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June 11, 2013

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Re: SRO Request for Comment on Selected Draft CAT NMS Plan Topics

Dear SRO Representatives:

The Securities Industry and Financial Markets Association ("**SIFMA**")[1] appreciates the opportunity to provide comments on the four selected topics concerning the National Market System Plan (the "**NMS Plan**") relating to the consolidated audit trail (the "**CAT**") required under Rule 613 of the Securities and Exchange Act of 1934 (the "**Exchange Act**"). The self-regulatory organizations (the "**SROs**") published this request for public comment on April 22, 2013 (the "**April Release**").

SIFMA thanks the SROs for seeking preliminary input from the public on particular topics selected by the SROs. SIFMA believes that early public comment on these matters is extremely important and will greatly enhance the development of the NMS Plan. We look forward, however, to the opportunity to provide the SROs with comments on all aspects of the complete NMS Plan, prior to its filing with the SEC.

[1] SIFMA brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA's mission is to support a strong financial industry, investor opportunity, capital formation, job creation and economic growth, while building trust and confidence in the financial markets. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association. For more information, visit www.sifma.org.

I. Topic 1: Primary Market Transactions

The SROs are considering whether to require the reporting of primary market allocations in NMS securities, and have requested comment on the feasibility, benefits and costs of such reporting. Rule 613(a)(1)(vi) requires the SROs' proposed NMS Plan to include a discussion of "[t]he feasibility, benefits, and costs of broker-dealers reporting to the consolidated audit trail in a timely manner: (A) The identity of all market participants (including broker-dealers and customers) that are allocated NMS securities, directly or indirectly, in a primary market transaction; (B) The number of such securities each such market participant is allocated; and (C) The identity of the broker-dealer making each such allocation."

A. General Comments

At the outset, it is important to clarify an ambiguity with respect to what is meant by primary market transaction "allocations." SIFMA believes Rule 613(a)(1)(vi) is intended to reference only the final step in the allocation process, *i.e.*, the point at which securities purchased in a primary market transaction are placed into a customer's account or subaccount, as applicable. We will refer to this step as the "final allocation." We do not believe that the "allocations" referred to in Rule 613(a)(1)(vi) refer to the preliminary internal allocations made as part of the book-building process, which we will refer to as "preliminary allocations." SIFMA therefore responds to the SROs' request for comments consistent with this understanding.

SIFMA believes that it is feasible to report the identity of market participants receiving final allocations of NMS securities in primary market transactions, as well as the number of such securities and the identity of the allocating broker-dealer. SIFMA agrees that such information would likely provide some regulatory benefit.[2] Nonetheless, there would be significant costs associated with the systems build-out required to effect this reporting. SIFMA members generally maintain information regarding final allocations in systems separate from those systems that contain data relating to secondary market trading. More importantly, these systems do not generally have execution reporting capacity, since reporting of primary market transactions is not currently required under OATS and other transaction reporting systems.

Information about the final execution of primary market transactions into customer accounts, which ultimately feeds the confirmation, clearance and settlement systems of the various firms, however, should currently be available in the books and records of the firms. In fact, this information is generally available for reporting to the Electronic Blue Sheets ("**EBS**") system. As SIFMA believes that EBS should be

[2] For example, the SEC noted that such information would better assist the SEC in understanding the capital formation process and, when combined with secondary market data, the calculation of investor positions. *See* Exchange Act Release No. 67457 (July 18, 2012) (the "**CAT Adopting Release**") at 267.

decommissioned and replaced by the CAT once the CAT is operational,[3] we support the CAT's expansion to include final allocations of NMS securities in primary market transactions as part of an overall scheme to supplant EBS with the CAT and retire EBS.

However, SIFMA strongly believes that any expansion of reporting obligations to primary market transactions should only relate to final allocations, not preliminary allocations. The systems and processes used to track the steps prior to final allocation—including obtaining indications of interest, making preliminary allocations, and the book-building process generally—are not standardized or consistent across the industry. More importantly, this preliminary information is not currently required to be reported to any regulatory reporting system, and thus is not maintained in a industry standard format, and the cost of system changes to capture and report this information in a standardized format would greatly outweigh any regulatory benefit. Further, since indications of interest and preliminary allocations are not orders or executions, they are not required to be reported pursuant to Rule 613 and would not fit into the CAT framework of reporting order lifecycle events. Preliminary allocation information is, of course, available for regulatory review in the books and records of the firms involved.

