

FINANCIAL INFORMATION FORUM

January 25, 2024

By electronic mail

Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090
Attn: Mr. Sai Rao

Re: Securities and Exchange Commission’s November 2, 2023 Exemptive Order re: Reporting by an Order Routing Firm of Settings Applied by an Order Receiving Firm

Dear Mr. Rao,

Financial Information Forum (“FIF”) is submitting this letter in response to the exemptive order granted by the Securities and Exchange Commission (the “Commission”) to the Participants (the “CAT Plan Participants”) of the National Market System Plan Governing the Consolidated Audit Trail (the “CAT NMS Plan”) on November 2, 2023 (the “November 2023 Exemptive Order”).¹ FIF is writing specifically with respect to the exemptive relief granted by the Commission to exempt CAT reporting firms that route orders to exchanges from reporting to CAT certain handling instructions “that may be set by Industry Members at the various Participant exchanges via exchange ports.”² The relief granted by the Commission does not address the concerns of FIF members previously communicated by FIF and our members to Commission representatives.³

In this letter, for brevity, we use the following terminology:

- “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.

¹ 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) (“November 2023 Exemptive Order”).

² Id. at 88 FR 77131-77132.

³ See, for example, the draft request for exemptive relief submitted by FIF to the Commission on January 10, 2023, available at <https://fif.com/index.php/working-groups>.

- “Port Settings” refer to any CAT-reportable, “material” terms of an order 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. We discuss this in further detail below.

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.” Throughout this letter, it is important to keep in mind that CAT already has 100% of the data being discussed. The only issue in question is whether the Commission will insist that such Port Settings data must be reported redundantly, by both parties.

Below, we discuss the following points:

- It is unduly burdensome for a Routing Firm to report Port Settings to CAT, and there is no additional surveillance benefit to doing so. In fact, there are negative consequences for surveillance.
- 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.
- The partial exemption in the November 2023 Exemptive Order is tantamount to no relief at all. The order only exempts a handful of order handling instructions. If any single instruction exists outside of the exempted values, industry participants must incur the large and unwarranted cost of building a solution to report such instructions regardless of the supposed relief. FIF members raised this point with Commission representatives during a call on August 5, 2022, before the Commission issued the November 2023 Exemptive Order.
- Further, the order is discriminatory, because it only gives relief for orders routed to exchanges, and not to orders routed to broker-dealers. This distinction is illogical and unfair, and there is no policy justification for it. Further, because the relief is limited in this manner, it will still require industry participants to incur the large and unwarranted cost of building a solution to report Port Settings in general.

On January 10, 2023 FIF submitted to Commission representatives a draft request for exemptive relief relating to this issue.⁴ As an update to the request in that letter, FIF members request that the Commission grant exemptive relief such that, for an order communicated electronically by a Routing Firm to any Receiving Firm, the Routing Firm is only required to report to CAT the material terms⁵ that

⁴ Ibid.

⁵ “Material terms” is defined in Rule 613(j)(7) of the Commission’s Regulation NMS. 15 U.S.C. §242.613(j)(7).

are known systematically to the Routing Firm (i.e., the terms that are part of the Routing Firm’s books and records).

The relief granted by the Commission in the November 2023 Exemptive Order does not address the concerns identified by FIF members in the prior draft FIF request for exemptive relief. In granting relief in the November 2023 Exemptive Order, the Commission clearly recognizes that there are legitimate policy concerns involved with requiring Routing Firms to report Port Settings applied by Receiving Firms. Yet, as discussed in this letter, the limited scope of relief granted by the Commission does not address any of these concerns. FIF members urge the Commission to act quickly to correct this.

Cost versus benefit

The Commission, in evaluating whether it should require a Routing Firm to report Port Settings to CAT, should consider the implementation burden that will be imposed on industry members and weigh that against the potential regulatory benefit (if any). In Section I of this letter, we discuss the implementation requirements that will be imposed on firms (including potentially having to construct a “pre-linkage” system) and why the Commission’s proposal is unduly burdensome for firms to implement. In Section II we discuss the fact that the Commission’s proposal will result in a false audit trail for surveillance personnel and one that is inferior to the current audit trail. In Section III we discuss why exemptive relief should cover any setting applied by a Receiving Firm that is not included in the Routing Firm’s electronic order message, and why the Commission’s current relief is insufficient and discriminatory.

I. It is unduly burdensome for a Routing Firm to report to CAT the settings applied by a Receiving Firm

In evaluating this requirement, the Commission should consider the fact that approximately 1,800 industry members report tens of billions of CAT events every trading day

In this Section I we discuss the practical challenges of what the Commission is proposing. Based on the data provided in the Commission’s Order approving the Executed Share Model for CAT funding, FIF estimates that industry members submit, on average, approximately 83.6 billion CAT records per trading day.⁶ A significant portion of these reportable events involve order routing.⁷ Accordingly, the scope of transactions affected by this Port Settings question is billions per day.

