

# FINANCIAL INFORMATION FORUM

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February 10, 2016

Re: Technical Amendment to CAT NMS Plan, December 23, 2015

Dear CAT NMS Plan Participants,

The Financial Information Forum (FIF)<sup>1</sup> Consolidated Audit Trail Working Group (FIF CAT WG) has reviewed the Amendment to National Market System Plan Governing the Consolidated Audit Trail Pursuant to Rule 613 of Regulation NMS under the Securities Exchange Act of 1934<sup>2</sup> (“the Amendment”). The FIF CAT WG has identified several changes included in the Amendment that represent a significant departure from our understanding of the definition and intention of the Exemptive Relief Requests. FIF is therefore submitting this letter to highlight the issues for immediate review by Plan Participants. We are hopeful that the Participants will consider these comments, recognize the conflicts introduced by this Amendment, and correct the Amendment before the CAT NMS Plan is published and released for comment.

Please note that the issues highlighted in this letter are limited to the changes included in the recently submitted Technical Amendment. As you are aware, FIF has many other concerns with the CAT NMS Plan, most of which have been discussed with Plan Participants over the past two years. A complete comment letter will be submitted once the CAT NMS Plan is published for public comment. However, because this most recent submission to the SEC contains new material which is problematic, the FIF CAT WG considered it prudent to notify the Participants of our concerns so that quick action can be taken to correct these issues.

### ***Time on Allocation Report***

**Issue:** The definition of an Allocation Report was broadened to include *the time of allocation*, the security that has been allocated, the price per share of shares allocated, the side of shares

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<sup>1</sup> FIF ([www.fif.com](http://www.fif.com)) was formed in 1996 to provide a centralized source of information on the implementation issues that impact the securities industry across the order lifecycle. Our participants include trading and back office service bureaus, broker-dealers, market data vendors and exchanges. Through topic-oriented working groups, FIF participants focus on critical issues and productive solutions to technology developments, regulatory initiatives, and other industry changes.

<sup>2</sup>[http://www.catnmsplan.com/web/groups/catnms/@catnms/documents/appsupportdocs/cat\\_e\\_plan\\_12\\_23\\_15.pdf](http://www.catnmsplan.com/web/groups/catnms/@catnms/documents/appsupportdocs/cat_e_plan_12_23_15.pdf)

allocated, and the number of shares allocated to each account.<sup>3</sup> As previously agreed in industry discussions with the Participants through the CAT Development Advisory Group (“DAG”), time has no regulatory significance on allocations. The newly added requirement for time of allocation presents an issue because it would significantly broaden the systems impacted and increase associated costs for implementing the CAT NMS Plan.

**Rationale:** Rule 613 does not include time as a required data element for allocation reports<sup>4</sup>. The latest Amendment does not indicate why time is now a critical data element required on Allocation Reports; nor does the Amendment clarify which time stamp must be captured for an allocation event – e.g., the time when the allocation request was received from the customer or the time when the allocation was processed. This represents a significant change to the CAT NMS Plan<sup>5</sup>, a significant change to broker-dealer system infrastructure, and a significant cost delta for broker-dealers to implement the CAT NMS Plan.

FIF industry surveys and feedback on clock offset and time stamp issues submitted to the Participants<sup>6</sup> assumed that time was not a required element for Allocation Reports. This is critical because systems which process allocations are generally separate from the systems which process orders and executions. These systems are generally not considered time sensitive; therefore, these systems have not invested in the most current clock management facilities. The scope of systems impacted and the costs would dramatically increase over what was previously projected.

The inclusion of time on the Allocation Report Definition in this Amendment is a serious departure from the understanding the industry had with the Participants on this topic.

**Recommendation:** The CAT NMS Plan should reflect Rule 613 and remove the new reference to time as a requirement on the Allocation Report. For what purpose was time stamp added as a required element on Allocation Reports? For which allocation event should the time stamp be captured? If the industry better understood the reason for including this data element, it could work with the Participants to define a solution acceptable to both the Participants and the industry.

