

# FINANCIAL INFORMATION FORUM

November 16, 2023

## **By electronic mail**

Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090  
Attn: Sai Rao, Counsel for Trading and Markets, Office of the Chair

**Re: Reporting of non-executable RFQ responses to CAT**

Dear Mr. Rao,

Financial Information Forum (“FIF”) is submitting this letter as a follow-up to the attached letters that FIF sent to representatives of the Securities and Exchange Commission (the “Commission”) on June 1, 2023 and September 6, 2023 relating to the reporting of non-executable RFQ responses to the Consolidated Audit Trail (“CAT”). In this letter we refer to non-executable RFQ responses as RFQ responses that are “not immediately actionable” (or “NIA RFQ responses”) based on the terminology used in the July 31 CAT Technical Specifications document.<sup>1</sup> As discussed in the June 1 letter, FIF members believe that the term “actionable” creates unnecessary confusion because the Commission defines this term with a different meaning in Regulation NMS as compared to how this term is defined in the CAT Technical Specifications.<sup>2</sup> FIF is submitting this letter on behalf of FIF members that are broker-dealers and technology vendors that support broker-dealers.

In the June 1 letter, FIF explains that NIA RFQ responses should not be reportable to CAT because they are neither orders nor bids or offers under Commission Rule 613(j)(8).<sup>3</sup> As discussed in the June 1 letter, the National Market System Plan Governing the Consolidated Audit Trail (the “CAT NMS Plan”), which

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<sup>1</sup> CAT Reporting Technical Specifications for Industry Members, Version 4.0.0 r20 (July 31, 2023), available at [https://catnmsplan.com/sites/default/files/2023-09/09.01.2023\\_CAT\\_Reporting\\_Technical\\_Specifications\\_for\\_Industry\\_Members\\_v4.0.0r20\\_CLEAN.pdf](https://catnmsplan.com/sites/default/files/2023-09/09.01.2023_CAT_Reporting_Technical_Specifications_for_Industry_Members_v4.0.0r20_CLEAN.pdf) (“CAT Technical Specifications”), at 39.

<sup>2</sup> If a non-executable RFQ response includes a symbol, side, price and quantity, it could be actionable under the Commission’s definition of “actionable indication of interest” in Rule 600(b)(1) of Regulation NMS (17 CFR §242.600(b)(1)) but not actionable as the term is used in the CAT Technical Specifications (because the response cannot be executed by the solicitor). It is important that regulators use consistent terminology to avoid any unnecessary confusion.

<sup>3</sup> 17 CFR §242.613(j)(8).

uses the terminology from Rule 613, similarly does not provide for reporting of NIA RFQ responses.<sup>4</sup> As further discussed in the June 1 letter, the Commission, in an Order published on April 20, 2020, approved a plan for CAT to be implemented in five phases (Phases 2a through 2e).<sup>5</sup> The April 2020 Order provides that certain quotes would be reportable in Phases 2c (for equities) and 2d (for options) and expressly limits the RFQ responses that are reportable to CAT to immediately actionable RFQ responses.<sup>6</sup> If the Commission were to require the reporting of NIA RFQ responses to CAT, this would be contrary to the April 2020 Order. If NIA RFQ responses are reportable to CAT, why did the Commission explicitly state multiple times in the April 2020 Order that only actionable RFQ responses are reportable to CAT? Further, why, in the April 2020 Order, did the Commission not provide a temporary exemption for reporting NIA RFQ responses to CAT? FIF members do not understand how the Commission can require that NIA RFQ responses be reportable to CAT in light of the express wording to the contrary in the April 2020 Order. CAT FAQ B45 further supports this point.<sup>7</sup>

FIF further states in the June 1 letter that, if the Commission intends to require the reporting of certain NIA RFQ responses, it is important for the Commission to provide clarity as to the scope of reporting that is required. For example, Commission Rule 600(b)(11), which is part of Regulation NMS, defines a bid or offer as:

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<sup>4</sup> See, for example, the definition of “Order” in Section 1.1 of the Limited Liability Company Agreement of Consolidated Audit Trail, LLC, a Delaware Limited Liability Company (Sept. 6, 2023), which references the definition in Commission Rule 613(j)(8).

<sup>5</sup> Securities Exchange Act Release No. 88702 (Apr. 20, 2020) (Order Granting Conditional Exemptive Relief, Pursuant to Section 36 of the Securities Exchange Act of 1934 (“Exchange Act”) and Rule 608(e) of Regulation NMS Under the Exchange Act, from Sections 6.4, 6.7(a)(v) and 6.7(a)(vi) of the National Market System Plan Governing the Consolidated Audit Trail).

<sup>6</sup> “The Participants state that Phase 2c Industry Member Data also includes electronic quotes that are provided by or received in a CAT Reporter’s order/quote handling or execution systems in Eligible Securities that are equities and are provided by an Industry Member to other market participants off a national securities exchange under the following conditions: ... (2) an equity bid or offer which is accessible electronically by customers or other market participants and is immediately actionable for execution or routing; i.e., no further manual or electronic action is required by the responder providing the quote in order to execute or cause a trade to be executed).... The Participants explain that accordingly, any response to a request for quote or other form of solicitation response provided in a standard electronic format (e.g., FIX) that meets this quote definition (i.e., an equity bid or offer which is accessible electronically by customers or other market participants and is immediately actionable for execution or routing) would be reportable in Phase 2c.” Id. at 17-18. “The Participants state that Phase 2d Industry Member Data also would include electronic quotes that are provided by or received in a CAT Reporter’s order/quote handling or execution systems in Eligible Securities that are options and are provided by an Industry Member to other market participants off a national securities exchange under the following conditions: a listed option bid or offer which is accessible electronically by customers or other market participants and is immediately actionable (i.e., no further action is required by the responder providing the quote in order to execute or cause a trade to be executed). The Participants state that accordingly, any response to a request for quote or other form of solicitation response provided in standard electronic format (e.g., FIX) that meets this definition would be reportable in Phase 2d for options.” Id. at 19-20.

