attention to this request.

Very truly yours,

/s/ Howard Meyerson

Howard Meyerson
Managing Director, Financial Information Forum

Cc: Lily Bailey, Securities and Exchange Commission
Brandon Becker, CAT Operating Committee
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¹⁴ Securities Exchange Act Release No. 67457 (July 18, 2012), 77 FR 47521 (Aug. 1, 2012), at 77 FR 45748.