### ***Customer Identifying Information on Original Receipt or Order Origination***

**Issue:** The Amendment broadened the data required on a CAT report for original receipt or origination of an order to include “Firm Designated ID, Customer Account Information and *Customer Identifying Information* for the relevant customer”<sup>7</sup>. One of the fundamental purposes

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<sup>3</sup> Amendment to CAT NMS Plan, Section 1.1, Definitions

<sup>4</sup> Rule 613, Consolidated Audit Trail, SEC 17 CFR Parts 242 (Release No. 34-67457; File No. S7-11-10) RIN 3235-AK51; Section (c)(7)(vi)

<sup>5</sup> National Market System Plan Governing the Consolidated Audit Trail Pursuant to Rule 613 of Regulation NMS under the Securities Exchange Act of 1934, submitted February 27, 2015

<sup>6</sup> FIF Clock Offset Preliminary Report, February 17, 2015, ‘FIF asked for confirmation from SROs on the following but preliminarily believes Allocations would not be subject to millisecond timestamps but rather a cancel/correct process will be put in place to track changes to allocations’.; FIF CAT WG Industry Feedback on Clock Drifts and Time Stamp Issues, September, 2013, “...implementation impact of 50 ms clock drift requirement for electronic orders and executions”.

<sup>7</sup> Amendment to National Market System Plan Governing the Consolidated Audit Trail Pursuant to Rule 613 of Regulation NMS under the Securities Exchange Act of 1934, submitted December 23, 2015, Section 6.4(d)(ii)(C)

of recommending the “Customer Information Approach” in the Exemptive Relief Request<sup>8</sup> was to eliminate the need to specify the CAT Customer ID on every CAT report for original receipt or origination of an order, but instead use a Firm Designated ID on the CAT reports, which will allow the Plan Processor to cross-reference Customer Account Information and Customer Identifying Information through the customer profile. Rule 613 does not require Customer Identifying Information on CAT reports for original receipt or origination of an order.<sup>9</sup>

**Rationale:** Previously, the CAT NMS Plan specified that “information of sufficient detail to identify customer”<sup>10</sup> was required on CAT reports for original receipt or origination of an order. The “Customer Information Approach” in the Exemptive Relief Request specifies “Broker-dealers would then only be required to report firm-designated identifier information on each new Reportable Event representing receipt of an order submitted to the Central Repository rather than the “Customer-ID” as set forth in Rule 613(c)(7), and the CAT Plan Processor would associate specific customers and their Customer-IDs with individual order events based on the reported firm-designated identifier”.<sup>11</sup>

One of the basic goals of the Firm Designated ID approach was to limit the exchange of sensitive customer data. FIF members insist that Customer Identifying Information should only be supplied to the CAT when the customer is being defined to CAT or the customer profile is being updated. Customer Identifying Information should never be specified on normal CAT reporting events. It would require the transmittal of customer identifying information within the broker-dealer systems and to the Plan Processor on many events throughout the day, exposing very sensitive and confidential information to systems and networks that previously never handled PII information.

Inclusion of Customer Identifying Information and Customer Accounts on CAT reports for original receipt or origination of order represents a serious set-back to the industry’s understanding of, and is completely contrary to, the “Customer Information Approach” as documented in the Exemptive Relief Request.<sup>12</sup>

**Recommendation:** Require only Firm Designated ID for customer identification on the CAT reports for original receipt or origination of orders. By defining a customer once to the Plan Processor and again only when updates are required, the Customer Identifying Information and Customer Accounts data will be more protected, as all future references to that customer could be performed using the Firm Designated ID. The Plan Processor can cross-reference the customer profile through the Firm Designated ID to retrieve the Customer Account or Customer Identifying Information if required for regulatory purposes.

