

ALERTS

Broker-Dealers: B-Ds Receive Consolidated Audit Trail (“CAT”) Relief Due to COVID-19 Pandemic

March 18, 2020

In light of public health issues caused by the outbreak of coronavirus disease 2019 (“COVID-19”), on March 16, 2020, the staff of the Division of Trading and Markets of the U.S. Securities and Exchange Commission provided no-action relief to the self-regulatory organizations (“SROs”) responsible for ensuring compliance with the National Market System Plan governing the Consolidated Audit Trail (“CAT NMS Plan”).^[1] Following this announcement, the Operating Committee for the CAT NMS Plan announced that it understood that these SROs would not take disciplinary action against their members for failing to commence reporting to the Consolidated Audit Trail (“CAT”) prior to May 20, 2020.^[2]

Background

The CAT is a central repository that will receive, consolidate and retain the trade and order lifecycle data for all NMS securities (i.e., listed equities and options) and over-the-counter (“OTC”) equity securities. Under the CAT NMS Plan and related self-regulatory organization rules, exchanges, other SROs and broker-dealers will be required to submit order lifecycle information to the CAT for each trading day on a nightly basis. CAT requirements are applicable to all U.S. exchanges and broker-dealers and — unlike existing trade reporting utilities (e.g., FINRA’s Order Audit Trail System (“OATS”)) — no U.S. broker-dealers are exempt from CAT requirements.^[3]

No-Action Relief

Broker-dealers have a number of upcoming CAT compliance dates that are separated into multiple phases (“Phased Reporting”) through 2022. Under the Phased Reporting^[4] plan, broker-dealers (other than small broker-dealers) (“Large Broker-Dealers”) and small broker-dealers^[5] (“Small Broker-Dealers”) would have been required to submit member data^[6] to the CAT by April 20, 2020.^[7] The no-action relief provides that the staff will not recommend enforcement action against SROs under Section 19(g)(1) of the Exchange Act and Rule 608(c) of Regulation NMS should the SROs not enforce the CAT NMS Plan implementation dates. The SEC no-action relief extends until May 20, 2020, unless it is extended. Immediately following the release of the SEC no-action letter, the Operating Committee for the CAT NMS Plan announced that, consistent with this relief, the SROs responsible for enforcing the CAT NMS Plan implementation dates would similarly not take disciplinary action against their members for failing to commence reporting to the CAT prior to May 20, 2020, unless extended.

While the SEC and SRO relief currently extends to May 20, 2020, broker-dealers should be mindful that the production readiness testing and certification process for CAT should be conducted 14 days prior to reporting.

Conclusion

Due to the impact of COVID-19 on broker-dealers and other market participants, the SEC and relevant SROs have effectively delayed the implementation of the CAT NMS Plan until May 20, 2020, and indicated that the relief may be extended beyond that date. For broker-dealers that have already completed the testing and certification process and want to start reporting to CAT, the CAT production environment will be ready to accept Reportable Event information on April 20, 2020. Broker-dealers wishing to take advantage of the delayed implementation should be prepared to start the production readiness testing and certification process on May 6, 2020 so that they will be ready to report into the CAT production environment on May 20, 2020.

The SEC, like other federal and state regulators, will continue monitoring the COVID-19 situation and may, if necessary, further extend the time period for any of the CAT no-action relief granted. Schulte Roth & Zabel

continues to monitor regulatory developments in connection with COVID-19 and the CAT and will provide further updates as they come in. However, firms should also independently review any regulatory updates to be mindful of their obligations under SEC rules as well as other regulatory regimes.

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If you have any questions concerning this Alert, please contact your attorney at Schulte Roth & Zabel or one of the authors.

[1] See SEC no-action letter (March 16, 2020), available here.

[2] See Letter from the Operating Committee for the CAT NMS Plan (March 16, 2020), available here.

[3] See SIFMA's "Firm's Guide to the Consolidated Audit Trail (CAT)," (Aug. 20, 2019), available here.

[4] Phases 2a-2e of the Phased Reporting are described in Table 1: Industry Specifications Phased Approach in the CAT Reporting Technical Specifications for Industry Members (version 2.2.1 r3) (Jan. 31, 2020); Table 1: Industry Specifications Phased Approach, CAT Reporting Technical Specifications for Industry Member (version 3.0.0) (Jan. 31, 2020); and Table 1: Industry Customer & Account Specifications Phased Approach, CAT Reporting Customer & Account Technical Specifications for Industry Members (Version 1.0) (Jan. 23, 2020) (collectively with amendments, "Industry Member Technical Specifications"), each of which is available here. The Industry Member Technical Specifications also provide detailed guidance regarding the data required to be reported for each phase.

[5] The SEC defines a small broker-dealer as a broker or dealer that (a) had total capital (net worth plus subordinated liabilities) of less than \$500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to Exchange Act rule 17a-5(d) or, if not required to file such statements, a broker or dealer that had total capital (net worth plus subordinated liabilities) of less than \$500,000 on the last business day of the preceding fiscal year (or in the time that it has been in business, if shorter); and (b) is not affiliated with any person (other than a natural person) that is not a small business or small organization as defined in Exchange Act rule 0-10.

[6] Specifically, Large Broker-Dealers and Small Broker-Dealers would be required to submit Phase 2a member data.

See also fn 7 re: scope of reporting member data in Phase 2a. *See also* Letter from Michael Simon, Chair, CAT NMS Plan Operating Committee, to Vanessa Countryman, Secretary, Securities and Exchange Commission (Feb. 19, 2020), available [here](#).

[7] This requirement and deadline would be applicable only to Large Broker-Dealers and Small Broker-Dealers required to record and report information to OATS pursuant to applicable SRO rules.

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