⁶ Securities Exchange Act Release No. 98290 (Sept. 6, 2023), 88 FR 62629 (Sept. 12, 2023) (Joint Industry Plan; Order Approving an Amendment to the National Market System Plan Governing the Consolidated Audit Trail) (the “ESM Approval Order”), at 88 FR 62680 and 62681. In the ESM Approval Order, the Commission (citing data provided by the CAT Plan Participants) writes that the CAT system receives 418 billion records per day. In the ESM Approval Order, the Commission equates 90% of participant CAT records to 72% of total CAT records. This means that participant CAT records represent 80% of total CAT records, and industry member CAT records represent 20% of total CAT records. Multiplying 418 billion by 20%, FIF estimates that industry members submit approximately 83.6 billion CAT records per trading day.

⁷ FIF is not aware of the Commission or the CAT Plan Participants making publicly available the number of events reported to CAT each day on average that relate to order routing. However, it is reasonable to assume that route reports comprise many billions of events reported to CAT daily, since nearly every order must be routed in order to take effect.

Equally important, the Port Settings question likely impacts nearly all broker-dealers that are subject to CAT reporting. FIF is not aware of exactly how many firms report to CAT today; the original CAT NMS Plan estimated that 1,800 broker-dealers would be subject to CAT reporting.⁸ Whether Port Settings affect every order routed by every broker-dealer is not known, without further research, but FIF members assume that nearly all broker-dealers that are CAT reporters must report that they routed orders somewhere and, accordingly, would be subject to the burdens described in this letter. If the Commission believes otherwise, the Commission should identify why certain CAT reporting broker-dealers would not be subject to this burden.

The Commission's limited relief will likely require an enormous industry-wide data sharing and pre-linkage process

Without relief, the obligation to report Port Settings will likely require collaboration between every Routing Firm and every Receiving Firm where a relationship exists. This would be an enormous, industry-wide data-sharing project – one that could actually dwarf the size of CAT reporting itself. FIF refers to this concept as “Pre-Linkage”. The logical requirement is for every Routing Firm to establish a way to receive from every Receiving Firm where it does business a daily digest of all orders transmitted between them, and all Port Settings that have been applied to such orders. Either the Routing Firm or the Receiving Firm will need to translate such Port Settings into CAT fields and values according to the expansive CAT reporting specifications. The Routing Firm must also collate the data into its own books and records and validate these records against the data transmitted from the Receiving Firm before the Routing Firm can finally generate and send its required files to CAT. This collection, processing and validation process essentially duplicates the process that CAT already performs on a daily basis – but expands the work such that it is repeated thousands of times, all across the industry. In short, Routing and Receiving Firms will need to perform Pre-Linkage external to CAT before they can submit their data to CAT, where the data gets “linked” all over again. FIF members understand that linkage is the most expensive and resource-intensive operation that CAT performs.

This Pre-Linkage regime would also expand the operational complexity of CAT reporting, throughout the industry, by several orders of magnitude. What will a Routing Firm do on a daily basis if it finds that the Pre-Linkage collating of data from its Receiving Firms is faulty? A new operational regime and procedures must be established. The Routing Firm will need to contact the Receiving Firm and reconcile any Pre-Linkage breaks. The Receiving Firm might need to re-run its Pre-Linkage files and resend them to its Routing Firms. Either the Routing Firm or the Receiving Firm might need to halt its CAT processes for the day and troubleshoot before any further reporting (to each other, or to CAT) can continue. This process would likely take place well into the evening hours or overnight.

Today, collection and “linkage” of CAT data happen in one central place, with one set of experts managing this process. In a future with mandatory Port Settings reporting the transmission, ingestion, and linking of CAT data will be multiplied by thousands of router-to-receiver relationships across the industry. The cost to build and maintain this, and the security issues created by it, would be extreme.

⁸ See Limited Liability Company Agreement of Consolidated Audit Trail, LLC (September 6, 2023), at Appendix C-81.

All potential approaches for implementation are unduly burdensome

Should the Commission fail to grant relief, there are logically three potential approaches that market participants could take to implement this requirement:

Approach	Title	Description
1	Mapping by Routing Firms	Routing Firms enhance their own order data, before reporting it to CAT, by mapping their CAT reporting to reflect their knowledge of each Receiving Firm’s various configurations.
2	Mapping by Receiving Firms	Receiving Firms electronically transmit CAT reportable values to Routing Firms for every Port Setting for every order. ⁹
3	Hybrid Approach	Receiving Firms transmit every Port Setting for every order to all Routing Firms. ¹⁰ Routing Firms translate these Port Settings to CAT-reportable values for every order.

The reporting of Port Settings by a Routing Firm involves at least two distinct steps: identification of the Port Settings applied for every order; and translation of the Port Settings to CAT-reportable values. The following table identifies the responsible party for each step for each approach:

Approach	Identification of the Port Settings Applied for Every Order	Translation of Port Settings to CAT-Reportable Values
1	Routing Firm	Routing Firm
2	Receiving Firm	Receiving Firm
3	Receiving Firm	Routing Firm

Timing

Based on the exemptive order granted by the Commission on July 22, 2022 (the “July 2022 Exemptive Order”), industry members would be required to begin reporting Port Settings data to CAT on January

⁹ As discussed further below, this could be on an order-by-order basis or based on categories (i.e., groupings) of orders.

¹⁰ As discussed further below, this could be on an order-by-order basis or based on categories (i.e., groupings) of orders.