B. Responses to Specific SRO Questions

The SROs requested comment on the following specific questions with respect to the potential reporting of allocations of NMS stocks in primary market transactions:

How do broker-dealers generally maintain this information? Do they maintain it in a reportable, electronic format or other format that is easily or readily convertible into a reportable format? What specific type of information is collected? If not maintained in electronic format, what would the potential costs and burdens be of implementing such a requirement? Please provide comments on any potential method, format, or approach for submitting such information electronically.

While practices vary at individual firms, SIFMA members generally maintain information regarding final allocations electronically. This information may be available from the syndication desk of the primary underwriter in the offering, and through the participant firms' confirmation, clearance and settlement systems. This information is generally stored in electronic format and is available for review in the firm's internal records for audit and other purposes. As noted above, information about final allocations is generally available for EBS reporting.

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[3] *See* SIFMA Comment Letter to SRO CAT RFP Concepts Document (Jan. 22, 2013) at 14, *available at* http://www.catnmsplan.com/industryFeedback/P202678 (the " **SIFMA RFP Concepts Comment Letter**"); SIFMA Industry Recommendations for the Creation of a Consolidated Audit Trail (Mar. 28, 2013) at 18-21, *available at* http://www.catnmsplan.com/industryFeedback/P242319 (the "**SIFMA CAT Recommendations Paper**").

Do broker-dealers use systems and methods to handle information regarding allocations that differ from those used to handle information regarding secondary market transactions in such securities?

Many firms maintain information regarding primary market transactions in separate systems from those which maintain information relating to secondary market trading. Information regarding final allocations may also be maintained in separate systems depending on whether the final allocation is made to a retail investor or an institutional customer. However, firms generally use the same clearance and settlement systems for clearing and settling final allocations in primary market transactions as they do for clearing and settling secondary market trades. The relevant information should be available there.

What are the general timeframes for when determinations are made regarding primary market allocations? What are the different "stages" of these allocations? Is there a tentative allocation that is subject to change? What would prompt changes? When is the allocation final and not subject to change? What format are allocation determinations in at the various stages? When would allocation (preliminary or final) information be available for submission? Please comment on what a reasonable expected timeframe is to report allocations.

Preliminary allocations are generally determined shortly before pricing of a primary market transaction. Until the SEC declares the registration statement effective (in the case of non-shelf offerings) and the transaction prices, however, these allocations are tentative, conditional, and not final. These only become final after confirmation with customers following the effectiveness of the registration statement. Reporting of final allocations should be required no earlier than 8:00 a.m. on the trading day following the calendar day on which such final allocations are made.

With respect to the SROs' specific question, SIFMA notes that different firms have different book building processes. While generalizations are difficult, preliminary allocations may change for a variety of reasons. These include changes in indications of interest, "upsizing" or "downsizing" of a planned transaction, customers' decisions not to participate, or changes to the anticipated offering size or price. Preliminary allocations are conditional, entirely tentative, and non-binding on either the firm or the potential investor up until the offering is declared effective by the SEC, the transaction is priced, and the final allocation is made. Since they are conditional and tentative, there would be little regulatory benefit from requiring their reporting to the CAT. This information will, of course, be captured in the books and records of the firm and will continue to be subject to regulatory review outside of the CAT.

II. Topic 2: Advisory Committee

The SROs have requested comment on the proposed composition, structure, rights and obligations of the Advisory Committee. Rule 613(b)(7) requires the SROs' proposed NMS Plan to provide for an Advisory Committee to advise the plan sponsors on the implementation, operation, and administration of the central repository.

A. General Comments

SIFMA believes that governance of the CAT is a critical element in developing and maintaining the NMS Plan, and that the Advisory Committee is a central element of the overall governance of the CAT. While SIFMA provides its views with respect to the specific Advisory Committee proposals below, we note that it is difficult to comment on the Advisory Committee in isolation and out of context with the CAT governance as a whole. SIFMA has voiced its views with respect to certain elements of the CAT's governance in its comment letter responding to the SROs' RFP Concepts Document[4] and in its Recommendations for the Creation of a Consolidated Audit Trail.[5] As described in more detail in those materials, SIFMA believes that the CAT should be governed in a transparent manner that fosters collaboration between the SROs and their members. To achieve this, SRO member firms must be deeply involved in the governance of the CAT.

