FINANCIAL INFORMATION FORUM

March 4, 2024

By electronic mail to rule-comments@sec.gov

Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090
Attn: Secretary

Re: File Number SR-FINRA-2024-002: Proposed Rule Change to Adopt FINRA Rule 6897(a) and Supplementary Material to Establish Fees for Industry Members Related to Historical Costs of the National Market System Plan Governing the Consolidated Audit Trail ("FINRA 002 filing")

File Number SR-FINRA-2024-003: Proposed Rule Change to Adopt FINRA Rule 6897(b) (CAT Cost Recovery Fees) to Implement a Historical Consolidated Audit Trail Recovery Assessment ("FINRA 003 filing")

Dear Secretary,

The Financial Information Forum ("FIF")[1] appreciates the opportunity to comment on the above-referenced rule filings by the Financial Industry Regulatory Authority ("FINRA") with the Securities and Exchange Commission (the "Commission"). This comment letter also applies to the exchange rule filings that have similar content to the FINRA 002 filing. In this letter we refer to the FINRA 002 and 003 filings and the similar exchange filings as the "SRO filings". The SRO filings seek to implement the "executed share model" for funding the consolidated audit trail ("CAT") system approved by the Commission on September 6, 2023.[2] FIF is submitting this letter on behalf of our broker-dealer members and technology vendors that support these members.

This comment letter is limited to the specific topic of reconciliation of invoices to be received by industry members from (i) the CAT system, and (ii) downstream routing and executing firms and venues for the

[1] FIF (www.fif.com) was formed in 1996 to provide a centralized source of information on the implementation issues that impact the securities industry across the order lifecycle. Our participants include broker-dealers, exchanges, back office service bureaus, and market data, regulatory reporting and other technology vendors in the securities industry. Through topic-oriented working groups, FIF participants focus on critical issues and productive solutions to technology developments, regulatory initiatives, and other industry changes.
[2] Securities Exchange Act Release No. 98290 (Sept. 6, 2023), 88 FR 62628 (Sept. 12, 2023) (Joint Industry Plan; Order Approving an Amendment to the National Market System Plan Governing the Consolidated Audit Trail; Notice).

pass-through of CAT fees. FIF understands that FIF members are addressing a wider scope of issues relating to the SRO filings either through other industry association comment letters or through individual firm comment letters.

FIF members have engaged in extensive discussions to identify current reconciliation challenges faced by industry members and potential approaches to address these challenges. Given the complexity of this topic, FIF members continue to engage in these discussions. This letter reflects recommendations from FIF members based on the discussions to date.

The following are some of the key points discussed in further detail below:

- It is crucial that broker-dealers, as part of their standard financial and operational risk management practices, have the ability to properly reconcile all CAT invoices to the associated transactions for which they will be invoiced.
- For the same reason, it is also important to ensure that any pass-through of fees (i.e., rebilling) to upstream routing broker-dealers is based on accurate data and to enable proper reconciliation by upstream routing broker-dealers of any such pass-through of fees.
- Based on the challenges that FIF members -- subsequent to the Commission's approval of the executed share model for CAT billing -- have identified with the current CAT billing process, FIF members recommend that CAT bill the originating broker, rather than the executing broker, for each side to a transaction; this recommended approach would significantly reduce the operational burden that the current billing approach imposes on industry members.
- If the Commission does not agree that billing should be based on the originating broker, FIF members provide recommendations on changes to the current billing and reconciliation processes to facilitate reconciliation.
- Based on the current CAT NMS Plan requirements for billing, FIF members are not aware of any approach that would enable industry members to reconcile all transactions that they are billed for on a trade-by-trade basis.
- Based on the current CAT NMS Plan requirements for billing, industry members could reconcile all transactions on an aggregated basis, based on the routedOrderID or quoteID.
- This would require the CAT system to provide, in the CAT Billing Trade Details file,[3] the routedOrderID or quoteID for all transactions; the CAT Billing Trade Details file currently only provides the routedOrderID for on-exchange transactions.
- Where possible, trade-by-trade reconciliation should be facilitated. The exchanges could take certain steps to facilitate trade-by-trade reconciliation, as discussed below.
- For a number of reasons (discussed below), billing based on TRF and ORF reports (defined below) is problematic; the CAT system should instead bill based on the Order Trade (MEOT) events that industry members report to CAT.
- FIF members have identified certain issues with the current CAT Billing Trade Details files that should be addressed, as listed below.

[3] The specifications for the CAT Billing Trade Details files are set forth in the CAT Technical Specifications for Billing Trade Details, Version 1.0 r1 (Dec. 8, 2023), available at https://catnmsplan.com/sites/default/files/2023-12/12.07.2023-CAT-Techical-Specifications-for-Billing-Trade-Details-v1.0r1_CLEAN.pdf ("CAT Billing Specifications").

- The effective date for billing should allow a reasonable time period for industry members to update their systems and processes to conform to the fee filings that the Commission approves.

A. It is crucial that broker-dealers can properly reconcile all CAT invoices to the associated transactions for which they will be invoiced (whether by CAT or another market participant)

During the past few months, the Participants in the National Market System Governing the Consolidated Audit Trail (the "CAT Plan Participants") and FINRA CAT, LLC ("FINRA CAT") have taken a number of steps to make trade detail data available to industry members to facilitate reconciliation of CAT billing data by industry members.[4] FIF members appreciate the significant steps that the CAT Plan Participants and FINRA CAT have taken during this period. Industry members have actively participated in this process.[5] FIF members also appreciate the focus of Commission representatives on reconciliation of CAT invoices.

While significant progress has been made, significant additional actions are required. It is crucial that broker-dealers, as part of their standard financial and operational risk management practices, have the ability to properly reconcile all CAT invoices to the associated transactions for which they will be invoiced. It is also important to ensure that any pass-through of fees (i.e., rebilling) to upstream routing broker-dealers is based on accurate data and to enable proper reconciliation by upstream routing broker-dealers of any such pass-through of fees. The ability to properly reconcile invoices from CAT and rebills from executing firms is also important for firms that intend to pass-through these fees to upstream firms and customers.

FIF members have identified various issues with respect to reconciliation of CAT invoices that should be addressed. These issues are discussed below.

B. Applicable CAT NMS Plan provisions relating to billing

Prior to our discussion below of CAT reconciliation issues, we present applicable provisions from the CAT NMS Plan relating to CAT billing. We discuss these provisions in more detail below.