31, 2025.¹¹ Any of the logical approaches outlined above will take the industry many months to implement. If no relief is given, that work must start very soon. FIF members urge the Commission to take up this issue immediately.

Prior guidance from the Commission on the scope of the reporting requirement

Each of the three approaches outlined above is unduly burdensome. We discuss below the challenges with each approach. Before discussing each approach in detail, we review the guidance from the Commission on the scope of this reporting requirement.

In the July 2022 Exemptive Order, the Commission clarifies the scope of a Routing Firm’s reporting requirement with respect to settings applied by a Receiving Firm:

Furthermore, Rule 613 and the CAT NMS Plan only obligate the sender of an order to report the Material Terms of the Order that it communicated to and/or agreed upon with the receiver of the order, including default or implicit special handling instructions communicated through a port-level setting. If the receiver of an order subsequently attaches “any special handling instructions” to an order without informing the sender, including special handling instructions communicated through a port-level setting, only the receiver would be obligated to report those Material Terms of the Order.¹²

As discussed in detail below, what the Commission is proposing will require analysis and implementation for thousands of router-to-receiver relationships, which is unduly burdensome.

Approach 1: A Routing Firm estimates and translates the Receiving Firm’s behavior

The first approach that we discuss is the only approach that is possible for a Routing Firm to implement independently. Today, there is no existing protocol for Receiving Firms to transmit Port Settings data to Routing Firms in an electronic format that the Routing Firm can process. This first approach is illustrated by Diagram 1:

¹¹ See, Securities Exchange Act Release No. 95234, 87 FR 42247 (July 14, 2022), Order Granting Temporary 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 Certain Requirements of the National Market System Plan Governing the Consolidated Audit Trail, at 87 FR 42254-42255.

¹² Ibid.

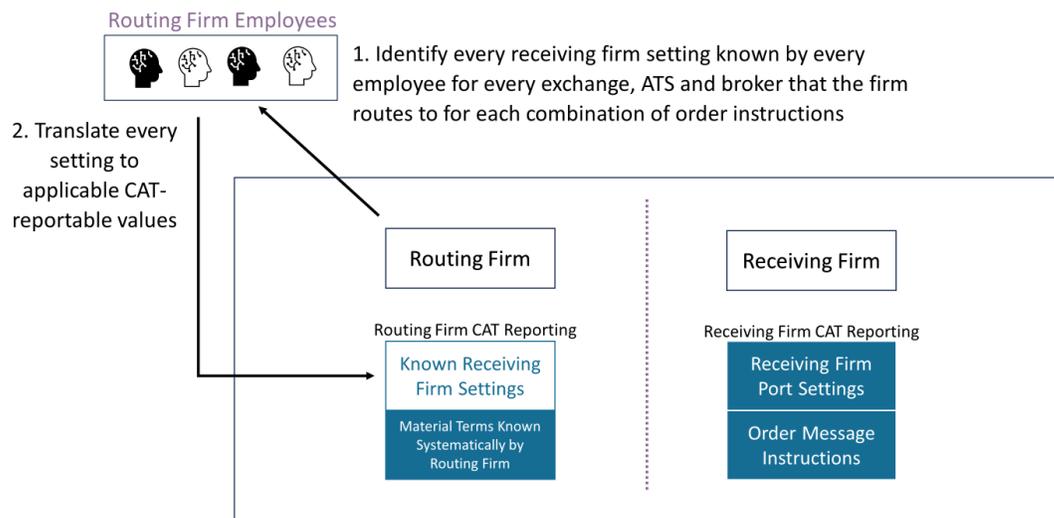


Diagram 1

A Routing Firm would need to take a number of steps if it were to adopt this approach:

- The Routing Firm would need to survey every employee involved in routing to identify any settings that the employee is aware of with respect to each category of order sent to each Receiving Firm to which the Routing Firm routes.
- Depending on the firm, this survey might need to include employees in the following functional areas: development; testing; implementation; operations; compliance; legal; risk management; trading; routing; business analysis; product management; and project management.
- Based on the survey responses, the firm would need to assign an order category for every order for each Receiving Firm and map each order category to the associated settings. A port number identifier (also referred to as a “session number identifier”) can be used instead of an order category for settings that the Receiving Firm applies at a port (i.e., session) level.¹³
- The Routing Firm would then need to analyze and map each order category and session number identifier to specific CAT handling instructions values and other values for other CAT reporting fields.
- This mapping will be challenging in many cases because the Routing Firm, in many cases, will not understand the details of a Receiving Firm’s settings. In these cases, representatives of the Routing Firm will need to contact representatives at the Receiving Firm to request additional clarification about the setting.
- Even if the Routing Firm has full knowledge about a setting, the Routing Firm will need to exercise judgment to map specific settings (and specific combinations of settings) to specific CAT handling instructions and other values. In many cases, this could require discussions with internal or external legal and compliance personnel.

¹³ Please see the additional discussion in Section III below.