SIFMA believes that the Advisory Committee must be constituted in a manner that is independent from the SROs so that it may act as a representative voice of the industry in the governance of the CAT. This is particularly important in light of the conflict of interest that the SROs face: the SROs are sponsors and overseers of the NMS Plan, while at the same time, the NMS Plan will impose obligations on those same SROs. The Advisory Committee must therefore become and remain an integrated part of the CAT governance, rather than a peripheral body external to the actual CAT decision-making. SIFMA notes that in other contexts, such as under the CTA Plan and the Nasdaq UTP Plan, advisory committees that were originally intended to have an integrated role have instead been relegated to passivity and effectively excluded from the deliberation process. This result was caused, in significant part, by the SROs' excessive use of executive sessions that precluded the participation of the advisory committee members.[6] As described below, SIFMA believes that safeguards and procedural protections must be implemented to create an Advisory Committee that will be able to become and continue to be an active participant and effective part of the CAT governance structure.

Separate and apart from the Advisory Committee, the CAT's own governing board should include member firm representatives, independent and non-independent directors, and the board should have an independent audit committee.[7] In addition, the

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[4] *See* SIFMA RFP Concepts Comment Letter at 11–13.

[5] *See* SIFMA CAT Recommendations Paper at 22–29.

[6] *See*, *e.g.*, Letter from Ira D. Hammerman, General Counsel, SIFMA, to John Ramsay, Acting Director, Division of Trading and Markets, SEC (Mar. 28, 2013) (objecting to Nasdaq UTP Plan's purported adoption of a fee increase taken during executive session excluding the advisory committee) *available at* http://www.sec.gov/comments/s7-24-89/s72489-31.pdf; Exchange Act Release No. 69587 (May 15, 2013) (Nasdaq UTP Plan adopting an amendment to reverse the improper fee increase).

[7] SIFMA believes that Rule 613 does not require that the governing board of the NMS Plan be made up only of SRO representatives, and that it does not preclude the SROs from including independent board members.

CAT should be administered by a single centralized body from a legal, administrative, supervisory and enforcement perspective, rather than by 18 separate SROs. As a regulatory undertaking and industry utility, the CAT should be operated at-cost, with those costs shared equitably among the industry, including both the SROs and their members. Importantly, the CAT's costs and financing must be fully transparent, with publicly disclosed annual reports, audited financial statements, and executive compensation disclosure.

B. Responses to Specific SRO Proposals and Questions

The SROs requested comment on the following specific aspects of the structure of the Advisory Committee proposed by the SROs:

Composition. The SROs are proposing that each member of the Advisory Committee would be selected by affirmative vote of a majority of the SROs.

SIFMA does not agree with the SROs' proposed methodology for selection of Advisory Committee members. The SROs propose to themselves select the members of the Advisory Committee. However, selection of the members of the Advisory Committee members by the SROs is fraught with conflict. Realistically, the commercial interests of the SROs and those of SRO member firms in connection with the CAT are likely to diverge. SIFMA is concerned that the SROs may have an incentive to appoint Advisory Committee members that they believe are least likely to raise concerns with SRO proposals. This construct would undermine the SROs' own proposal that Advisory Committee members be independent of the SROs.

Instead, SIFMA proposes that SRO member firms, rather than the SROs, elect members to the Advisory Committee. Rather than have every firm vote for every committee member, those firms within each category could vote for their own representative. For example, only broker-dealers with a substantial investor customer base and with no more than 150 registered persons would vote for the Advisory Committee representative for that category. This will ensure that the representatives are, in fact, the persons that firms believe are most qualified to represent them. SIFMA will work with its members to develop a more detailed proposal for this process.

[The SROs] are proposing to select one representative from each of [nine] categories to be a member of the Advisory Committee, provided that [certain of] the representatives identified … must include no fewer than three broker-dealers that are engaged in the U.S. listed options business and no fewer than three broker-dealers that are engaged in the U.S. listed equities business … Should additional categories, such as issuers, academics, or securities information processors, be added? Is there a category that should not be included?