Under Section 11.3(a)(iii)(A) of the CAT NMS Plan, one-third of CAT fees are allocated to the "CAT Executing Broker for the Buyer" and one-third of CAT fees are allocated to the "CAT Executing Broker for the Seller":

> Each Industry Member that is the CAT Executing Broker for the buyer in a transaction in Eligible Securities ("CAT Executing Broker for the Buyer" or "CEBB") and each Industry Member that is the CAT Executing Broker for the seller in a transaction in Eligible Securities ("CAT Executing Broker for the Seller" or "CEBS") will be required to pay a CAT Fee for each such transaction in Eligible Securities in the prior month based on CAT Data. The CEBB's CAT Fee or CEBS's CAT Fee (as applicable) for each transaction in Eligible Securities will be calculated by multiplying the number of executed equivalent

[4] See, for example, the documents posted in the CAT Fees section of the CAT NMS Plan, catnmsplan.com/cat-fees.
[5] See, for example, letters submitted by FIF to the CAT Plan Participants and FINRA CAT on October 10, October 26, November 22 and December 8, 2023, available at https://fif.com/index.php/working-groups?start=0.

> shares in the transaction by one-third and by the Fee Rate reasonably determined pursuant to paragraph (a)(i) of this Section 11.3.[6]

Section 1.1 of the CAT NMS Plan provides the following definition for CAT Executing Broker in relation to off-exchange transactions:

> "CAT Executing Broker" means … (b) with respect to a transaction in an Eligible Security that is executed otherwise than on an exchange and required to be reported to an equity trade reporting facility of a registered national securities association, ***the Industry Member identified as the executing broker and the Industry Member identified as the contra-side executing broker in the TRF/ORF/ADF transaction data event in the CAT Data submitted to the CAT by FINRA pursuant to the Participant Technical Specifications*** [emphasis added]; provided, however, in those circumstances where there is a non-Industry Member identified as the contra-side executing broker in the TRF/ORF/ADF transaction data event or no contra-side executing broker is identified in the TRF/ORF/ADF transaction data event, then the Industry Member identified as the executing broker in the TRF/ORF/ADF transaction data event would be treated as CAT Executing Broker for the Buyer and for the Seller.[7]

C. The CAT Plan Participants should amend the CAT NMS Plan to provide for billing based on the originating broker, rather than the executing broker, for each side

As quoted above, the CAT NMS Plan provides for CAT to bill the executing broker for the buyer and the seller. Subsequent to the Commission's approval of the executed share model for CAT billing, FIF members have undertaken significant analysis of the work that would be required for reconciliation and rebilling based on this model. Many FIF members also have commenced work towards implementing reconciliation and rebilling processes based on the executed share model. Based on this analysis and work, FIF members have identified significant operational challenges with reconciliation and rebilling based on this fee model.

In most cases, executing brokers will seek to rebill CAT fees upstream to routing brokers. This creates an operational burden for executing brokers as they seek to rebill and collect payments from multiple upstream brokers. This also creates an operational burden for routing brokers in reconciling and paying the amounts they are billed from multiple executing brokers. In many cases, there are multiple levels of routing prior to a transaction, which would require multiple levels of rebilling, reconciliation and collection. FIF members expect that, at some point in the future, exchanges and their affiliated routing brokers will seek to rebill for scenarios where an exchange, through its affiliated routing broker, reroutes an order to another exchange for execution, and the affiliated routing broker is thereby classified as the executing broker for the transaction.

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[6] Limited Liability Company Agreement of Consolidated Audit Trail, LLC (Sept. 6, 2023), available at https://catnmsplan.com/sites/default/files/2023-09/LLC_Agreement_of_Consolidated_Audit_Trail_LLC-as-of-9.06.23.pdf ("CAT NMS Plan"), at 74.

[7] Id. at 3.

FIF members believe that a more straightforward approach would be for CAT to bill the originating broker for each side directly. This would avoid the multiple levels of rebilling, reconciliation and collection that will be required under the current approach. Under this proposed approach, if an exchange, through its affiliated routing broker, reroutes an order to another exchange, the originating broker, and not the exchange's affiliated routing broker, would be responsible for payment of the CAT fee for that side (i.e., buyer or seller side, as applicable) of the transaction. This would relieve the exchange from having to rebill in this scenario because the exchange's routing broker would not be charged any fee by CAT.

FIF members believe that this change could be implemented through the following changes to the CAT NMS Plan:

- Change the defined term "CAT Executing Broker" to "CAT Originating Broker"
- Replace the current definition of "CAT Executing Broker" with a new definition of "CAT Originating Broker."

FIF members believe that the above changes to the wording of the CAT NMS Plan could be introduced without causing a material delay in the approval process for the SRO filings. FIF members are not clear as to the time it would take to update the CAT system and associated CAT system documentation to implement billing based on the originating broker and request feedback from the CAT Plan Participants and FINRA CAT on this point.

FIF members have identified the following specific scenarios that the CAT Plan Participants and FINRA CAT would need to address if they were to implement CAT billing based on the originating broker:

- For a customer order, the originating broker would be the broker that reports the New Order event from the customer.
- For a principal order, the originating broker would be the broker that reports a New Order event for the principal order.
- A representative order would link back to the upstream customer or principal order. If linkage from a representative order is not available (for example, because a representative order contains the "YE" flag), the CAT system would charge the broker that reports the representative order as the originating broker.
- More generally, in any scenario where upstream linkage is not available (for example, in the case of a manual route, where a routedOrderID is not reported to CAT), the CAT system would charge as the originating broker the broker that does not provide upstream linkage in its CAT event.
- Where no order is created for a side of a trade (for example, where a market maker executes against a customer order but does not create its own order), the CAT system would bill the market maker based on the FDID reported for that side of the trade.

If the Commission agrees with FIF members that it would be more efficient for CAT to bill the originating broker, instead of the executing broker, for each side, FIF members would be able to provide additional detail as to the fields that the originating broker would require for reconciliation of its CAT bills.

D. If the Commission does not agree that billing should be based on the originating broker, FIF members provide recommendations on changes to the current billing and reconciliation processes to facilitate reconciliation

As discussed in the preceding section, FIF members believe that the most efficient approach is for CAT to bill the originating broker for each side to a transaction. If the Commission does not agree with this approach, the Commission should take steps to enhance the current reconciliation process, which is based on the "CAT Executing Broker." FIF members discuss below reconciliation challenges with the current approach for billing and potential approaches to address these challenges. As discussed below, based on the current billing process, industry members will not be able to perform a comprehensive and accurate reconciliation of their CAT bills. Accordingly, it is important for the Commission to consider the recommendations below to enhance the reconciliation process.