- The Routing Firm would need to impose an obligation on its own employees to notify the firm in advance if the employees become aware of (i) any setting changes applied by a Receiving Firm; and (ii) any new combination of instructions that the Routing Firm transmits to a Receiving Firm (or a new session created between a Routing and Receiving Firm) that could result in different settings being applied by a Receiving Firm and, as a result, different handling instructions and other values to be reportable to CAT. The firm would then need to apply the same interpretive processes as described above.
- The Routing Firm would need to request that Receiving Firm personnel notify Routing Firm personnel in advance of settings changes to be applied by the Receiving Firm. This could put a restrictive burden on Receiving Firms, restricting their ability to innovate their execution offerings.
- Routing Firms also would need to regularly monitor updates to Port Settings documentation communicated by Receiving Firms and conduct periodic repeats of the survey process in case a Receiving Firm has made any changes that it neglected to announce.

The processes required for implementing the first approach involve a highly inefficient use of industry member resources. These processes also would be unduly burdensome, as they provide no benefit to regulators, and in fact create a negative “benefit” as we discuss below. In addition, given the complexity of these processes, the quality of reporting would likely be poor.

Approach 2: A Receiving Firm provides CAT-formatted data to a Routing Firm

A second approach would involve the Receiving Firms identifying the settings that apply for every order and mapping those settings to specific handling instructions and other values that are reportable to CAT by the Routing Firm. The Receiving Firm would then communicate to the Routing Firm specific CAT reporting values associated to each order, every day. The Receiving Firm could provide this mapping on (i) an order-by-order basis, (ii) a session basis, or (iii) based on specific combinations of order instructions sent by the Routing Firm. Mapping on a session basis could only be used for settings that a Receiving Firm applies at a port (i.e., session) level. Diagram 2 illustrates this approach:

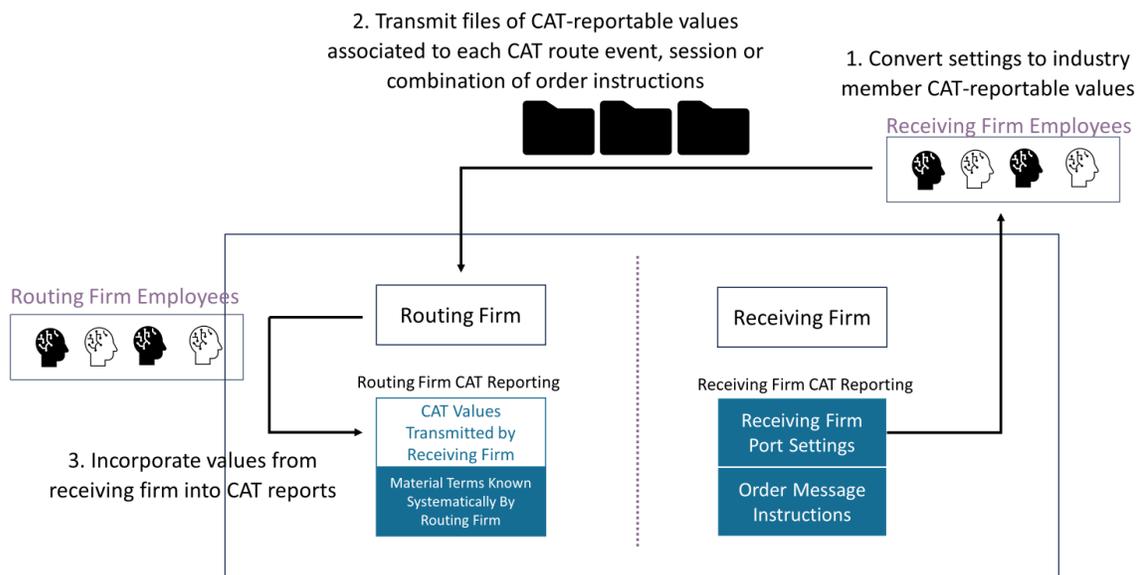


Diagram 2

The second approach effectively shifts from the Routing Firm to the Receiving Firm a significant portion of the Routing Firm burden described for the first approach. One advantage of this approach is that the Receiving Firm will have a far better understanding of its settings as compared to a firm that routes to the Receiving Firm. As a result, the Receiving Firm would be able to provide a more accurate mapping of specific settings to specific CAT-reportable values.

It is unclear why Receiving Firms would be willing to undertake this effort, since this regulatory obligation applies to the Routing Firms and not the Receiving Firms. If the Receiving Firm is an exchange, an additional challenge is that industry members and exchanges report different handling instructions to CAT. While this approach requires Receiving Firms to generate CAT-reportable values, Routing Firms will still need to perform the costly Pre-Linkage process described above.

Approach 2 also involves significant work for the Routing Firm to oversee and monitor the CAT-reportable values transmitted by each of its Receiving Firms. This significant oversight obligation will mean less time for firms' surveillance personnel to perform more worthwhile regulatory oversight functions.

