

FINANCIAL INFORMATION FORUM

March ____, 2025

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 the 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

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.

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.⁴

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).⁵

FIF and FIF members have set forth in detail the rationale for this exemption request in a letter submitted by FIF to the Commission on January 25, 2024.⁶ The following are some of the important points discussed in detail in the January 2024 FIF letter:

- Requiring Routing Firms to report Port Settings applied by a Receiving Firm to CAT would likely require an enormous industry-wide data sharing and pre-linkage process.
- There is no additional surveillance benefit to doing so.
- In fact, there is a negative surveillance impact. For example, requiring a Routing Firm to report Port Settings to CAT will create a false audit trail. Such reporting would not accurately reflect what a Routing Firm “knows” in its own books and records; nor would it accurately reflect what the Routing Firm actually transmitted to the Receiving Firm.

If the Commission does not agree to grant the above-requested exemption, FIF members request that the Commission grant a limited exemption based on the Port Settings enumerated on Schedule 1. FIF members consider this second alternative to be an inferior approach because (i) it will impede future innovation by Receiving Firms, (ii) there will be an operational burden to identify and obtain updated exemptive relief in response to changes in business practices and changes in regulatory requirements, and (iii) despite best efforts by FIF and FIF members, FIF members are concerned that Schedule 1 does not necessarily identify all Port Settings.

A recent example of the challenges with limiting exemptive relief to enumerated Port Settings is the following statement in the CAT Transaction Reporting Technical Specifications relating to new auction-related handling instructions that became reportable to CAT on July 1, 2024: “CAT, LLC will submit an exemptive relief request to the SEC to include ‘AUC’ and ‘AOK’ in the list of Exempted Port-Level Settings that the Commission identified in the November 2, 2023 Exemptive Order.”⁷ FIF members are not aware

⁴ The following terms are defined below for purposes of this exemption request: Routing Firm; Receiving Firm; and Port Settings.

⁵ This request for exemption supersedes the request for exemption submitted by FIF on March 21, 2024. FIF letter to the Commission (Mar. 21, 2024), available at <https://fif.com/index.php/working-groups/category/271-comment-letters?download=2905:fif-exemptive-request-letter-to-the-sec-on-port-settings&start=30&view=category>.

⁶ FIF letter to the Commission (Jan. 25, 2024), available at <https://fif.com/index.php/working-groups>.

⁷ CAT Reporting Technical Specifications for Industry Members, Version 4.1.0 r5 (Jan. 22, 2025), available at https://catnmsplan.com/sites/default/files/2025-01/1.31.25_CAT_Reporting_Technical_Specifications_for_Industry_Members_v4.1.0r5_CLEAN.pdf (“CAT Technical Specifications”), at xxix.

of any exemptive relief being submitted relating to these two handling instructions, nor are FIF members aware of the Commission issuing an amendment to the Commission’s current exemptive relief relating to Port Settings⁸ to add these two handling instructions.⁹

Based on the above, FIF members believe that exemptive relief without limitation to specific Port Settings 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.”¹⁰ As discussed above, if the Commission does not agree to grant exemptive relief without limitation as to Port Settings, FIF members request that the Commission grant exemptive relief based on the Port Settings enumerated on Schedule 1. FIF incorporates Schedule 1 and the terms of the January 2024 FIF letter into this request.

Capitalized terms

The following capitalized terms have the following meanings for purposes of this exemption 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 order¹¹ 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.

⁸ Securities Exchange Act Release No. 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), at 88 FR 77131-77132.

⁹ CAT FAQ E32 provides as follows: “Some exchanges will trigger auctions and consider orders to be ‘auction-eligible’ by default if they meet certain criteria. If no explicit auction instruction is given, then auction-related handlingInstructions values must not be used.” Available at <https://catnmsplan.com/faq>. FIF members request written clarification from the Commission as to whether this guidance would override the need for exemptive relief with respect to auction-related handlingInstructions values. If the Commission does not believe that exemptive relief is required with respect to auction-related handlingInstructions values, FIF members request further clarification as to why exemptive relief would not be required for the auction-related handlingInstructions values but would be required for other port settings.

¹⁰ 17 CFR §242.608(e).

¹¹ “Material terms” is defined in Rule 613(j)(7) of the Commission’s Regulation NMS. 17 CFR §242.613(j)(7).

Current requirement for Receiving Firms to report all Port Settings

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.

Discussion of applicable provisions of Regulation NMS and the CAT NMS Plan

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.¹² Rule 613(j)(7) of Regulation NMS provides that the "material terms" of an order:

... 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.¹³

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.¹⁴ 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.¹⁵

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,

¹² 17 CFR §242.613(c)(7).

¹³ 17 CFR §242.613(j)(7).

¹⁴ 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).

¹⁵ 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 Technical Specifications, at 421-427.

including the time the event occurred, is accurately captured and reported to the consolidated audit trail (emphasis added).¹⁶

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: Brandon Becker, CAT Operating Committee
Erika Berg, Securities and Exchange Commission
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¹⁶ Securities Exchange Act Release No. 67457 (July 18, 2012), 77 FR 47521 (Aug. 1, 2012), at 77 FR 45748.