E. Based on the current CAT NMS Plan requirements for billing, industry members are not aware of any approach that would enable reconciliation of all transactions on a trade-by-trade basis

How TRF non-media reports create challenges for reconciliation

As described in the passage quoted in Section B above, CAT billing for off-exchange transactions is based on the TRF/ORF/ADF Transaction Data events that FINRA reports to CAT (the "CAT TRF events"). These CAT TRF events, in turn, are based on reports that industry members submit to the TRF and ORF trade reporting systems (for ease of reference, we refer to the Nasdaq/FINRA Trade Reporting Facility, the NYSE/FINRA Trade Reporting Facility, and FINRA's Order Reporting Facility as the "TRF reporting systems" or the "TRF"). The reports that industry members submit to the TRF can be "media" or "non-media." Media events are publicly disseminated and subject to CAT billing; non-media events are not publicly disseminated and are not subject to CAT billing.[8]

The problem is that, in many scenarios, a broker that routes an order to an executing broker does not know whether the executing broker is reporting any resulting trade to the TRF as a media report (in which case the routing broker is subject to billing from CAT) or a non-media report (in which case the routing broker is not subject to billing from CAT but will often be subject to pass-through billing from the executing broker). This creates a problem when the routing broker is trying to reconcile the bill from CAT against the transactions reported back to the routing broker by the executing broker (for example, through FIX) because the CAT bill will only contain a subset of the transactions that the executing firm

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[8] The technical requirements for reporting to these systems are set forth in the applicable technical specifications documentation for each system. See, for example: Nasdaq FIX for Trade Reporting (T+1) Programming Specification, Version 2023-02 (Aug. 2023), available at https://nasdaqtrader.com/content/technicalsupport/specifications/TradingProducts/fixactspec.pdf ("Nasdaq TRF Specification"); FINRA/NYSE Trade Reporting Facility (TRF) Messaging Specification, V5.7 (Nov. 2, 2023), available at https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE_TRF_Messaging_Spec.pdf; and FIX Specifications for the Over the Counter Trade Reporting Facility, Version 1.10 (Jan. 8, 2024), available at https://www.finra.org/sites/default/files/2022-06/FIX-Specs-ORF-Trade-Rptg-Nanos.pdf.

reports back to the routing firm (i.e., the transactions where the executing broker reported a media event to the TRF). This also creates a reconciliation problem when the routing firm seeks to reconcile pass-through CAT fees from the executing broker (which would be for transactions that the routing broker reported through a non-media event) because, in many cases, the routing broker does not know whether the executing broker has reported a media or non-media event for a transaction.

In the next sub-sections we describe this issue in more detail for alternative trading system ("ATS") and dealer transactions and where orders are further routed by a broker-dealer that receives an order (a "receiving broker").

Reconciliation challenge for ATS transactions

If a routing broker routes an order to an ATS, and the ATS executes the order against another ATS participant, the ATS has three options for reporting the resulting transaction to the TRF:

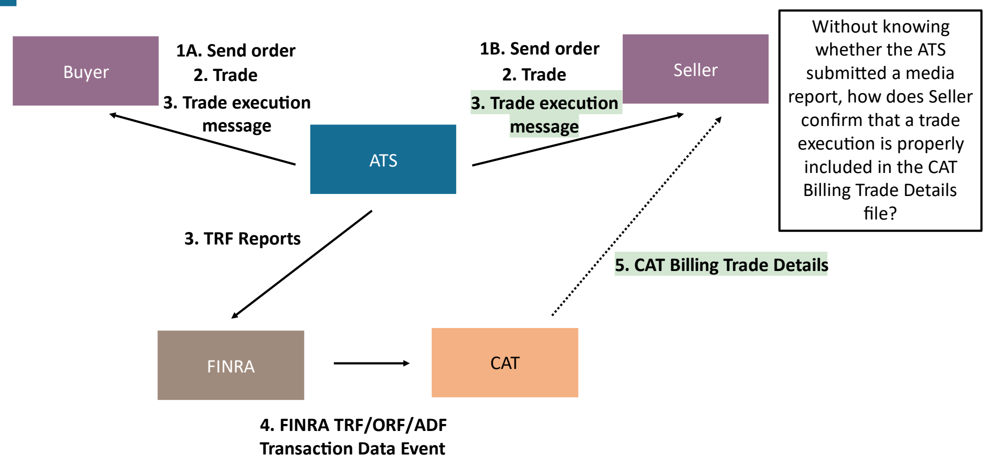
- The ATS can report a media event for the side with the seller and a non-media event for the side with the buyer
- The ATS can report a media event for the side with the buyer and a non-media event for the side with the seller
- The ATS can report a media event as a cross and report non-media events for both the buyer and seller.[9]

Routing brokers typically do not know whether an ATS has reported a media or non-media event for the routing broker's side of the trade. For example, an ATS could have a general policy of always reporting a media event for the side with the seller and a non-media event for the side with the buyer. However, if the ATS operator (or an affiliate) is a party to the trade (in this case, as the seller), the ATS is required to report a single media report for the trade, which would involve reporting the trade with the buyer on a media event. Similarly, if the seller is not a FINRA member, the ATS would report the side with the buyer on a media event. This means that, where the routing broker is the buyer, the routing broker would not know, based on the trade execution message that the routing broker receives from the ATS, whether the ATS reported the routing broker's side as media or non-media and, accordingly, whether the routing broker should expect a bill from CAT. The same challenge applies where the routing broker is the seller.

Diagram 1 illustrates the reconciliation challenge for a routing broker:

[9] Trade Reporting Frequently Asked Questions, available at https://www.finra.org/filing-reporting/market-transparency-reporting/trade-reporting-faq, FAQ 307.1.

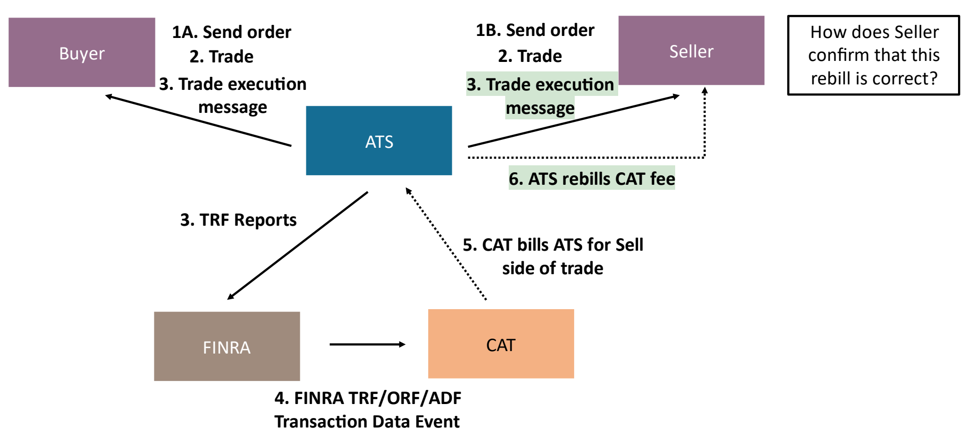
Diagram 1: Reconciliation of billing from CAT



Only a subset of the seller's transactions should appear in the CAT Billing Trade Details file -- specifically transactions where the ATS reported the side with the seller through a media report. If the seller does not know whether the ATS reported the side with the seller as a media report, the seller does not know whether a trade included in the CAT Billing Trade Details file should have been included. The seller also does not know whether trades that were not included in the CAT Billing Trade Details file were properly excluded. Further, the share volume of the trade execution messages from the ATS will exceed the share volume of the CAT Billing Trade Details file (assuming at least one non-media transaction).

