

SEC Issues Conditional Exemptive Relief Related to Broker-Dealer CAT Reporting Timelines

The U.S. Securities and Exchange Commission (SEC) [announced](#) on April 20, 2020, that it had voted to issue two exemptive orders relating to the implementation of the National Market System Plan Governing the Consolidated Audit Trail (CAT NMS Plan), in part, to address effects of COVID-19 on the securities markets. The first exemptive order ([First Order](#)) grants conditional exemptive relief that provides a phased Consolidated Audit Trail (CAT) reporting timeline for broker-dealers. The second exemptive order ([Second Order](#)) provides relief by permitting introducing brokers that meet certain requirements to follow the small broker-dealer reporting timeline.

Regulation NMS and the CAT NMS Plan

In 2012, the SEC promulgated [Exchange Act Rule 613](#), which required national securities exchanges or national securities associations (SROs) to develop and submit to the SEC a national market system plan to govern the creation, implementation, and maintenance of a consolidated audit trail and central repository. The consolidated audit trail and central repository would capture customer and order event information for orders in NMS securities stemming across markets and throughout the complete lifecycle of the order (i.e., from order inception through routing, cancellation, modification, and/or execution) into a single, consolidated data source. In support of its requirement, the SEC explained that the wide spectrum of methods for data recordkeeping, retrieval, and reporting currently used by the different SROs caused regulators to engage in a time-intensive process to review provided information that was often lacking in completeness. The CAT NMS Plan was initially published for comment on May 17, 2016, and approved by the SEC, as modified, on [November 15, 2016](#).

First Exemptive Order

The First Order pertains to Sections 6.4, 6.7(a)(v) and 6.7(a)(vi) of the CAT NMS Plan, which require SROs to mandate that each "Industry Member" (defined by the CAT NMS Plan as a member of an SRO) begin reporting data to a central repository. The CAT NMS Plan phased in implementation of reporting with compliance dates based on whether the member was a Large Industry Member (November 2018) or Small Industry Member (November 2019). Small Industry Members are defined by Rule 613 as Industry Members that qualify as "small broker-dealers" as defined by SEC Rule 613 and Large Industry Members are defined as Industry Members that are not Small Industry Members. [Requesting SROs](#) proposed an alternative five-phase implementation plan (with each phase titled sequentially "Phase 2a" through "Phase 2e"), subject to the satisfaction of certain conditions, including that (1) the full scope of data required under the CAT NMS Plan will be available at the conclusion of all five reporting phases; and (2) SROs would set requirements to implement testing of data systems according to a set timeline.

In response to industry concerns regarding additional delays as a result of the COVID-19 pandemic, [requesting SROs](#) sought an additional exemption with respect to the first two compliance dates. Acknowledging the impact of the COVID-19 pandemic on market participants, the First Order provides an additional delay to Phase 2a and Phase 2b CAT reporting compliance dates while noting that Industry Members who elect to report to CAT prior

to the June or July 2020 compliance dates may report to CAT as early as the initially proposed compliance dates (i.e., April 20, 2020, and May 18, 2020, respectively).

In light of the First Order, market participants should be aware of the following key CAT reporting milestones, which apply to Industry Members based on whether they are (1) large broker-dealers or (2) small broker-dealers. As noted below, there is one distinction for small broker-dealers that currently report to FINRA's Order Audit Trail System (OATS small broker-dealers) versus those that do not (non-OATS small broker-dealers):

- June 22, 2020: Initial equities reporting (Phase 2a Reporting) for large broker-dealers **and** OATS small broker-dealers
- July 20, 2020: Initial options reporting (Phase 2b Reporting) for large broker-dealers
- December 13, 2021: Full equities and options reporting (Phases 2b, 2c, 2d Reporting) for large **and** small broker-dealers
- July 11, 2022: Full customer and account reporting (Phase 2e Reporting) for large **and** small broker-dealers

Additionally, the First Order sets the following testing timelines:

Milestone	Testing Description
2019 December	Industry Members begin to file submission and data integrity testing for Phases 2a and 2b
February	Industry Members begin testing the reporter portal, including data integrity error correction tools and data submissions
	(1) Industry Member test environment will be open with intra-firm linkage validations to Industry Members for both Phases 2a and 2b
2020 April	(2) Exchanges that support options market maker quoting will begin accepting quote sent time on quotes from Industry Members no later than this time
July	Industry Member test environment will be open to Industry Members with inter-firm linkage validations for both Phases 2a and 2b
January	Industry Member test environment will be open to Industry Members with Phase 2c functionality (full representative order linkages)
2021 June	Industry Member test environment will be open to Industry Members with Phase 2d functionality (manual options orders, complex options orders, and options allocations)
2022 January	Industry Member test environment (customer and account information) will be open to Industry Members

Please see the chart below, which summarizes the proposed revised compliance timeline in greater detail. Market participants can view a more detailed implementation timeline on the [CAT website](#).

Second Exemptive Order

The Second Order relates to the treatment of certain broker-dealers that fall outside of the "Small Industry Member" definition and, therefore, are subject to a shorter compliance schedule. As explained in the Second Order, based on the definition of Small Industry Member, broker-dealers (introducing brokers) who introduce transactions on a fully disclosed basis to a clearing participant that is not a small broker-dealer (as such term is defined by the [Exchange Act Rule 0-10\(c\)](#)) would not be "Small Industry Members," regardless of whether the

introducing broker otherwise met small broker-dealer requirements.

Under the terms of the Second Order, introducing brokers may comply with the compliance schedule for Small Industry Members, provided that they meet the small broker-dealer capital requirements. In support of its decision to provide relief, the SEC stated in the Second Order that the SEC "understands that despite their clearing relationships, these [introducing brokers] have the same resource limitations as other small broker-dealers that are similarly capitalized."

The SEC noted that the relief provided in both the First Order and the Second Order is limited to the requirements in those order. Accordingly, outside of the relief provided in the orders, market participants must comply with any all other compliance dates or obligations in the CAT NMS Plan.

Summary of Revised Reporting Compliance Dates Pursuant to April 20 Exemptive Order

Phase Data Description	Large Industry Members	Small Industry Members
<p>2a Industry Member data <i>solely related to eligible securities that are equities</i>, including, without limitation, (1) all events and scenarios covered by OATS, which includes information related to the receipt or origination of orders, order transmittal, and order modifications, cancellations and executions; (2) reportable events for: (i) proprietary orders for equities; (ii) electronic quotes in listed equity eligible securities (i.e., NMS stocks); (iii) electronic quotes in over-the-counter (OTC) equities; and (iv) electronic quotes in unlisted eligible securities sent to a quotation system not operated by an SRO or Industry Member; and (3) firm designated IDs. Phase 2a Industry Members must also report (1) all street side representative orders (including both agency and proprietary orders) and mark such orders as representative orders, except in certain limited exceptions; (2) the manual and electronic capture time for manual order events; (3) special handling instructions for the original receipt or origination of an order during Phase 2a; and (4) when routing an order, whether the order was routed as an intermarket sweep order.[1]</p>	<p>Must report by June 22, 2020</p>	<p>OATS Members: Must report by June 22, 2020</p> <p>Non-OATS Members: Must report by December 13, 2021</p>
<p>2b Industry Member data <i>related to eligible securities that are options</i> and related to simple electronic option orders (i.e., orders to buy or sell a single option that is not related to or dependent on any other transaction for pricing and timing of execution that is either received or routed electronically by an Industry Member), excluding electronic paired option orders (i.e., electronic option orders that contain both the buy and sell side that is routed to another Industry Member or exchange for crossing and/or price improvement as a single transaction on an exchange). Phase 2b Industry Members also will report: (1) responses to auctions of simple orders and paired simple orders; and (2) combined orders (<i>i.e.</i>, a single, simple order in listed options created by combining individual, simple orders in listed options from a customer with the same exchange origin code before routing to an exchange), but the linkage to the underlying orders is not required to be reported until Phase 2d.</p>	<p>Must report by July 22, 2020</p>	<p>Must report by December 13, 2021</p>