Schedule 1
Enumerated Port Settings and Scenarios

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

Notes for table:

- “RBD” is an abbreviation for a routing broker-dealer.
- A “recipient” could be an exchange, ATS or broker-dealer.
- A “default setting” is a setting by a recipient that applies to a group of orders routed by an RBD to the recipient as opposed to being communicated for a single order. A default setting can be set at various aggregate levels, including one or more of the following: session (port); trader; customer; or algo type.
- The table below references FIX Tags as examples in certain cases, but there are other order routing protocols.

CAT Field / Attribute	Recipient Type	Description
handlingInstructions: AUC; AucResp	Exchange	Exchanges can provide order types that are eligible to participate in auctions without the RBD having to explicitly specify that the order is auction-eligible. See, for example, CAT FAQ E32 (“Some exchanges will trigger auctions and consider orders to be ‘auction-eligible’ by default if they meet certain criteria”). ¹⁷
handlingInstructions: CPR	Exchange, ATS or Broker-Dealer	Many ATSS enable ATS participants to apply client segmentation or restrictions on interacting with affiliates on a default basis.
handlingInstructions: DNRT	Exchange, ATS or Broker-Dealer	An ATS or broker-dealer can set a default to not route all of an RBD’s orders or a category of the RBD’s order.
handlingInstructions: NH	Exchange, ATS or Broker-Dealer	Many customers do not include the Not Held instruction in the FIX message. Instead, the routing broker-dealer (RBD) and the recipient agree that this value should be set by default for specific categories of orders.
handlingInstructions: RSV	Exchange, ATS or Broker-Dealer	An RBD FIX message instructs an exchange on the maximum value that the exchange can display for the order. The RBD and exchange agree that this value should be set by default and override any FIX message instruction.

¹⁷ Available at <https://catnmsplan.com/fag>.

CAT Field / Attribute	Recipient Type	Description
		Alternatively, the RBD might not communicate a value in the FIX message, and an agreed value is set by default.
handlingInstructions: SLD	Exchange	An exchange can apply a Slide instruction on a default basis.
handlingInstructions: STP	Exchange, ATS or Broker-Dealer	Many ATSS enable participants to block trades between the participant's buy and sell orders on a default basis.
handlingInstructions: d (Discretionary Peg); M (Midpoint Peg); P (Market Peg); PEG (Peg); and R (Primary Peg)	Exchange, ATS or Broker-Dealer	A recipient can apply pegged instructions on a default basis.
minQty	Exchange, ATS or Broker-Dealer	<p>An RBD FIX message instructs an exchange on the minimum quantity that can be executed. The RBD and exchange agree that this value should be set by default and override any FIX message instruction.</p> <p>Alternatively, the RBD might not communicate a value in the FIX message, and an agreed value is set by default.</p> <p>Minimum quantity can apply to all executions on an order or only to the first execution, depending on the understanding between the parties.</p>
timeInForce	Exchange, ATS or Broker-Dealer	<p>FIF members have identified the following scenarios relating to the timeInForce field:</p> <ul style="list-style-type: none"> • An RBD could designate an order to participate in an exchange cross. The RBD could transmit the order as a DAY order, and the exchange could configure the order as an IOC order. Alternatively, the RBD could transmit the order as an IOC order, and the exchange could configure the order as a DAY order. • A recipient could configure an RBD for a limited time span for a category of orders.
tradingSession	Exchange, ATS or Broker-Dealer	In many cases an RBD does not communicate a trading session to a recipient, and this value is set by the recipient on a default basis. FIF members have previously recommended that this field be made conditional in CAT (i.e., it should only be reportable if communicated by the RBD in the order message). If

CAT Field / Attribute	Recipient Type	Description
		<p>this field remains mandatory, exemptive relief is appropriate.</p> <p>CAT FAQs D16 and D18 acknowledge this scenario and provide guidance for the recipient but not for the RBD.¹⁸</p> <p>The following are examples of scenarios where a recipient applies a trading session default:</p> <ul style="list-style-type: none"> • An RBD sends a DAY order pre-market without specifying a trading session. The recipient configures the order to participate in pre-market and regular session trading. Alternatively, the recipient configures the order to participate only in regular session trading. • An RBD sends a DAY order post-market without specifying a trading session. The recipient configures the order to participate in post-market, pre-market and regular session trading. Alternatively, the recipient configures the order to participate only in pre-market trading and regular session trading. Alternatively, the recipient configures the order to participate only in regular session trading. <p>The logic for an RBD to try to derive the default trading session set by a recipient could be complex because the default trading session could be based on multiple factors, including time of order receipt and order type (for example, (i) DAY or GTC and (ii) whether the order is eligible to participate in an exchange cross). As one example of the challenges faced by an RBD, an RBD could route an order at 9:29:59, the default applied by the recipient could be based on whether the recipient receives the order prior to or during the default trading session, and the RBD would not know for certain when the recipient receives the order.</p>

¹⁸ Ibid.