A similar reconciliation challenge arises where the ATS reports the side with the seller as non-media and seeks to pass-through the fee to the routing broker. This is illustrated in Diagram 2:

Diagram 2: Reconciliation of rebill from ATS



The ATS would only be justified in rebilling a CAT fee to the seller if the ATS reported the seller's side of the transaction as non-media. Without knowing whether the ATS reported the seller's side of the transaction as media or non-media, the seller is not able to reconcile for the specific transaction whether the ATS is correct in passing-through this fee.

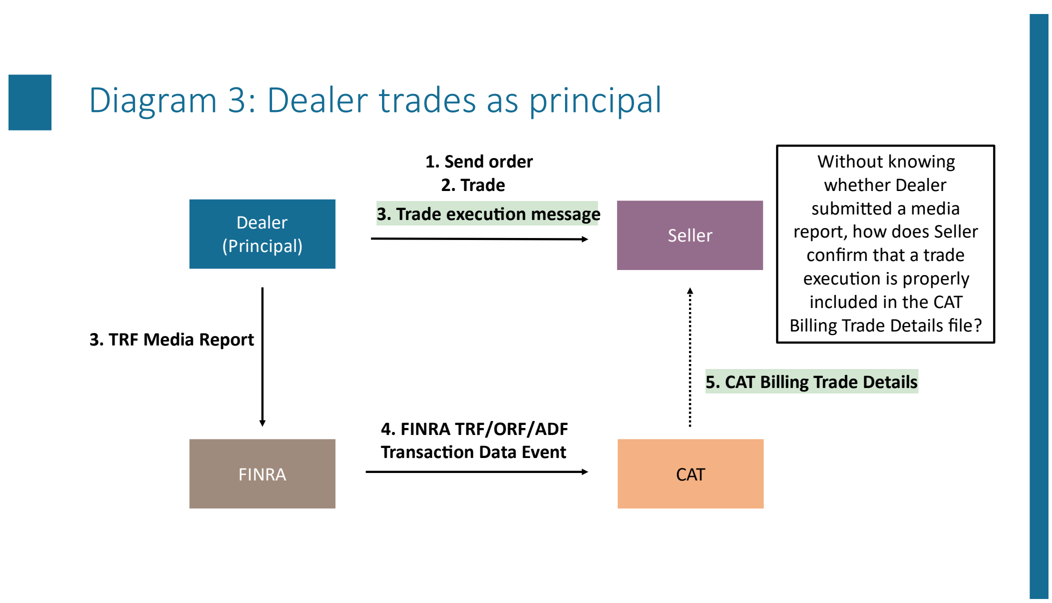
More generally, the issues described in this sub-section apply to any scenario where a broker-dealer crosses a transaction on an agency basis and one or more parties to the transaction is another broker-dealer.

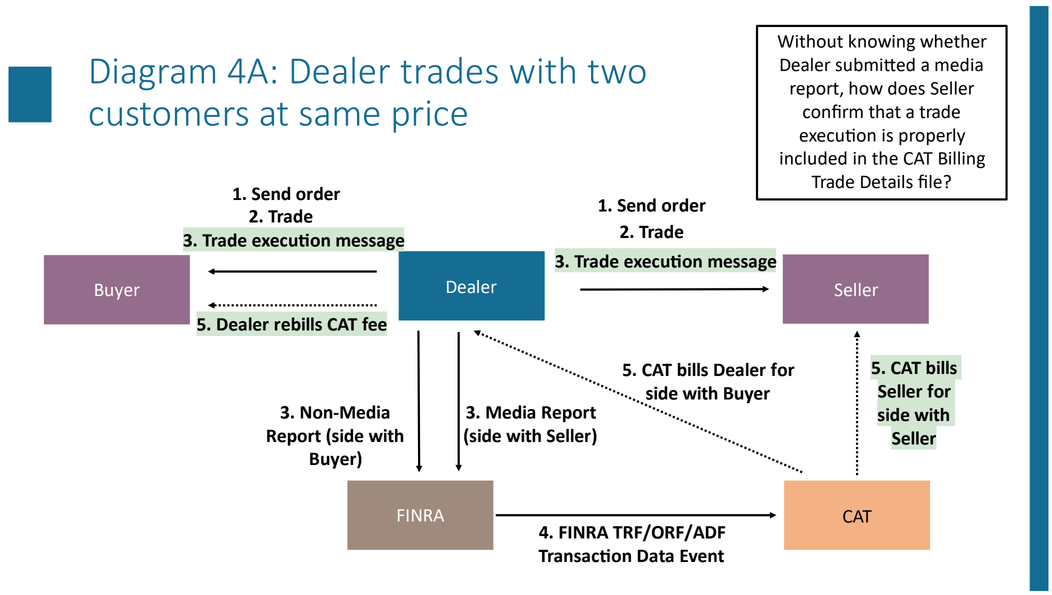
Reconciliation challenge for dealer transactions

A similar challenge applies where a routing broker routes an order to a dealer and the dealer executes the order against the routing broker. The following are at least three (but not all) possible scenarios that must be considered:

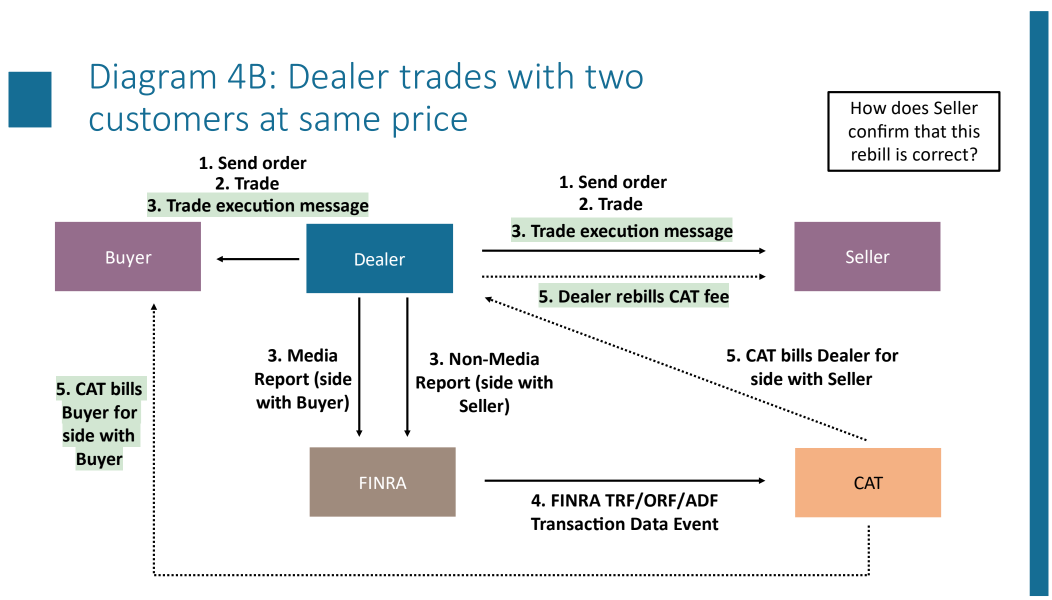
- The dealer trades as principal and reports a media event (see Diagram 3 below)
- The dealer trades with two customers at the same price, reports the side with the routing broker with a media event, and reports the side with the contra as a non-media event (see Diagram 4A below)
- The dealer trades with two customers at the same price, reports the side with the routing broker with a non-media event, and reports the side with the contra as a media event (see Diagram 4B below).