<sup>7</sup> “... any equity bid or offer that is accessible electronically by customers or other market participants and is immediately actionable (i.e., no further manual or electronic action is required by the responder providing the quote in order to execute or cause a trade to be executed) is reportable starting in Phase 2c; and any listed option bid or offer which is accessible electronically by customers or other market participants and is immediately actionable (i.e., no further action is required by the responder providing the quote in order to execute or cause a trade to be executed ) is reportable starting in Phase 2d.” Available at <https://catnmsplan.com/fag>.

the bid price or the offer price communicated by a member of a national securities exchange or member of a national securities association to any broker or dealer, or to any customer, at which it is willing to buy or sell **one or more round lots of an NMS security**, as either principal or agent, **but shall not include indications of interest** [emphasis added].<sup>8</sup>

In its 2009 proposing release on Regulation of Non-Public Trading Interest, the Commission wrote:

This exclusion of IOIs was part of the definition of bid or offer when it was originally drafted in 1978 for inclusion in the predecessor of Rule 602. In the adopting release, **the term ‘indication of interest’ was not defined, discussed, or expressly limited to a non-actionable communication of trading interest** [emphasis added].<sup>9</sup>

Commission statements like the one above, along with the inconsistent use of the term “actionable,” are creating significant confusion for FIF members as to the scope of reporting that is encompassed by “NIA RFQ responses.” For example, if both actionable and non-actionable indications of interest are not bids or offers under Regulation NMS (as stated above by the Commission), under what conditions would an NIA RFQ response be reportable to CAT? Given the current lack of clarity, FIF members are not able to proceed with implementation of this new reporting requirement absent guidance from the Commission, as requested by FIF in our June 1 letter.

In an exemptive request letter submitted by the Participants in the CAT NMS Plan (the “CAT Plan Participants”) on May 23, 2023, the CAT Plan Participants request exemptive relief with respect to requiring industry members to report NIA RFQ responses to CAT.<sup>10</sup> The CAT Plan Participants request exemptive relief through July 31, 2024. The CAT Plan Participants explain in the letter that:

The deadline of July 31, 2024 would allow the Plan Processor to finalize technical specifications that will be used by Industry Members to implement the necessary changes to firm systems in order to comply with these requirements, and the Industry Members to implement the reporting requirements related to the NIA Electronic RFQ Responses. Specifically, FINRA CAT expects to publish updated technical specifications to facilitate reporting of NIA Electronic RFQ Responses by July 2023, and Industry Members have indicated that they require approximately twelve (12) months from publication of final technical specifications in order to develop and implement necessary systems changes.<sup>11</sup>

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<sup>8</sup> 17 CFR §242.600(b)(11).

<sup>9</sup> Securities Exchange Act Release No. 60997 (Nov. 13, 2009), 74 FR 61208 (Nov. 23, 2019) (Regulation of Non-Public Trading Interest), available at <https://www.sec.gov/rules/proposed/2009/34-60997.pdf>, at 61212.

<sup>10</sup> Letter from Brandon Becker, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Securities and Exchange Commission (May 23, 2023), available at <https://catnmsplan.com/sites/default/files/2023-05/05.23.23-Exemption-Request-Regarding-Responses-to-Electronic-RFQs.pdf>.

<sup>11</sup> Id. at 5.

It is now more than five months since FIF's submission of its June 1 letter, and FIF has not yet received either a written or oral response to the June 1 letter from Commission representatives. As discussed in the June 1 letter, to commence work on implementing CAT reporting of NIA RFQ responses, FIF members require written clarification from the Commission as to the scope of reporting for NIA RFQ responses. Accordingly, if the Commission intends to proceed with requiring that NIA RFQ responses be reportable to CAT, FIF members request that the implementation date for reporting NIA RFQ responses be moved to the date that is one year after (i) the Commission provides clear guidance as to the scope of reporting for NIA RFQ responses, and (ii) the CAT Plan Participants and FINRA CAT publish updated reporting scenarios and FAQs based on this guidance. This one year implementation period is necessary for a number of reasons, including the fact that RFQ platform operators will first need to develop specifications and communicate these specifications to their industry member customers, and industry members will then need to code to these specifications. It will also be necessary for industry members and RFQ platform operators to test with each other and with the CAT system.

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FIF members would like to schedule a call with Commission representatives to discuss the points set forth above, including the timeline for CAT reporting for NIA RFQ responses. If you would like clarification on any of the items discussed in this letter, please contact me at [howard.meyerson@fif.com](mailto:howard.meyerson@fif.com).

Very truly yours,

/s/ Howard Meyerson

Howard Meyerson  
Managing Director, Financial Information Forum

Cc: Lily Bailey, Securities and Exchange Commission  
Hugh Beck, Securities and Exchange Commission  
Brandon Becker, CAT NMS Plan Operating Committee  
Erika Berg, Securities and Exchange Commission  
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