

FINANCIAL INFORMATION FORUM

December 9, 2024

By electronic mail

U.S. Securities and Exchange Commission

100 F Street, N.E.

Washington, D.C. 20549–1090

Attn: Gary Gensler, Chair

Hester M. Peirce, Commissioner

Caroline A. Crenshaw, Commissioner

Mark T. Uyeda, Commissioner

Jaime Lizárraga, Commissioner

Re: Request for extension of exemptive relief previously granted by the Securities and Exchange Commission relating to consolidated audit trail linkage for representative orders

Ladies and Gentlemen,

On December 16, 2020, the Securities and Exchange Commission (the “Commission”), pursuant to Section 36(a)(1) of the Securities Exchange Act of 1934 (the “Exchange Act”) and Rule 608(e) thereunder, granted the Participants in the CAT NMS Plan (the “CAT Plan Participants”) temporary exemptive relief, until July 31, 2023, from “the requirement in Section 3, Appendix D of the CAT NMS Plan that the CAT Plan Participants create the lifecycle between customer orders to representative orders created in firm accounts for the purpose of facilitating a customer order...”¹ On July 8, 2022, the Commission extended this temporary exemptive relief until July 31, 2024.² On May 19, 2023, the Commission extended this temporary exemptive relief until January 31, 2025.³ For the reasons discussed below, Financial Information Forum (“FIF”), on behalf of FIF members, requests that the Commission extend this temporary exemptive relief until July 31, 2025.

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As currently planned, starting on February 1, 2025, the CAT Plan Participants, at the direction of the Commission, intend to remove from the CAT system the ability for industry members to report certain flags on Order Fulfillment events (specifically, the “YE” and “YP” flags) in lieu of reporting linkage to

¹ Securities Exchange Act Release No. 90688 (Dec. 16, 2020), 85 FR 83634 (Dec. 22, 2020).

² Securities Exchange Act Release No. 95234 (July 8, 2022), 87 FR 42247 (July 14, 2022).

³ Securities Exchange Act Release No. 97530 (May 19, 2023), 88 FR 33655 (May 24, 2023).

specific representative orders.⁴ In some scenarios, no representative order exists, and thus it is not possible for industry members to provide the linkage to specific representative orders that will be required as of February 1, 2025. In other scenarios, industry members do not maintain this linkage in their books and records. In other scenarios, the CAT system does not provide a method to provide linkage to a specific order. These scenarios are described in detail in the request for exemptive relief relating to representative order linkage that FIF submitted to the Commission on July 2, 2024 (the “July 2024 FIF exemption request”).⁵ Please refer to the July 2024 FIF exemption request for additional detail on these scenarios.

During 2024, FIF and FIF members have participated in a series of productive discussions with representatives from the Commission on the application of the CAT representative order linkage requirements to the scenarios described in the July 2024 FIF exemption request. In this exemption request, FIF members have submitted detailed documentation with specific trading workflows that will be impacted if the current exemptive relief is not extended.⁶ The objective of the current discussions between FIF members and the Commission is to identify how each of these workflows should be reported to CAT. While the current discussions have been productive, additional time is required to identify and implement a long-term solution for how linkage for these trading workflows should be reported to CAT. The Commission has previously granted temporary exemptive relief to the CAT Plan Participants from representative order linkage requirements, but this relief has not considered or addressed the specific scenarios identified in the July 2024 FIF exemption request.

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The result of removing the flags referenced above is that industry members will be faced with the choice of either (i) submitting large numbers of Order Fulfillment events that the CAT system will reject and that will not be repairable,⁷ or (ii) abandoning certain common existing trading workflows. For example, it is a common workflow for industry members to trade as principal against customer orders without the industry member creating a firm order. This workflow will no longer be possible if the flags referenced above are removed from CAT because a firm will not be able to report Order Fulfillments to CAT when the firm fulfills its “Manning” obligation for this workflow.⁸ Conversely, if industry members submit large numbers of Order Fulfillments that the CAT system will reject, this will present a significant processing

⁴ See, for example, CAT Reporting Technical Specifications for Industry Members, Version 4.1.0 r4 (Oct. 18, 2024), available at https://catnmsplan.com/sites/default/files/2024-10/10.18.24_CAT_Reporting_Technical_Specifications_for_Industry_Members_v4.1.0r4_CLEAN.pdf (“CAT Technical Specifications”), at 367-370. According to the CAT Technical Specifications, “Order Fulfillment events are required in scenarios where: A representative order was used to facilitate the execution of the customer/client order.” CAT Technical Specifications, at 176. FIF members understand that, absent exemptive relief, FINRA CAT LLC will (i) disable the “YE” flag for Order Fulfillment events, and (ii) maintain the “YP” flag for Order Fulfillment events but require linkage to a principal order.

⁵ Letter from FIF to the Commission (July 2, 2024), available at <https://fif.com/index.php/working-groups/category/271-comment-letters?download=2962:fif-exemptive-request-letter-to-the-sec-on-representative-order-linkage&start=10&view=category> (“July 2024 FIF Exemption Request”).

⁶ Ibid.