This is similar to the ATS scenarios discussed above. Without knowing whether the dealer reports a media or non-media event for the transaction with the routing broker, the routing broker is not able to reconcile the trade execution messages against the CAT Billing Trade Details file. This is illustrated in Diagrams 3 and 4A:





Without knowing whether the dealer reports a media or non-media event for the transaction with the routing broker, the routing broker also is not able to reconcile the trade execution message against a rebill from the dealer. This is illustrated in Diagram 4B:



Onward routing by the receiving firm

It is also important to consider the scenario where a receiving broker routes an order to another industry member or to an exchange for execution. In some cases, there could be multiple levels of routing before a transaction occurs. In this scenario, the transaction will not appear in the routing broker's CAT Billing Trade Details File, but the receiving broker could rebill the transaction to the routing broker.

F. FINRA CAT should add the routedOrderID to the CAT Billing Trade Details file for off-exchange transactions as this would allow for aggregated reconciliation based on the routedOrderID

routedOrderID is included as a field in the CAT Billing Trade Details file for on-exchange transactions but is not included as a field in the CAT Billing Trade Details file for off-exchange transactions.[10] The CAT Plan Participants should add routedOrderID as a field for off-exchange transactions.

If the routedOrderID is included in the CAT Billing Trade Details file for all transactions, a routing broker could reconcile transactions on an aggregated basis based on the following process:

- For each routedOrderID for each applicable period, sum the shares reported back to the routing broker in trade execution messages
- Compare this total to the total of the following:
    - All transactions included in the CAT Billing Trade Details file with that routedOrderID
    - All transactions with that routedOrderID rebilled by the receiving broker.

This process would require the receiving broker to provide the routedOrderID when it rebills the routing broker (or a transaction identifier that the routing broker can link to the routedOrderID).

There are some limitations with this reconciliation process. First, the receiving firm might not rebill the routing firm or might rebill the routing firm on a delayed basis. As a result, while the routing firm could confirm that it is not being overbilled by CAT and the receiving firm (in the aggregate), there could be scenarios where the aggregate bills from CAT and the receiving broker are less than what would be expected based on the trade execution messages. Second, if an overbill occurs, it will not be clear in many cases whether this is an overbill from CAT or the receiving firm; this is because, as discussed above, the routing firm does not know whether the receiving firm has reported a transaction as a media report (in which case the transaction should be billed by CAT) or a non-media report (in which case the receiving firm could rebill for the transaction). Nevertheless, if billing is linked to the routedOrderID, a routing firm can reconcile on an aggregated basis against bills from CAT and downstream parties.

The CAT system can identify the routedOrderID for any off-exchange transaction through the following linkage:

- The reportingSideBranchSequenceIdentifier in the Participant TRF/ORF/ADF Transaction Data (TRF) event[11] links back to the tapeTradeID in the Industry Member Trade (MEOT) event[12]

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[10] CAT Billing Specifications, at 13-15.

[11] CAT Reporting Technical Specifications for Plan Participants, Version 4.1.0-420 (Sept. 25, 2023), available at https://catnmsplan.com/sites/default/files/2023-12/12.07.2023-CAT-Techical-Specifications-for-Billing-Trade-Details-v1.0r1_CLEAN.pdf ("Participant Technical Specifications"), at 151.

[12] CAT Reporting Technical Specifications for Industry Members, Version 4.1.0 r1 (Jan. 26, 2024), available at https://catnmsplan.com/sites/default/files/2024-01/1.26.24_CAT_Reporting_Technical_Specifications_for_Industry_Members_v4.1.0r1_CLEAN.pdf ("Industry Member Technical Specifications"), at 135-136.

- The orderID field in the buyDetails (or sellDetails, as applicable) of the MEOT links back to the orderID in the Order Accepted event[13]
- The Order Accepted event contains the routedOrderID.[14]

The primary reason that FINRA CAT should add the routedOrderID to the CAT Billing Trade Details file for off-exchange transactions is that it would allow for aggregated reconciliation of all transactions, as described above. Another important consideration is that without the routedOrderID for off-exchange transactions, industry members would need to reconcile against the Equity Trade Journal files provided by the TRF operators (discussed below). An industry member might only subscribe to one of the Equity Trade Journal files (for example, the file provided by Nasdaq), but would need to subscribe to another Equity Trade Journal file (for example, the file provided by the NYSE) solely to reconcile its CAT transactions. It is unreasonable to require industry members to incur this cost solely for the purpose of CAT reconciliation. Instead, firms should be able to reconcile against trade execution messages from counter-parties, which would be possible if the routedOrderID were provided in the CAT Billing Trade Details file for all transactions.

G. Why trade-by-trade reconciliation is not feasible in many circumstances

Ideally, a routing broker would be able to reconcile all transactions on a trade-by-trade basis. For the bill from CAT, this would mean reconciling a trade identifier in the trade execution message from the receiving broker against the trade identifier provided in the CAT Billing Trade Details file. There are various reasons that this is not possible in many circumstances.

In many cases, the BranchSeqNbr or ContraBranchSeqNbr that an executing broker-dealer reports to the TRF for an off-exchange transaction will not match the trade execution identifier that the broker-dealer reports to the counter-party in the trade execution message.[15]

One scenario where this could occur would be the following:

- A broker-dealer receives an order from a routing broker
- The order is received in the broker-dealer's order management system ("OMS")
- The OMS transmits the order to the broker-dealer's execution management system ("EMS")
- The EMS executes the order
- Upon trade execution, the OMS sends a trade execution message to the routing broker
- The OMS generates the trade execution identifier reported in the trade execution message
- The EMS generates the transaction identifier that the broker-dealer reports to the TRF
- The OMS and EMS generate different transaction identifiers.

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[13] Id. at 72 and 137.
[14] Id. at 73.
[15] The Nasdaq TRF and the ORF provide for reporting of transaction identifiers in the BranchSeqNbr and ContraBranchSeqNbr fields. The NYSE TRF provides for reporting of transaction identifiers in the FirmTradeID and SecondaryFirmTradeID fields.