SIFMA believes that the Advisory Committee should be composed primarily of representatives of SRO member firms, as it is SRO members and their representatives

that will be directly impacted by the requirements and the cost of the CAT. The member firms are best suited to offer particular expertise into securities industry operations.[8] With that in mind, SIFMA questions whether it is necessary or advisable to include on the Advisory Committee a representative of a data vendor. Data vendors will not obtain information or otherwise be involved in the processing or sale of CAT data, so it is unclear what their interest in, or continuing contribution to, the governance of the CAT would be. Similarly, SIFMA does not believe that issuers are directly impacted by the CAT or would generally have critical insights, and should not be included. SIFMA also specifically opposes the inclusion of representatives of securities information processors ("**SIPs**"). The SIPs are owned and operated by SROs, and a SIP representative would therefore not be independent of the SROs. The views of data vendors, issuers, SIPs, and others may be solicited through requests for public comment, rather than as a regular member of the Advisory Committee. SIFMA therefore suggests striking these categories.

SIFMA does not oppose including an individual investor representative or an academic on the Advisory Committee and believes the right individuals may offer an important contribution to the Advisory Committee. However, because these groups will be less directly impacted by the CAT, we believe their representation should not decrease the number of member firm representatives on the Advisory Committee, who will have a direct and continuing stake in the CAT. As noted below, we believe the Advisory Committee should be expanded so that these representatives are in addition to, rather than in place of, member firm representatives.

SIFMA generally agrees with the SROs' concept of representation based on a broad categorization of firms. However, the categories should be carefully considered and remain flexible to assure a sufficient cross section of a broad range of the industry, including the primary users of the system. In this respect, the categories proposed by the SROs are too narrow and should be based on different criteria for measuring the size of the firm. Instead of the seven specific categories identified, the SROs should identify a fewer number of more general categories of representation with the view of representation of small and large broker-dealers,[9] institutional and retail firms, and firms with different mixes of businesses, services and products.

Finally, SIFMA also believes that efficient broad industry representation can be achieved by having one or more industry trade groups, such as SIFMA, provide a representative to the board. The positive experience with the CAT Development Advisory Group has indicated that trade group representation improves the advisory committee process by allowing for better coordination, marshaling of collective resources, and broader insight beyond the few directly represented firms.

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[8] The SROs may also wish to consider creating two subcommittees of the Advisory Committee, one focused on the general functionality and governance of the CAT and the other focused on technical and operational issues.

[9] For example, Rule 613 refers to "small broker-dealer" using the definition under Rule 0-10(c), generally those broker-dealers with less than $500,000 in total capital and subordinated liabilities.

Term. The SROs are proposing that the term of each member of the Advisory Committee shall be for a period of two years with approximately half of the Advisory Committee being elected each year. Consequently, four of the nine initial members of the Advisory Committee, as determined by the SROs, would have an initial term of one year. Advisory Committee members could serve consecutive terms; however, no member may serve on the Advisory Committee for more than two consecutive terms.

SIFMA believes that a committee made up of nine members may be too small and that the Advisory Committee should include no fewer than 12 members. An Advisory Committee with a minimum of 12 members would allow for sufficient representation of a broad range of broker-dealer members, along with other parties, such as individual investors and academics, that can provide useful outside views. The SROs should retain authority to expand (but not reduce) the size of the Advisory Committee in the future, so as to bring in additional member firms that focus on new or different products that will be added to the CAT as it develops. In addition, SIFMA suggests that the Advisory Committee have a traditional staggered board structure, with members holding their seats for three years, and one third of the Advisory Committee being held for reelection each year. Such a structure would minimize disruption and ensure a level of continuity, while still allowing for significant turnover and the introduction of new viewpoints.

Function. The Advisory Committee's role is to advise the SROs on the implementation, operation, and administration of the central repository. The SROs are proposing that, in that role, members of the Advisory Committee will have the right to attend meetings of the SROs as set forth in the CAT NMS Plan (subject to the SROs' right to meet in executive session by affirmative vote of a majority of the SROs) and submit their views to the SROs on Plan matters prior to a decision on such matters; however, members of the Advisory Committee will have no right to vote on matters considered by the SROs.

