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May 21, 2020

SEC to Amend National Market System Plan Governing Consolidated Audit Trail

The U.S. Securities and Exchange Commission (SEC) on May 15, 2020, voted to adopt amendments to the national market system plan governing the consolidated audit trail (the CAT NMS Plan). SEC Chairman Jay Clayton stated in a related [press release](#), "[t]hese amendments build upon other recent Commission actions relating to the CAT designed to enable the SROs, in conjunction with the broker-dealers, to focus on bringing a functional, more secure CAT online."

Regulation NMS and the CAT NMS Plan

The CAT NMS Plan was initially published for comment on May 17, 2016, and approved by the SEC, as modified, on [November 15, 2016](#). The CAT NMS Plan affects [Exchange Act Rule 613](#), which requires 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.

Since the approval of the CAT NMS Plan, the SEC has taken actions to accommodate SROs, many of which are still preparing to meet the approaching implementation timelines. The amendments, which were initially [proposed](#) on September 9, 2019, include "provisions designed to increase operational transparency surrounding the implementation process and the [SROs'] financial accountability for the timely completion of the consolidated audit trail." In explaining the need for these changes, the SEC noted in the adopting release for these amendments ([Release](#)) that SROs had failed to meet initial CAT deadlines as well as extended deadlines.

Additionally, as we covered in a recent client update, on April 20, 2020, the SEC issued two exemptive orders relating to the CAT NMS Plan, in part, to address effects of COVID-19 on the securities markets. The first exemptive order ([First Order](#)) authorized conditional exemptive relief granting a phased CAT reporting timeline for broker-dealers. The second exemptive order ([Second Order](#)) provided relief permitting certain introducing brokers to follow the small broker-dealer reporting timeline. The SEC explained in the Release that the totality of the SEC's accommodations regarding the CAT NMS Plan "will help to ensure that the Participants fulfill their obligations to deliver a functional CAT on a reasonably achievable timeframe."

Proposed Amendments

The Release adopts amendments to the CAT NMS Plan to address two goals: (1) increase operational transparency; and (2) increase financial accountability.

Amendments to Increase Operational Transparency

As amended, the CAT NMS Plan will impose disclosure obligations on SROs as follows:

- The SROs must file with the Commission, and make publicly available, (1) an implementation plan containing a detailed timeline with objective milestones to achieve full CAT implementation; and (2) ongoing quarterly progress reports containing an itemized description of the progress made by the participants toward achieving each of the milestones set forth in the implementation plan.
- Each document must be submitted to the CEO, president, or an equivalently situated senior officer at each SRO and then approved by a supermajority vote of the operating committee (e.g, an "affirmative vote of at least two-thirds of all of the members of the operating committee or any subcommittee, as applicable, authorized to cast a vote with respect to a matter presented for a vote (whether or not such a member is present at any meeting at which a vote is taken) by the operating committee or any subcommittee, as applicable").
- To the extent that any document is approved without a unanimous vote of the operating committee, each SRO whose operating committee member did not vote to approve the document must separately file with the SEC, and make publicly available, a statement identifying itself and explaining why it did not vote to approve the document in question.

The Release clarifies that the reporting requirements apply to SROs up to the point of implementation of the CAT. Accordingly, the SEC does not require additional reporting but "encourages the Participants to communicate fully with affected market participants regarding any 'upgrades schedules.'"

Amendments to Increase Financial Accountability

The CAT NMS Plan permits both SROs and their members to impose fees that would compensate for costs and expenses incurred by the SROs in connection with the development and implementation of the CAT. In efforts to increase financial accountability, the Release establishes target deadlines for implementation milestones defined by the Release as well as a reduction scale setting the amount of fee recovery that would no longer be available to SROs who miss any of the target deadlines. Specifically, an SRO that does not meet these deadlines would be subject to a reduction in the amount of CAT funding that they can recover from its members. The amount of available funding would be reduced by 25% at regular intervals.

The four implementation timelines are as follows:

- July 31, 2020** Initial Industry Member Core Equity and Option Reporting
- December 31, 2020** Full Implementation of Core Equity Reporting Requirements
- December 31, 2021** Full Availability and Regulatory Utilization of Transactional Database Functionality
- December 31, 2022** Full Implementation of CAT NMS Plan Requirements

Effective Date

The amendments will become effective 30 days after publication of the Release in the Federal Register.

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