The transaction identifier that a broker-dealer reports to the TRF is reported by FINRA to CAT through the FINRA TRF/ORF/ADF Transaction Data Event. This identifier is then included in the CAT Billing Trade Details file. If the transaction identifier that an executing broker reports to a counter-party in a trade execution message does not match the identifier that the executing broker reports to the TRF, the transaction identifier received by the counter-party in the trade execution message also will not match the transaction identifier received by the counter-party in the CAT Billing Trade Details file. Accordingly, the counter-party will not be able to reconcile based on the transaction identifier. Instead, the counter-party will be required to reconcile based on aggregated trade characteristics (for example, based on the routedOrderID, as described above).

A second scenario where an executing firm could report a BranchSeqNbr or ContraBranchSeqNbr to the TRF that does not match the trade execution identifier reported back to the counter-party involves an ATS that generates the following identifiers:

- ATS 1 reports a transaction to the TRF with an identifier of 123. This identifier is reported by FINRA in a CAT TRF event and then appears in the CAT Billing Trade Details file.
- For the same transaction, ATS 1 sends a trade execution message to the buyer with a trade execution identifier of 123B.
- For the same transactions, ATS 1 sends a trade execution message to the seller with a trade execution identifier of 123S.

In this scenario, the identifier received by the ATS customer from ATS 1 does not match the identifier in the ATS customer's CAT Biling Trade Details file. While, in the example presented above, it is possible to translate between the two values by removing the S or B (as applicable) at the end of the transaction identifier received from ATS 1, there are many scenarios where it is not clear how to map the trade execution identifier received from an ATS to the transaction identifier included in the CAT Billing Trade Details file.

H. Billing for off-exchange transactions should be based on MEOT events and not based on the CAT events reported by FINRA

The CAT system should bill for off-exchange transactions based on MEOTs and not based on CAT events reported by FINRA

In accordance with the CAT NMS Plan, the CAT system bills industry members based on the TRF/ORF/ADF Transaction Data event that FINRA submits to CAT. There are a number of challenges with this approach, as discussed in this section. Given these challenges, the CAT Plan Participants should amend the CAT NMS Plan to provide for billing based on the MEOTs that industry members report to CAT. FIF members understand that this approach would require a relatively straightforward amendment to the CAT NMS Plan, consisting of amending one sentence in the definition of "CAT Executing Broker" in Section 1.1 of the CAT NMS Plan (see above).

The proposed approach to bill for off-exchange transactions based on MEOTs would also require guidance from the CAT Plan Participants and FINRA CAT that a firm should report all trade cancels and corrections to CAT. For example, in CAT Reporting Scenario 9.1.5 (Trade is Cancelled at the Trade Reporting Facility and a New Trade is Reported Using a New Compliance ID or FINRA Control Number), the executing firm would need to report a correction of the original MEOT, as opposed to reporting two MEOTs without indicating that the first MEOT was cancelled (as currently provided).[16] If a firm reports an MEOT with a reportingExceptionCode of 'P' (intra-firm order where there is no change in beneficial ownership),[17] the transaction should not be subject to CAT billing.

The proposed approach would further require that FINRA CAT add the following fields from CAT events into the CAT Billing Trade Details file:

- From the MEOT event: tradeID; symbol; eventTimestamp; quantity; price; tapeTradeID; marketCenterID; and reportingExceptionCode
- From the MEOT buyDetails and sellDetails: orderKeyDate; orderID; firmDesignatedID; and side
- From the MEOTS buyDetails and sellDetails: orderKeyDate; orderID; side; quantity; and firmDesignatedID
- From the MEOA event: senderIMID; and routedOrderID.

Transactions executed on an ATS (or otherwise as an agency cross)

This letter discusses above challenges for a firm in reconciling trades that are executed on an ATS if the firm does not know whether the ATS has reported the firm's side of the trade through a media or non-media report.

When an ATS reports a transaction to CAT on an MEOT, the ATS reports the buyer and the seller as the parties to the trade. Accordingly, for an ATS execution, if billing is based on the MEOT, each party will expect to be billed by CAT for such party's side to the trade. This would enhance reconciliation for ATS transactions.

This same point also applies where a broker-dealer executes a transaction as an agency cross and either the buyer or seller (or both) is a broker-dealer.

Transaction involving a broker-dealer that is not a FINRA member

Consider the following scenario, which is described in CAT Reporting Scenario 2.2.3[18]:

- A FINRA member routes an order to an industry member that is not a FINRA member
- The non-FINRA member executes the trade.

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[16] CAT Industry Member Reporting Scenarios, Version 4.10 (Oct. 21, 2022), available at https://catnmsplan.com/sites/default/files/2022-10/10.21.22_Industry_Member_Tech_Specs_Reporting_Scenarios_v4.10_CLEAN.pdf ("Industry Member Reporting Scenarios"), at 823-825.
[17] Industry Member Technical Specifications, at 423.
[18] Industry Member Reporting Scenarios, at 25-28.

In this scenario, the FINRA member is required to report the transaction to the TRF as a media event. The FINRA member is also responsible to pay the CAT fee for both sides of the trade. This is not fair to the FINRA member. There is no policy justification for charging the FINRA member, but not charging the non-FINRA member, for this trade. Instead, CAT should bill based on the two-sided MEOT that the non-FINRA member reports to CAT (with each side getting billed for 1/3 of the CAT fee), and CAT should not bill the one-sided MEOT that the FINRA member reports to CAT.

Complexity of TRF trade condition values

The complexity of the TRF trade condition values adds unnecessary complexity to CAT billing. This complexity can be avoided if billing is instead based on the MEOTs that industry members report to CAT.

One of the fields in the CAT Billing Trade Details file is the saleCondition field. This field is described in the CAT Technical Specifications for Billing Trade Details (the "CAT Billing Specifications").[19] This field appears to be based on the following four fields from the Equity Trade Journal Specifications: SaleCND1; SaleCND2; SaleCND3; and SaleCND4.[20] The description of the saleCondition field in the CAT Billing Specifications includes the following values and associated definitions:

A Acquisition
B Bunched Trade
D Distribution
E Automatic execution (system)
H Intraday trade detail (system)
K Rule 155 Amex/Rule 127 NYSE
S Split trade
X Exercise of OTC option

FIF members would not consider a trade with any of the following values to be reportable to CAT: A; D; and X. Accordingly, FIF members do not understand why trades with any of these modifiers would appear in the CAT Billing Trade Details file. If the Commission determines that billing for off-exchange transactions should be based on CAT TRF events, FINRA CAT would need to provide clarification on this point. FIF members also do not understand which trading scenarios the B, E, H, K and S values are describing. If the Commission determines that billing for off-exchange transactions should be based on CAT TRF events, FINRA CAT would need to provide clarification on this point.