Approach 3: Hybrid Approach: A Receiving Firm provides its native information to a Routing Firm, and the Routing Firm translates such data into CAT format

A third approach would involve the exchange or other Receiving Firm communicating its settings electronically to Routing Firms, with these Receiving Firm settings mapped to individual orders, sessions or categories of orders, as applicable. This approach is illustrated in Diagram 3:

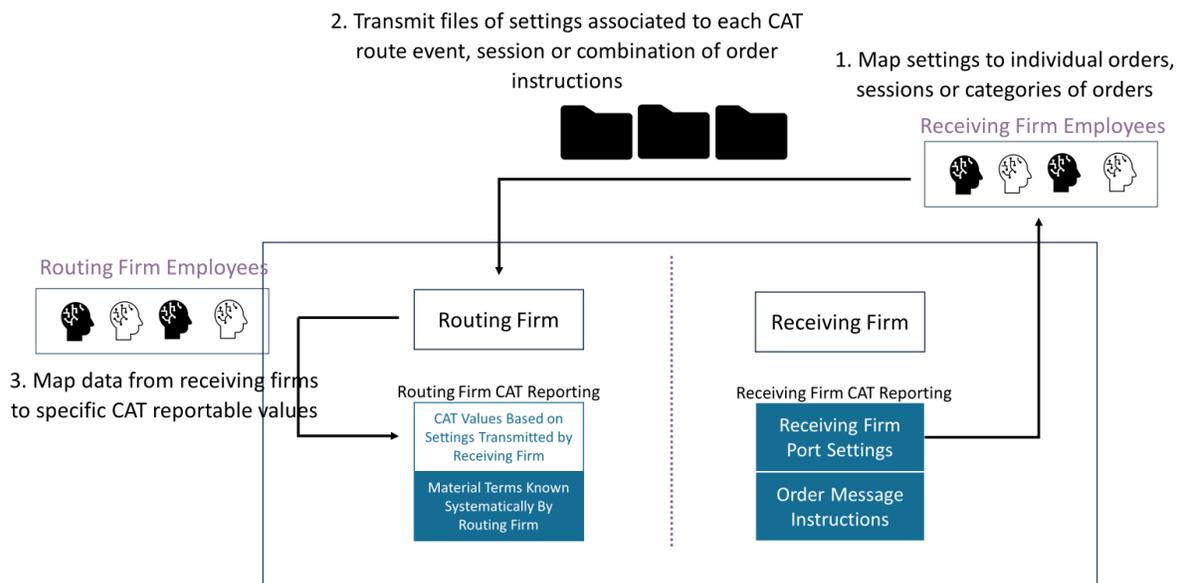


Diagram 3

Routing firms would then need to map the settings and combinations of settings from each Receiving Firm to specific CAT handling instructions and other CAT-reportable values. Alternatively, Receiving Firms could provide this data in a descriptive (i.e., unstructured) manner, and Routing Firms would still need to map these descriptions to specific CAT handling instructions and other CAT-reportable values

Implementing the third approach would be a significant project for Receiving Firms, and Routing Firms would still have to perform much of the work that is required under the first approach, including a process of mapping specific settings and combinations of settings from each Receiving Firm to specific CAT handling instructions and other CAT-reportable values. It is also unclear why Receiving Firms would be willing to undertake the effort required to implement this third approach since this regulatory obligation applies to the Routing Firms and not the Receiving Firms.

Assuming that all Receiving Firms were willing to undertake the work required to implement the third approach (notwithstanding that Receiving Firms have no legal obligation to do so), the third approach also would involve a significant coordination effort across all industry participants to standardize the formats for the transmission of this data. The third approach also would effectively require Routing Firms, prior to their submission of CAT records, to conduct their own linkage validations against the data provided by the Receiving Firms.

The Commission’s proposal will likely result in certain firms changing from real-time to end-of-day CAT reporting, thereby increasing CAT operating costs, impairing the quality of the CAT audit trail and increasing the risk of firms missing the T+1 reporting deadline

In addition to the unwarranted impact on reporting firms, another drawback of the Commission requiring Routing Firms to report Port Settings is that it is likely to impact Routing Firms’ ability to report

their daily data to CAT intraday. FIF members are aware that often larger firms (with more CAT data to report) will begin submitting their CAT data early in the trading day, in order to lessen the work required in the evening. Intra-day data submission also benefits the CAT system itself by expanding the window of CAT processing time, thereby reducing CAT operating costs.

If the Commission does not provide relief as requested by FIF members, firms that report intraday today likely will need to change some or all of their reporting to end-of-day – so that the Routing and Receiving firms can perform Pre-Linkage of their data before reporting to CAT. This will increase the required volume of overnight processing by the CAT system, resulting in further increases in the ongoing costs for operating the CAT system.

Finally, all reporting firms will be at greater risk of missing the T+1 reporting deadline, and further risk of daily CAT reporting errors, due to the added complexity of Pre-Linkage and the further compression of their own operational processes.

Pre-Linkage creates a host of new cybersecurity risks

This Pre-Linkage regime would create a new requirement for Routing and Receiving Firms to transmit billions of order records, or untold thousands of rules-based files between them daily. This necessarily requires that every firm must create new ways to transmit and receive such data and ingest it into Routing Firms' books and records. This opens up new avenues for malicious third-party actors to steal data or obtain access into a firm's systems.