⁷ The July 2024 FIF Exemption Request discusses the challenges with reporting Order Fulfillment events if the current flags are removed.

⁸ This is described in more detail on pp. 8-11 of the July 2024 FIF Exemption Request.

and workflow challenge for the CAT system, the regulators and industry members as large numbers of rejected and unsubmitted CAT events pile-up. For these reasons, FIF members believe that the requested extension of the current exemptive relief relating to CAT linkage for representative orders is necessary and appropriate and consistent with the public interest, in accordance with Section 36(a)(1) of the Exchange Act and Rule 608(e) thereunder.⁹ This relief is necessary to allow for the continuation of the current discussions between FIF members and the Commission to address these concerns.

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For many years, FIF as an industry association has been active in working with the Commission, the CAT Plan Participants, FINRA CAT LLC (“FINRA CAT”) and FIF members to assist in the implementation of consolidated audit trail (“CAT”) reporting. Throughout this time period, the activities of FIF and FIF members have included: the hosting of Working Group calls for FIF members to review and discuss regulatory and interpretive guidance and technical documentation published by the Commission, the CAT Plan Participants and FINRA CAT (referred to collectively as the “regulators”); through FIF member discussions on these Working Group calls, enhancing industry member awareness and understanding of the CAT reporting requirements, including regulatory interpretive guidance and technical documentation published by the regulators; submitting questions to the regulators to obtain clarification on various reporting requirements; reviewing and discussing responses from the regulators to these questions; recommending enhancements to the CAT system, including enhancements that improve the quality of the CAT audit trail; and collecting and providing feedback to regulators on specific issues and topics relating to CAT reporting, as requested by regulators. FIF also maintains a contact system to assist industry members in managing linkage errors with other industry members. These efforts by FIF and FIF members demonstrate the ongoing focus of industry members in complying with their CAT reporting obligations and the significant resources devoted by industry members over many years towards such compliance. These actions by FIF members also have contributed to significantly enhancing the quality of the CAT audit trail.

For many years, FIF members have identified the significant challenges with implementing certain CAT linkage requirements relating to representative orders and order fulfillments. For example, on September 17, 2018, FIF presented to the regulators a report titled “FIF OMS-EMS Study Findings,” which identified various challenges with certain CAT linkage requirements relating to representative orders and order fulfillments.¹⁰ On June 27, 2022, FIF members participated on a call with Commission representatives during which FIF members discussed these challenges; during this call, FIF members reviewed a PowerPoint presentation that FIF had submitted to Commission representatives in advance of the call.¹¹ The PowerPoint presentation included diagrams to illustrate the challenges faced by industry members in implementing certain CAT linkage requirements relating to representative orders. On January 10, 2023, FIF submitted to the Commission a draft exemption request relating to

⁹ 15 U.S.C. §78mm(a)(1); 17 CFR §242.608(e).

¹⁰ Available at <https://fif.com/index.php/working-groups/category/271-comment-letters?download=3034:fif-oms-ems-study-findings&start=110&view=category>.

¹¹ Available at <https://fif.com/index.php/working-groups/category/271-comment-letters?download=3035:representative-order-linkage-scenarios-submitted-to-the-sec&start=70&view=category>.

representative order linkage.¹² On March 21, 2024, FIF submitted an exemption request to the Commission relating to linkage requirements for representative orders.¹³ After further discussions among the regulators, FIF and FIF members, FIF submitted an updated exemption request to the Commission on July 2, 2024.¹⁴ Since that time, FIF and FIF members have participated in a series of productive discussions with representatives from the Commission relating to these linkage requirements for representative orders and the requested exemptive relief.

As demonstrated by the July 2, 2024 FIF exemption request, the linkage requirements for representative orders that the Commission seeks to mandate are very complex. This complexity results from the complexity of CAT reporting and the complexity of industry member workflows relating to representative orders and order fulfillments. It is important to highlight that the term “representative order” is a concept created by CAT (it is not a concept that exists in actual trading), and that all of the linkage requirements covered in July 2024 FIF exemption request involve linkage either from or to a representative order.

Given the complexity of these linkage requirements for representative orders, FIF members believe that it will be necessary for representatives from FIF members and the regulators to continue to have calls on a regular basis to identify the appropriate long-term solution for each of the scenarios presented in the July 2024 FIF exemption request. FIF members recommend that the regulators and FIF members meet on a weekly basis to continue to work through these scenarios. FIF members request an extension of the current exemptive relief to enable the continuation of the current ongoing discussions between the regulators and FIF members relating to linkage requirements for representative orders.

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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

¹² Available at <https://fif.com/index.php/working-groups/category/271-comment-letters?download=2752:draft-request-for-exemption-submitted-by-fif-to-the-sec-on-cat-reporting-of-port-settings-by-an-order-sender&start=60&view=category>.

¹³ Available at <https://fif.com/index.php/working-groups/category/271-comment-letters?download=2904:fif-exemptive-request-letter-to-the-sec-on-representative-order-linkage&start=20&view=category>.

¹⁴ July 2024 FIF Exemption Request. Over this time period, there were many other communications by FIF to the Commission relating to these linkage requirements; FIF can provide a more detailed list to the Commission upon request.

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