SIFMA agrees that the role of the Advisory Committee is to advise on the implementation, operation, and administration of the central repository. In addition, however, SIFMA believes that the Advisory Board should have a substantive voting role. Rule 613 does not preclude the SROs from granting the Advisory Committee voting rights on key issues, such as budgets, increases in fees and costs, new requirements that could place significant burdens on member firms, or determining when public comment should be solicited on critical issues before certain actions be taken. SIFMA believes that the CAT governance would benefit from more direct involvement of the Advisory Committee, and SROs should propose such a role as part of the NMS Plan.

If the SROs seek to limit the Advisory Committee's role to advice and recommendations, then they must put key procedural safeguards in place in order to guarantee that the Advisory Committee is permitted to effectively perform this function. First, to prevent abuse of executive session, the SROs must be required to maintain specific written criteria that limit executive session only to situations where there will be a specific discussion of confidential regulatory information. SRO representatives voting to enter into executive session must be required to submit a written explanation for why an executive session is required. These written records should be maintained for

inspection by the SEC and Advisory Committee members to ensure that the purpose of the executive session is not abused.

Similarly, in order to assure that the SROs fully consider the views of the Advisory Committee, the SROs should be required to document and provide the Advisory Committee with a written statement explaining the reasons for any SRO rejection of a written recommendation submitted by the Advisory Committee. These records should similarly be maintained for inspection by the SEC and Advisory Committee members. Without such a safeguard, the SROs would be free to ignore the Advisory Committee's suggestions without adequate consideration and analysis. The Advisory Committee could then become a meaningless body that the SROs routinely disregard. If the Advisory Committee recommendations were to go unheeded without explanation, it would undermine the SEC's vision of the CAT governance.

Further, to facilitate meaningful Advisory Committee participation and input, Advisory Committee members must have sufficient time to analyze information and formulate views before meetings. The SROs should therefore prepare agendas for meetings and provide documentation to be discussed at the meeting in advance. Without sufficient preparation time to address substantive issues, the value of the input the Advisory Committee will be severely limited.

These procedural safeguards are necessary to be sure that the Advisory Committee remains an active part of the governance process, providing the benefits of industry insight that the SEC envisioned.

Meetings. The SROs are proposing that members of the Advisory Committee will have the right to attend meetings of the SROs pursuant to the CAT NMS Plan, to receive information concerning the operation of the central repository, and to provide their views to the SROs; provided, however, that the SROs may meet in executive session if they determine that such an executive session is required. It is anticipated that members of the Advisory Committee will be reimbursed for reasonable travel expenses incurred for attending meetings.

It is critical to the success of the Advisory Committee that its members are permitted to attend all meetings of the SROs relating to the CAT. As noted above, SIFMA believes that procedural safeguards must be in place to guarantee this right, by limiting the use of executive session to situations where confidential regulatory information will be discussed and a specific written record of the justification for each executive session is maintained.

Access to Information and Confidentiality. The SROs are proposing that members of the Advisory Committee will have the right to receive information concerning the operation of the central repository; however, the SROs would retain the authority to determine the scope and content of information supplied to the Advisory Committee, which is limited to that information that is necessary and appropriate for the Advisory Committee to fulfill its functions and may redact or anonymize certain information where appropriate. Any information received by members of the Advisory Committee in

furtherance of the performance of their functions pursuant to the CAT NMS Plan must remain confidential unless otherwise specified by the SROs

SIFMA believes that *all information* concerning the operation of the central repository should be made available to members of the Advisory Committee, except limited information that is *specifically* determined to be of a confidential regulatory nature. The SROs should be required to maintain a written record, for inspection by the SEC and Advisory Committee members, explaining and documenting the basis for any determination that material is of a confidential regulatory nature and therefore excluded from the Advisory Committee.

In addition, SIFMA disagrees with the SROs' proposal that "[a]ny information received by members of the Advisory Committee … must remain confidential." SIFMA believes that any information shared with the Advisory Committee should be available to share with member firm representatives. Advisory Committee members will represent particular categories of broker-dealers or other groups. In many cases, in order to best perform its advisory function and to provide substantive input in the decision making process, a committee member may deem it necessary to seek the views of others within his or her firm, or similar firms, that may have greater expertise regarding a particular matter. This sort of collaboration should be encouraged, not prohibited. This sharing of information is thus critical to the effective functioning of the Advisory Committee, and must be permitted.