Current absence of an industry-wide consensus or plan

This letter outlines several logical options for how Routing and Receiving Firms might share the required Port Settings data if the Commission fails to expand the current relief. At this time, there is no industry-wide consensus or plan for how to move forward on implementing any such regime. Will each of the 1,800 Routing Firms and all of their Receiving Firms, in every possible combination, be left to figure out which data-sharing method will be used in every case? Will there be any industry-wide standard? Will there be any industry-wide protocol for the data format? Who will determine these things, and how? Even just these decision points could take months to work out, and there is no guarantee that they will be worked out or agreed upon universally. A Routing Firm might be forced to cobble together multiple, different solutions for the various different venues that it uses -- further multiplying the complexity and cost. There is currently no industry data protocol for formatting this data, no industry standard for how to transmit and receive this data, and no industry authority that has a mandate to establish either.

II. Requiring that a Routing Firm report settings applied by a Receiving Firm will provide a false and inferior audit trail to surveillance personnel

Rather than enhancing the CAT data, the Commission's current stance on two-sided, redundant reporting of Port Settings would actually degrade the CAT data. There are multiple aspects to this problem:

- First, all “material aspects of an order” are already reported to CAT by Receiving Firms. No new data would be collected by requiring two-sided reporting.
- Second, today, it is possible to discern from the CAT data whether any term of an order was known systematically by the Routing Firm, or not (implying that it was added by the Receiving Firm due to some setting or configuration). If Routing Firms are forced to report Port Settings data, this differentiation will obviously be lost.
- Third, if Routing Firms are forced to report Port Settings data, that data will appear to CAT to be authoritative, but might not be. CAT would have no indication whether such data was actually known to the Routing Firm or simply repeated by the Routing Firm based on supplemental data it received from the Receiving Firm.
- Fourth, if Routing Firms are forced to report Port Settings data, that data would not indicate on its own whether the reported data was translated from the Receiving Firm’s data model to CAT format by the Routing Firm, the Receiving Firm, or any other party.
- Generally, if Routing Firms are required to report Port Settings data, CAT is no longer an audit trail of the real-world books and records, as intended; instead, CAT would morph into an “enhanced data warehouse” where the primary source of the data is no longer known.

Surveillance personnel will lose the ability to differentiate between (i) the material terms that were known systematically by the Routing Firm and (ii) the settings that were applied by the Receiving Firm

The following diagram illustrates the current CAT reporting obligations when a Routing Firm routes an order to a Receiving Firm:

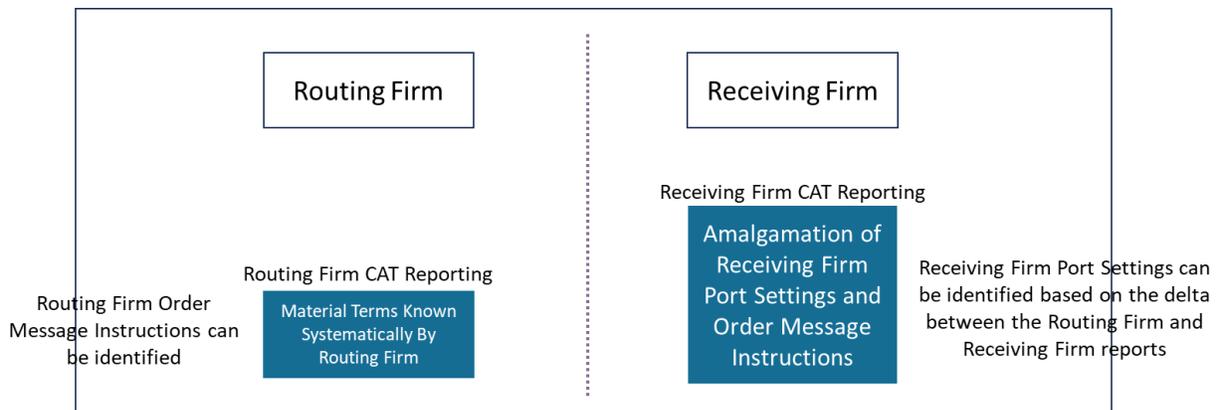


Diagram 4

The current CAT reporting provides a clear audit trail for surveillance personnel because surveillance personnel can identify the material terms that were known systematically to the Routing Firm and the terms that the Receiving Firm added to the order that were not known systematically to the Routing Firm.

As illustrated by Diagram 5 below, if the Routing Firm is also required to report the settings applied by the Receiving Firm (to the extent known by the Routing Firm), surveillance personnel can no longer identify (i) the material terms that were known systematically to the routing firm; and (ii) the settings

that were applied by the Receiving Firm that were not known systematically to the Routing Firm. This results in an inferior audit trail for surveillance personnel.