"Away from market" sale condition

The September 28, 2023 CAT billing presentation (on Slide 6) provides guidance that the following transactions are subject to CAT billing: "TRF/ORF non-tape (non-media) reports where the sale condition

[19] CAT Billing Specifications, at 20-22.
[20] Available at https://nasdaqtrader.com/content/home/help/ETJdl.pdf ("Equity Trade Journal Specifications"), at 8-10.

indicates 'away from market' (consistent with FINRA Section 3 Regulatory Transaction Fees)."[21] In the Nasdaq specifications for trade reporting, Byte 4 of Tag 277 has the following description for value 16: "16 = Away from market trade as defined in FINRA Rule 6380A(e)(2)."[22] Rule 6380A(e)(2) describes transactions -- such as gifts, option exercises and acquisitions -- that FIF members understand are not subject to CAT reporting. If these transactions are not subject to CAT reporting, how can they be subject to CAT billing? If the Commission determines that billing for off-exchange transactions should be based on CAT TRF events, FINRA CAT would need to provide clarification on this point. The "away from market" sale condition is another example of the unnecessary complexity that is introduced when CAT billing is based on TRF reporting.

The historical challenges with Section 31 reconciliation demonstrate that a billing process based on TRF data is problematic for reconciliation

For many years, the industry has faced significant challenges with reconciling the FINRA Regulatory Transaction Fee, which is based on TRF data. The Regulatory Transaction Fee is the fee that FINRA charges to FINRA members[23] to reimburse FINRA for the fees that FINRA is obligated to pay to the Commission pursuant to Section 31 of the Securities Exchange Act of 1934.[24] In many cases, clearing firms are not able to reconcile the Regulatory Transaction Fee invoices that they receive from FINRA against their own trading activity and the trading activity of their correspondent firms. When clearing firms rebill these fees to correspondent firms, the correspondent firms are not able to reconcile these rebills. When firms that are downstream in the order routing and execution process rebill these fees to upstream firms, the upstream firms are not able to reconcile these rebills. During November 2023, FIF initiated a discussion with FINRA about the current challenges faced by industry members in reconciling the Regulatory Transaction Fee and potential approaches to address these challenges.[25] The experience with the Regulatory Transaction Fee demonstrates that a billing process based on TRF data is problematic for reconciliation. While the executed share model provides for billing the executing broker, and FINRA bills the Regulatory Transaction Fee to the clearing firm, both approaches present similar challenges relating to rebilling and reconciliation.

Given the large number of transactions that industry members will need to reconcile, reducing the complexity of the reconciliation process is critical

Every industry member should be able to reconcile all transactions either on a trade-by-trade or aggregated basis, as described above. Given the large number of transactions that industry members will need to reconcile, reducing the complexity of the reconciliation process is critical. This includes enabling firms to automate the reconciliation process. As discussed above, using TRF reports as a basis for CAT billing for off-exchange transactions adds unnecessary complexity to the reconciliation process for such transactions, including unnecessary manual reviews. The reconciliation process can be greatly

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[21] CAT Billing (Sept. 28, 2023), available at https://catnmsplan.com/sites/default/files/2023-09/2023-09-28-CAT-Billing-Webinar.pdf, at Slide 6.
[22] Nasdaq TRF Specification, at 41-42.
[23] FINRA By-laws, Schedule A, Section 3 (Regulatory Transaction Fee).
[24] 15 U.S. Code § 78ee.
[25] https://fif.com/index.php/working-groups.

simplified by using CAT MEOT events, rather than TRF reports, as the basis for CAT billing for off-exchange transactions.

I. Mapping of TRF and ORF fields to CAT billing fields

If the Commission determines that CAT billing for off-exchange transactions should be based on TRF reports rather than MEOTs, the CAT Plan Participants and FINRA CAT should provide clarity on how the fields that a firm reports to the TRF are mapped to the fields that appear in the CAT Billing Trade Details file. Along with this comment letter, FIF is submitting a PowerPoint presentation that provides further detail on the clarity that FIF is requesting with respect to these field mappings.

J. Reconciliation where a routing broker routes to an exchange

Trade execution identifier should match the tradeID that an exchange reports to CAT

Trade-by-trade reconciliation appears to be feasible for the scenario where a routing broker routes to an exchange. To enable this reconciliation, every exchange, in each trade execution message that it sends to a routing broker, would need to provide a trade execution identifier that matches the tradeID that the exchange reports to CAT for the trade. This is necessary to enable trade-by-trade reconciliation for orders routed to an exchange, as this tradeID is provided in the CAT Billing Trade Details file.[26] FIF members believe that most exchanges and exchange groups are providing a trade execution identifier to the routing broker that matches the tradeID that the exchange reports to CAT for the transaction. FIF members are aware of at least three exchanges or exchange groups where the exchange (or one or more exchanges within the exchange group) is providing a trade execution identifier that does not match the tradeID that the exchange reports to CAT. FIF members also are aware of at least one exchange that is not providing a trade execution identifier in the trade execution message that it sends to executing broker-dealers. FIF members understand that these exchanges would need to perform technical work to provide the buying and selling firms trade execution identifiers that match the trade identifiers reported by these exchanges to CAT. It is important for all exchanges to provide a trade identifier to each routing broker that matches the trade identifier that the exchange reports to CAT, as this would enhance the ability for industry members to reconcile their bills for orders that are routed to and executed on these exchanges. Consistency across exchanges is also important to facilitate automated reconciliation by industry members.

Reconciliation based on routedOrderID

Without this matching trade execution identifier, industry members could seek to reconcile on an aggregated basis using the routedOrderID. There are some limitations to reconciliation based on the routedOrderID in that further effort is required to identify the specific transactions that are not reconciling.

[26] CAT Billing Specifications, at 13.

Reconciliation where an exchange reroutes an order

One challenge for a routing broker (RB1) when reconciling transactions resulting from routes to an exchange is the scenario where an exchange, through its affiliated routing broker, reroutes an order to another exchange for trade execution. If this scenario occurs, RB1 will receive a trade execution identifier from the exchange, but the transaction will not appear in the CAT Billing Trade Details file for RB1. If, in the future, exchanges seek to pass-through the CAT fees for these executions, RB1 could reconcile on an aggregated basis based on the routedOrderID. More specifically, the total executed shares confirmed by the exchange to RB1 for a specific routedOrderID should equal the sum of the total shares associated to that routedOrderID included in the CAT Billing Trade Details file and the total shares included in any pass-through that are associated to that routedOrderID.

Options exchange charging give-up broker

For trading on an options exchange, an executing broker can designate another firm as the "give-up" broker for an order with financial responsibility for any resulting transactions.[27] Section 11.3(a)(iii)(A) of the CAT NMS Plan (quoted above) requires that CAT bill the executing broker for each side for any transaction.[28] FIF members understand that in a give-up scenario the designating broker (as opposed to the give-up broker) is considered the executing broker and should be billed by CAT for the transaction.