Phase Data Description	Large Industry Members	Small Industry Members
<p>Industry Member data <i>related to eligible securities that are equities</i> (other than Phase 2a, 2d, or 2e data) and related to: (1) allocation reports; (2) quotes in unlisted eligible securities sent to an interdealer quotation system (IDQS) operated by a CAT reporter; (3) electronic quotes in certain listed equity eligible securities (i.e., NMS stocks); (4) reporting changes to client instructions regarding modifications to algorithms; (5) marking as a representative order any order originated to work a customer order in price guarantee scenarios; (6) flagging rejected external routes to indicate a route was not accepted by the receiving destination; (7) linkage of duplicate electronic messages related to a manual order event between the electronic event and the original manual route; (8) special handling instructions on order route report; (9) quote identifier on trade events; (10) reporting of large trader identifiers (LTIDs); (11) reporting of account opening date (or effective date) and reporting of a flag indicating the firm designated ID type as account or relationship; (12) order effective time for orders that are received by an Industry Member and do not become effective until a later time; (13) the modification or cancellation of an internal route of an order; and (14) linkages to the customer order(s) being represented for representative order scenarios. Phase 2c data may also include: (1) electronic quotes that are provided by or received in a CAT reporter's order/quote handling or execution systems that are provided off of an exchange; (2) over-the-counter (OTC) equity securities quotes sent by an Industry Member to an IDQS operated by an Industry Member CAT reporter; and (3) 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).</p>	<p>Must report by April 26, 2021</p>	<p>Must report by December 13, 2021</p>

Phase Data Description	Large Industry Members	Small Industry Members
<p>2d Industry Member data related to eligible securities that are equities (other than Phase 2a, 2c, or 2e data) or options (other than Phase 2b data). <i>With respect to options</i>, such data includes: (1) simple manual orders; (2) electronic and manual paired orders; (3) all complex orders with linkages to all CAT-reportable legs; (4) large trader identifiers (LTID) (if applicable) for accounts with reportable events for Phase 2d; (5) account opening date (or effective date) for accounts with an LTID and flag indicating the Firm Designated ID type as account or relationship for such accounts; (6) allocation reports; (7) the modification or cancellation of an internal route of an order; and (8) linkage between a combined order and the original customer orders. Phase 2d 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 options and are off-exchange (under certain conditions) and any response to a request for quote that meets this definition. <i>With respect to options or equities</i>, such data includes: (1) receipt time of cancellation and modification instructions; (2) modifications of previously routed orders (in certain instances); (3) over-the-counter (OTC) equities quotes sent by an Industry Member to an interdealer quotation system (IDQS) operated by an Industry Member CAT reporter that does not match and execute orders; and (4) absent exemptive or other relief, certain verbal or manual quotes on an exchange or in the OTC market.</p>	Must report by December 13, 2021	Must report by December 13, 2021
<p>2e Customer account information and customer identifying information (other than large trader identifiers), account opening date (or effective date), and firm designated ID type flag previously reported to the CAT.</p>	Must report by July 11, 2022	Must report by July 11, 2022

Endnote

[1] The First Order notes that in Phase 2a Industry Members would not be required to report (1) modifications of a previously routed order in certain limited instances, and (2) a cancellation of an order received from a customer after the order has been executed. With respect to modifications, the First Order provided the following example: "if a trader or trading software modifies a previously routed order, the routing firm is not required to report the modification of an order route if the destination to which the order was routed is a CAT [r]eporter that is required to report the corresponding order activity . . . if, however, the order was modified by a [c]ustomer or other non-CAT [r]eporter, and subsequently the routing Industry Member sends a modification to the destination to which the order was originally routed, then the routing Industry Member must report the modification of the order route." See First Order at 8-9.

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