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<sup>8</sup> April 3, 2015 filing, Request for Exemptive Relief from Certain Provisions of SEC Rule 613 of Regulation NMS under Securities Exchange Act of 1934, Section B

<sup>9</sup> Rule 613, Consolidated Audit Trail, SEC 17 CFR Parts 242 (Release No. 34-67457; File No. S7-11-10) RIN 3235-AK51; Section (c)(7)(i)

<sup>10</sup> National Market System Plan Governing the Consolidated Audit Trail Pursuant to Rule 613 of Regulation NMS under the Securities Exchange Act of 1934, submitted February 27, 2015, Section 6.4(d)(ii)(C)

<sup>11</sup> National Market System Plan Governing the Consolidated Audit Trail Pursuant to Rule 613 of Regulation NMS under the Securities Exchange Act of 1934, submitted February 27, 2015, Appendix C, (A)(a)(iii), Customer and Customer Account Information

<sup>12</sup> April 3, 2015 filing, Request for Exemptive Relief from Certain Provisions of SEC Rule 613 of Regulation NMS under Securities Exchange Act of 1934, Section B

## **SEC Exemption for Safeguards on CAT Data Confidentiality**

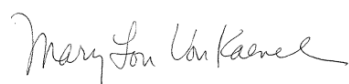
**Concern:** This Amendment added the requirement that the Plan Processor require all individuals who have access to the Central Repository to adhere to a set of security safeguards and to execute a “Safeguard of Information Affidavit”<sup>13</sup>; however, the Amendment specifically excludes SEC employees and Commissioners from this requirement.

**Rationale:** FIF CAT WG applauds this new requirement to put focus on the responsibility for data confidentiality and security with each person who accesses the Central Repository; however, the Amendment specifically excludes SEC employees and Commissioners from this requirement. This position does not seem to support the SEC’s own statements regarding the need for “a rigorous training program”<sup>14</sup> and the need for “the Commission to develop a cybersecurity program commensurate with this responsibility... focusing on people, processes and products...”<sup>15</sup> The SEC is aware of the importance of personnel when implementing a data confidentiality and security framework; “It is appropriate to mention personnel first because the single greatest cybersecurity risk that any organization faces comes from within.”<sup>16</sup> Customers who are already nervous about sharing and storing sensitive PII data in a centralized repository have every right to expect the primary users of this centralized repository to commit to the highest level of confidentiality requirements.

**Recommendation:** Eliminate the exclusion of the SEC employees and Commissioners from adhering to the data confidentiality safeguards outlined by the Plan Processor or include information about what safeguards apply to SEC staff and Commissioners to demonstrate appropriate level of controls in accessing and handling CAT data.

The FIF CAT Working Group is submitting these comments to the CAT NMS Plan Participants so that quick and decisive action can be taken to correct these issues. If helpful to the Plan Participants, further discussions can be held in future meetings of the DAG.

Sincerely,



Mary Lou Von Kaenel  
Managing Director  
Financial Information Forum

CC: The Honorable Mary Jo White, Chair  
The Honorable Michael S. Piwowar, Commissioner  
The Honorable Kara M. Stein, Commissioner  
Stephen Luparello, Director, Division of Trading and Markets  
Gary Goldsholle, Deputy Director, Division of Trading and Markets  
David S. Shillman, Associate Director, Division of Trading and Markets

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<sup>13</sup> Amendment to CAT NMS Plan, submitted December 23, 2015, Section 6.5(f)(i)(A) and (B) Data Confidentiality

<sup>14</sup> Commissioner Luis A. Aguilar, “Being a Responsible Steward: Ensuring that the SEC Implements Effective Cybersecurity Protocols for its Data Gathering Efforts”, December 16, 2015, Section V

<sup>15</sup> Commissioner Luis A. Aguilar, “Being a Responsible Steward: Ensuring that the SEC Implements Effective Cybersecurity Protocols for its Data Gathering Efforts”, December 16, 2015, Section V

<sup>16</sup> Commissioner Luis A. Aguilar, “Being a Responsible Steward: Ensuring that the SEC Implements Effective Cybersecurity Protocols for its Data Gathering Efforts”, December 16, 2015, Section V.a