

Consolidated Audit Trail (“CAT”) Clock Synchronization Requirements

On November 15, 2016, the Securities and Exchange Commission (“SEC”) approved the National Market Plan Governing the Consolidated Audit Trail (the “CAT NMS Plan” or the “Plan”). The SEC has approved a compliance rule series for each national securities exchange and the Financial Industry Regulatory Authority, Inc. (“FINRA”) (each, a “Participant” in the Plan) that requires the Participant’s members to comply with the CAT NMS Plan requirements and, ultimately, to report information to the CAT. This alert provides guidance regarding deadlines regarding clock synchronization requirements, including certifications, that apply to certain members of the Participants. Should you have any questions about this alert, please contact the CAT Help Desk by email at CATNMSIO@deloitte.com.

Business Clock Synchronization Requirement

Pursuant to the clock synchronization provisions in the CAT compliance rule series, each Participant’s member (“Industry Member”) shall synchronize its Business Clocks, other than such Business Clocks used solely for Manual Order Events or used solely for the time of allocation on Allocation Reports, at a minimum to within a fifty (50) millisecond tolerance of the time maintained by the atomic clock of the National Institute of Standards and Technology (“NIST”), and maintain such synchronization.¹ In addition, each Industry Member shall synchronize its (A) Business Clocks used solely for Manual Order Events and (B) its Business Clocks used solely for the time of allocation on Allocation Reports, at a minimum to within a one second tolerance of the time maintained by NIST, and maintain such synchronization. Under the Plan, as modified by an exemptive order issued by the SEC, each Industry Member must comply with these requirements with regard to Business Clocks that capture time in milliseconds on or before March 15, 2017, and each Industry Member must comply with these requirements with regard to Business Clocks that do not capture time in milliseconds on or before February 19, 2018. Further information about corresponding clock synchronization requirements (*i.e.*, documentation, certification, and violation reporting) is detailed below.

For purposes of the clock synchronization and certification deadlines, “Business Clocks” include those clocks that are used to record time related to “Reportable Events,” as defined under the Plan, including, without limitation, the original receipt or origination, modification, cancellation, routing, execution (in whole or in part) and allocation of an order, and receipt of a routed order, in Eligible Securities (*i.e.*, NMS Securities and OTC Equity Securities).

Synchronization Procedures

All Industry Members that have Business Clocks that are subject to the clock synchronization requirements must document and maintain their synchronization procedures and keep a log of the times when they synchronize their Business Clocks and the results of the synchronization process. The Participants expect that each Industry Member will synchronize its Business Clocks every business day before market open, and check synchronization at pre-determined intervals throughout the business day, to reasonably ensure that Business Clocks maintain synchronization. The Participants also expect that each Industry Member’s synchronization log will document whenever a Business Clock fails to be within the applicable tolerance of the time maintained by NIST. At a later date, the Operating Committee of the CAT NMS Plan will provide further guidance regarding clock synchronization thresholds and Industry Members’ clock synchronization logs. At that time, the Participants will publish this information.

¹ Unless otherwise noted, capitalized terms are used as defined in the CAT compliance rule series or herein.

Certification Regarding Business Clock Synchronization

The CAT compliance rule series requires each Industry Member to certify that its Business Clocks satisfy the synchronization requirements described above periodically in accordance with the certification schedule established by the Operating Committee of the CAT NMS Plan. The Operating Committee determined that such certifications should be made annually. Accordingly, as previously expressed to the industry, Industry Members must complete a certification in the form attached hereto that covers all Business Clocks by March 15 of each year.

For future certifications, Industry Members should use a copy of the form certification attached hereto, unless an updated form certification is available, in which case the Participants will distribute copies of such updated form certification prior to the applicable deadline.

Industry Members are not required to submit such certifications to the exchanges or FINRA. Instead, originals of such certifications must be maintained by Industry Members as part of their books and records and be available to regulators upon request. Industry Members who are members of multiple Participants need only make a single clock synchronization certification.

Violation Reporting

Each Participant's compliance rule series provides that each Industry Member with Business Clocks must report to the Plan Processor and the Participant when the Industry Member violates the clock synchronization requirements pursuant to the thresholds set by the Operating Committee of the CAT NMS Plan (the "Compliance Thresholds"). At this time, the Operating Committee has not adopted Compliance Thresholds, so Industry Members are not yet required to report violations of the clock synchronization requirements to the Plan Processor or the Participants. At a later date, the Participants will publish the Compliance Thresholds, subject to approval by the Operating Committee of the CAT NMS Plan. At that time, Industry Members will be required to report violations of the Compliance Thresholds to the Plan Processor and the Participants.