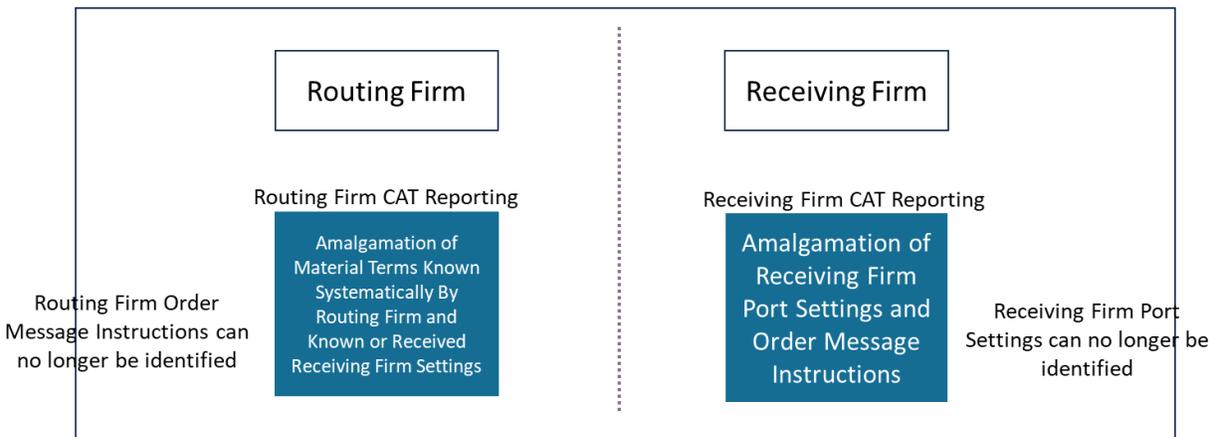


Diagram 5

With the Commission’s approach, the CAT system is no longer an “audit trail” system

With the Commission’s approach, the Routing Firm is no longer reporting based on its own books and records. The Routing Firm is intermingling into its CAT reporting its second-hand understanding of settings applied by the Receiving Firm, at which point the Routing Firm’s books and records become obfuscated.

Applying the Commission’s approach, the “consolidated audit trail” becomes an “enhanced data warehouse” (or, a “consolidated interpretive trail”) reflecting the Routing Firm’s attempt to perceive and interpret the settings applied by the Receiving Firm, as opposed to an audit trail of the Routing Firm’s books and records. A further problem (specifically under Approach 1 described above) is that the Port Settings reported by the Routing Firm are not authoritative because they are based on the perception and interpretation of the Routing Firm as opposed to the Routing Firm’s actual books and records.

Comparing the information added to, and removed from, the consolidated audit trail

If the Commission requires a Routing Firm to report the settings applied by a Receiving Firm (as understood by the Routing Firm), surveillance personnel will obtain access to certain additional information but also (as discussed above) will forfeit access to certain information. This table compares the characteristics of the information that will be lost from, and added to, the audit trail:

	What surveillance personnel lose	What surveillance personnel gain under Approach 1	What surveillance personnel gain under Approaches 2 and 3
Information lost and gained	<ul style="list-style-type: none"> • Lose the ability to identify the material 	<ul style="list-style-type: none"> • The second-hand (and potentially 	<ul style="list-style-type: none"> • Nothing; the Routing Firm will report

	What surveillance personnel lose	What surveillance personnel gain under Approach 1	What surveillance personnel gain under Approaches 2 and 3
	<p>terms that were known systematically to the Routing Firm</p> <ul style="list-style-type: none"> • Lose the ability to identify the settings that the Receiving Firm applied to the order beyond what was known systematically to the Routing Firm 	<p>inaccurate) interpretation by the Routing Firm of settings applied by the Receiving Firm</p>	<p>based on the data communicated by the Receiving Firm</p>
Level of knowledge of reporting party	<ul style="list-style-type: none"> • Obscures what is first-hand data because first-hand data (the routing firm's books and records) now becomes commingled with second-hand data 	<ul style="list-style-type: none"> • Routing Firm's second-hand interpretation of the Receiving Firm's system behavior 	<ul style="list-style-type: none"> • N/A; the Routing Firm will report based on the data communicated by the Receiving Firm
Factual vs. interpretive	<ul style="list-style-type: none"> • Lose reporting based on the Routing Firm's books and records, which is factual 	<ul style="list-style-type: none"> • The second-hand interpretation by the Routing Firm of the settings applied by the Receiving Firm is interpretive 	<ul style="list-style-type: none"> • N/A; the Routing Firm will report based on the data communicated by the Receiving Firm
Reliability and verifiability	<ul style="list-style-type: none"> • Lose data that is reliable and verifiable because it is based on the Routing Firm's books and records 	<ul style="list-style-type: none"> • Data is less reliable and less verifiable (because the Routing Firm's factual books and records data is now commingled with second-hand interpretive data that the Routing Firm is required to 	<ul style="list-style-type: none"> • N/A; the Routing Firm will report based on the data communicated by the Receiving Firm

	What surveillance personnel lose	What surveillance personnel gain under Approach 1	What surveillance personnel gain under Approaches 2 and 3
		add to its route report)	
Books and Records	<ul style="list-style-type: none"> The Routing Firm’s books and records become obfuscated to CAT surveillance personnel 	<ul style="list-style-type: none"> The second-hand understanding of certain employees of the Routing Firm of the settings applied by the Receiving Firm, which is not part of the Routing Firm’s books and records 	<ul style="list-style-type: none"> The Routing Firm will report based on the books and records of the Receiving Firm, not based on the books and records of the Routing Firm

As demonstrated by the table above, the Commission is losing first-hand, factual and authoritative information in favor of redundant, second-hand interpretive information. In addition, the Routing Firm’s books and records become obfuscated to CAT surveillance personnel because the Routing Firm’s books and records are now intermingled with the Routing Firm’s second-hand understanding of the settings applied by the Receiving Firm (under Approach 1) or data transmitted by the Receiving Firm to the Routing Firm subsequent to the actual route events (under Approaches 2 and 3).