III. Topic 3: Time Stamp Requirement

The SROs requested comment generally on what minimum level of granularity should be required for time stamping of information reported to the CAT. Rule 613(d)(3) requires the SROs' proposed NMS Plan to specify the minimum level of granularity for time stamp information to be submitted to the CAT, with such minimum reflecting current industry standards and be at least to the millisecond.

A. General Comments

It is important to note that Rule 613 only requires the reporting of time-stamp information for *particular* order lifecycle events. Specifically, time stamping subject to millisecond granularity is required under Rule 613(d)(3) only for (i) the time at which an order is received or generated, (ii) the time at which an order is routed out, (iii) the time at which a routed-in order is received, (iv) the time at which an order modification or cancellation is received or originated, and (v) the time at which an order is executed.[10] Rule 613 does not require time stamping, let alone millisecond-level granularity, for the various other events, such as post-trade subaccount allocations.[11]

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[10] *See* Rule 613(c)(7)(i)(E); Rule 613(c)(7)(ii)(C); Rule 613(c)(7)(iii)(C); Rule 613(c)(7)(iv)(C); Rule 613(c)(7)(v)(C).

[11] *See* Rule 613(c)(7)(vi)(A).

In distinguishing between those events that must be time stamped and those that do not, the SEC sensibly avoided a "one-size-fits-all" millisecond-level granularity requirement for all order lifecycle events and systems. Such a requirement would not be appropriate or cost-justified, as millisecond-level granularity for certain events, such as post-trade processing, allocations and error correction, have little regulatory significance.

Because, as noted below, the systems involved in post-trade processing, middle- and back-office systems are not currently capable of recording events at millisecond increments, it is critical that the SROs' NMS Plan maintain Rule 613's distinctions between those events that must be time-stamped, and those that do not. While SIFMA believes that firms will be able to ensure that their trading systems can time stamp those items required by Rule 613 at millisecond granularity, it would be cost-prohibitive and unnecessary to require upgrading of other systems.

Further, SIFMA does not believe that the NMS Plan should require reporting at any level more granular than milliseconds. Millisecond increments are generally industry standard for trading systems, and even requiring an upgrade across the board to milliseconds will be a significant industry build-out. Any more granularity would not be possible without excessive systems upgrades at tremendous additional cost, with questionable regulatory benefit.

Additionally, while Rule 613 requires a minimum of millisecond granularity for certain specific order lifecycle events, SIFMA believes that the SROs should seek exceptions from the SEC in cases of events that are processed manually. Millisecond level granularity is neither feasible nor meaningful for time stamping of manual receipt or routing of an order, or any other manual steps in an order's lifecycle. For example, when a firm receives an order from a customer by telephone, the exact millisecond that the order is received is not recordable, nor would it be of regulatory significance. After receipt, the firm would enter it into its electronic order system for routing. That event would be recorded with a millisecond-time stamp, but the original order receipt may only be time stamped to the second or minute.

B. Responses to Specific SRO Questions

The SROs requested comment on the following specific questions with respect to the time stamp requirement:

What level of granularity do firms currently capture on order information? Does the level of granularity differ depending on the particular order event (e.g., order entry, route, execution)?

As noted above, the current level of time stamp granularity at firms differs based on the nature of the firm, its business, and the particular system involved. Generally, automated order entry and trading systems use milliseconds, although this is not consistently true across the industry. Indeed, certain national securities exchange systems

presently only provide trading information in seconds, so firms are constrained by the information that they receive.[12] Additionally, many systems other than automated trading systems may not currently capture milliseconds. For example, many firms' middle- and back-office systems use less granular time increments, often seconds.

Do firms typically have a means by which to sequence events occurring during the same time increment?

Other than in the case of events that can be logically sequenced (*i.e.*, an order must be received before it is routed or executed), firms are not consistently able to sequence events that are time stamped at the same time increment. While some firms may have this capability, others may have no way of sequencing this information.