FIF members understand that, for on-exchange options transactions, CAT bills the executing broker based on the executingFirm value reported by the applicable exchange to CAT in an Order Trade event.[29] FIF members are aware that, for transactions executed on one options exchange group, CAT is billing the give-up broker, as opposed to the designating broker, in certain scenarios. This could be the result of the exchange reporting the give-up broker, instead of the designating broker, as the executingFirm for the transaction. FIF members believe that, based on the terms of the Executed Share Model, all exchanges should be billing the designating firm, as opposed to the give-up firm, in a give-up scenario.[30] Consistency across all exchanges also is important for industry members in reconciling their bills for these transactions.

Reconciliation against quoteID for options

The CAT Billing Trade Details file includes a quoteID field for on-exchange transactions.[31] This quoteID is based on the quoteID that the options exchange reports to CAT for an Order Trade (OT) event.[32] When a

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[27] See, for example, Rule 21.12 (Clearing Member Give Up) of the Rules of Cboe BZX Exchange, Inc. (updated as of Feb. 12, 2024), available at https://cdn.cboe.com/resources/regulation/rule_book/BZX_Exchange_Rulebook.pdf, at 535-538.
[28] See CAT NMS Plan, at 74 ("Each Industry Member that is the CAT Executing Broker for the buyer in a transaction in Eligible Securities … and each Industry Member that is the CAT Executing Broker for the seller in a transaction in Eligible Securities … will be required to pay a CAT Fee for each such transaction in Eligible Securities in the prior month based on CAT Data.").
[29] Participant Technical Specifications, at 125-128.
[30] CAT NMS Plan, at 74
[31] CAT Billing Specifications, at 13.
[32] Participant Technical Specifications, at 13.

market maker submits a quote to an options exchange, the market maker provides a quote identifier. If the exchange reports to CAT the quote identifier provided by the market maker, the market maker can reconcile the trade execution message from the exchange against the quoteID reported in the CAT Billing Trade Details file. FIF members understand that certain exchanges report a quoteID to CAT that is different from the quote identifier provided by the market maker. In this scenario, the market maker is not able to reconcile against the quoteID reported in the CAT Billing Trade Details file. FIF members recommend that each exchange should report to CAT the quote identifier provided by the market maker.

K. CAT Billing Trade Details file

FIF members have identified the following issues with the CAT Billing Trade Details file, which should be addressed:

- For certain on-exchange trades, the IMID in a row of the CAT Billing Trade Details file is not an IMID of the firm being invoiced.
- Certain rows in the CAT Billing Trade Details file do not provide either a reportingSideBranchSequenceIdentifier or a contraSideBranchSequenceIdentifier.
- The executionTimestamp and tradeReportTimestamp fields in the CAT Billing Trade Details file for off-exchange transactions include the date but not the time. Both fields also should provide the time. The CAT Billing Trade Details file for on-exchange transactions includes the date and the time in the eventTimestamp field.
- In the CAT Billing Trade Details file, if the reportingSideBranchSequenceIdentifier (or the contraSideBranchSequenceIdentifier, as applicable) is a numeric string, the CAT Billing Trade Details file rounds the branch sequence number to the sixth numeric character and then pads with zeros on the right.
- Certain controlNumber values in the CAT Billing Trade Details file do not have a matching Cntrl# value in the Equity Trade Journal file.[33]

L. The effective date for billing should allow a reasonable time period for industry members to update their systems and processes to conform to the SRO filings that the Commission approves

At this time, it is not clear to industry members whether the Commission will approve the SRO filings as proposed or with modifications. Accordingly, industry members will require a reasonable time period -- from the date of the Commission's approvals of the SRO filings -- to update their systems and processes to comply with the CAT fee requirements for industry members that are approved by the Commission.

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[33] See, CAT Billing Specifications, at 15, and Equity Trade Journal Specifications, at 7.

FIF appreciates the opportunity to comment on the SRO filings. If you would like clarification on any of the items discussed in this letter or would like to discuss further, please contact me at howard.meyerson@fif.com.

Very truly yours,

/s/ Howard Meyerson

Howard Meyerson
Managing Director, Financial Information Forum

Mapping from TRF to CAT Billing

Request for Clarification on Sample Scenarios

Mapping from TRF to CAT Billing

- FIF members request that FINRA CAT provide further written clarification on how the fields that firms report to the TRF are translated to the FINRA TRF/ORF/ADF Transaction Data event and then to the CAT billing file
- The scenarios below represent one understanding of how this works; FIF members request clarification as to whether this understanding is correct
- Note: The scenarios below use the Nasdaq TRF field names; FIF members also request clarification with respect to the NYSE TRF field names, which are different but parallel

TRF, CAT Participant and CAT Billing Fields

TRF Media Report

Field Number	Field Name
49	SenderCompID
375	ContraBroker
9825	ReportingGUID
9826	NonReportingGUID

CAT Billing

Field Number	Field Name
11	reportingExecutingMpid
12	reportingExecutingCRD
13	contraExecutingMpid
14	contraExecutingCRD

CAT Participant Specs

Field Number	Field Name
25	reportingSideMpid
26	reportingExecutingMpid
27	contraSideReportingMpid
28	contraExecutingMpid
29	reportingSideClearingNumber
34	contraSideClearingNumber

Scenario 1: Dealer Executes as Principal

- IB1 routes order to MM1
- MM1 executes as principal against IB1
- CB1 is the clearing firm for IB1

Scenario 1 Reporting

TRF Media Report

Field Name	Value
SenderCompID	MM1
ContraBroker	CB1
ReportingGUID	
NonReportingGUID	IB1

CAT Billing

Field Name	Value
reportingExecutingMpid	MM1
reportingExecutingCRD	MM1 CRD
contraExecutingMpid	IB1
contraExecutingCRD	IB1 CRD

CAT Participant Specs

Field Name	Value
reportingSideMpid	MM1
reportingExecutingMpid	MM1
contraSideReportingMpid	CB1
contraExecutingMpid	IB1
reportingSideClearingNumber	MM1
contraSideClearingNumber	CB1

Variations on Scenario 1

Number	Scenario Description	Reporting
2	MM1 trades as riskless principal; MM1 reports side with IB1 on a tape report (media report) to the TRF	Same as Scenario 1 (IB1 is billed)
3	MM1 trades as riskless principal; MM1 reports side with IB1 as a non-media report	No CAT bill to IB1
4	IB1 is self-clearing	MM1 reports IB1 to the TRF as the ContraBroker; IB1 is billed as the contraExecutingMpid
5	IB1 routes to an ATS (ATS1) instead of a market maker; ATS1 executes a cross and reports the side with IB1 on a tape report (media report) to the TRF	Same as Scenario 1 (IB1 is billed)
6	Same as Scenario 5, except that ATS1 reports the side with IB1 on a non-media report	No CAT bill to IB1
7	Same as Scenario 5, except that ATS1 reports the trade to the TRF as a cross	No CAT bill to IB1

FINANCIAL INFORMATION FORUM

Contact fifinfo@fif.com with comments or questions