The Commission’s proposed reporting will not accurately capture the Routing Firm’s knowledge

Under Approaches 2 and 3, the data reported to CAT does not infer anything at all about what the Routing Firm’s staff understand about the Receiving Firm’s order execution functionality. Rather, these approaches merely mean that the Routing Firm and Receiving Firm have built some method to transfer data between them and repeat it to CAT. There is no reason to infer from such a data-transfer process that the Routing Firm’s trading staff are aware of the Receiving Firm’s settings. Should regulators have a goal of understanding the Routing Firm staff’s level of knowledge, a different approach must necessarily be undertaken.

Two-sided reporting is not appropriate in all circumstances

Two-sided reporting (i.e., reporting of the same data by a Routing Firm and a Receiving Firm) is appropriate when a Routing Firm transmits an electronic order-related instruction to a Receiving Firm. In this scenario, the Routing Firm processes the sending of the order message, and the Receiving Firm processes the receipt of the order message. When a Receiving Firm applies settings that are not included in the Routing Firm’s order instructions, there is no processing or recording of it by the Routing Firm. Accordingly, two-sided reporting is not appropriate in that circumstance. In fact, two-sided reporting in this scenario is affirmatively inappropriate for an “audit trail”, as it falsifies the authoritative nature of what is reported.

III. The scope of the Commission’s current exemption does not address the stated concerns of industry members and is discriminatory

There is no policy basis to limit the exemption to settings configured specifically on a “port”

The exemption granted by the Commission is limited to specific handling instructions “... that may be set by Industry Members at the various Participant exchanges via exchange ports.”¹⁴ The scope of relief is inadequate in several respects.

First, the exemption should not be limited to configurations that are set at a “port” (i.e., session) level. Instead, the exemption should encompass *any* configuration applied by a Receiving Firm when a Routing Firm sends an electronic order route to a Receiving Firm and the configuration is not included in the Routing Firm’s electronic order message. Providing the exemption in this manner is necessary and appropriate because the concerns set forth in this letter apply whether a configuration is set at a session level, is applied to all orders, is based on the particular order instructions communicated by the Routing Firm, or is based on any other factors present in the relationship between a Routing Firm and Receiving Firm. It is illogical, and there is no policy basis, to limit relief to scenarios where a Receiving Firm applies an instruction specifically at a port level.

There is no logical or policy basis to limit the exemption to settings applied by an exchange

FIF members are not aware of any logical or policy basis to limit the exemption to settings applied by *exchanges*, nor has the Commission provided any explanation for why it is applying different requirements to orders routed to exchanges as compared to orders routed to other Receiving Firms. Because the Commission is treating orders routed to exchanges differently from orders routed to other Receiving Firms, the Commission is obligated to explain the reason for this distinction and provide market participants with the opportunity to comment on whether there is any valid basis for this distinction.

Limiting the exemption to defaults applied by exchanges is discriminatory

To force Routing Firms to incur the enormous cost of reporting Port Settings data for broker-to-broker flows, but meanwhile exempt broker-to-exchange flows from the same requirement under certain circumstances, is patently discriminatory and without merit.

There is no policy basis to limit the exemption to specific handling instructions

FIF members also disagree with the Commission’s approach of limiting relief to a short list of six specific order handling instructions. As FIF members have previously explained to Commission staff, to limit the relief to these six instructions is tantamount to giving no relief at all. FIF members have identified many

¹⁴ November 2023 Exemptive Order, at 88 FR 77131.

additional order handling instructions, used in Port Settings today, that are not included in the list of handling instructions set forth in the November 2023 Exemptive Order.

If even one Port Setting is used by a Receiving Firm (whether an exchange or broker-dealer) outside of those given relief, industry members must undertake the enormous Pre-Linkage project explained above. The points discussed in this letter relating to the burden imposed on industry members and the impact on the CAT audit trail are not dependent on the specific handling instructions that would be reportable.

Exemptive relief should not depend on whether Port Settings are controlled in an exchange’s web portal

The exemption granted by the Commission is limited to settings “set by Industry Members”. FIF members are first concerned that this condition is not clear. The most logical interpretation of this condition is that the exemption only applies where an exchange provides a broker-dealer member some control over the Port Settings through the exchange’s web portal. FIF members disagree with the Commission considering this as a factor in determining the scope of exemptive relief because the concerns set forth in this letter apply whether or not the Port Settings are controlled in an exchange’s web portal.

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Negative impact on industry innovation

Mandating two-sided reporting of Port Settings will likely hamstring future enhancements and innovations by Receiving Firms. By definition, the reason Port Settings exist is often because a venue desires to enhance its execution protocols in ways that Routing Firms’ systems do not model or understand. Today, the venue can incorporate such offerings much more quickly by using Port Settings as opposed to waiting for every Routing Firm to build out its systems to fully model the new feature.

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FIF and our members request the opportunity to discuss these issues further with Commission representatives. Please contact me at howard.meyerson@fif.com after you and your colleagues have had the opportunity to review the points set forth in this letter.

Very truly yours,

/s/ Howard Meyerson

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