IV. Topic 4: Clock Synchronization

The SROs requested comment on what synchronization standard should be required. Rule 613(d)(1) requires the SROs' proposed NMS Plan to require SROs and their members to, consistent with industry standards, "synchronize [their] business clocks that are used for the purposes of recording the date and time of any reportable event" to the time maintained by the National Institute of Standards and Technology ("**NIST**").

A. General Comments

Time synchronization practices vary by firm and within each firm depending on the system and that system's need for consistency with the time maintained by the NIST. As a general matter, SIFMA notes that the NMS Plan should only address time synchronization requirements for those system clocks that are used for time stamping those order events where time stamping is required under Rule 613.[13] Because firms' other business clocks, including those relating to post-trade processing, middle- and back-office operations, do not create time stamps required under Rule 613, the NMS Plan should not address synching of these other business clocks.

B. Responses to Specific Questions

The SROs requested comment on the following specific questions with respect to the clock synchronization requirement:

How frequently should broker-dealers be required to synchronize their clocks?

There is currently no standard for frequency of clock synchronization across the industry. Depending on the system involved, some firms synchronize their clocks

[12] For example, we understand that NYSE MKT (via its CCG FIX interface), NYSE Arca (via its FIX interface) and ISE (via its FIX interface) only provide second-level granularity.

[13] *See supra* note 10.

continuously throughout the day. Others synchronize their clocks at various times throughout the day. Still others do so only once daily. SIFMA does not believe that the NMS Plan should set a one-size-fits-all policy on how often firms must synchronize their system clocks to the NIST time. Different firms using different systems in different environments will experience different levels and speeds of time drift away from the NIST time. Internal systems within individual firms may be set at different intervals based on the operation and needs of those systems. Mandating specific frequencies of synchronization would likely be both unnecessarily frequent for some firms, and not frequent enough for others. Rather, the NMS Plan should include a maximum drift from the NIST time. Firms should be permitted to determine themselves, based on their individual circumstances, how often they must synchronize to the NIST time in order to maintain a drift no greater than the maximum permitted.

How much drift should be allowed between broker-dealers' clocks and the time maintained by the National Institute of Standards and Technology?

The current industry standard is to permit no more than one second of drift from the NIST time. Many smaller firms will have significant difficulty and would incur major expense in order to maintain drift at levels lower than one second.[14] At the same time, SIFMA acknowledges that maintaining a one-second drift standard could be viewed as somewhat inconsistent with the requirement to capture and report certain events in millisecond increments. SIFMA therefore believes there should be a differentiation between type of firms and markets in connection with any proposed reduction of the allowable drift standard to less than one second. Further, any reduction of permitted drift levels should be phased in over time, with smaller firms allowed significantly more time to comply.

For example, while all exchanges should be required to limit drift to a sub-second period, it might also be feasible for large firms trading in highly automated markets to do so. However, smaller firms and those that are not actively engaged in these markets, where sub-second levels of drift is less important, should initially be permitted to continue allowing drift of up to one second. Any mandate to reduce their drift levels to the reduced standard should be phased in over an extended period of years.

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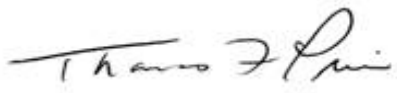
SIFMA greatly appreciates the SROs' consideration of its view in connection with the selected topics discussed in the April Release. SIFMA would be pleased to

[14] SIFMA also notes that each level of reduction in permitted drift creates a significant increase in the number of potential violations of the requirement. In turn, this would increase significantly the cost for firms of addressing any errors in recording and reporting the time of orders and executions, and addressing any enforcement risk that arises from these violations. The SROs should consider this increased burden and cost in determining the appropriate standard for drift.

discuss these comments in greater detail with the staff of the SROs. If you have any questions, please contact T.R. Lazo at (202) 962-7383, tlazo@sifma.org, or Tom Price at (212) 313-1260, tprice@sifma.org, or our counsel at Davis Polk & Wardwell LLP, Lanny A. Schwartz at (212) 450-4174, lanny.schwartz@davispolk.com, Gerard Citera at (212) 450-4881, gerard.citera@davispolk.com, or Zachary J. Zweihorn at (202) 962-7136, zachary.zweihorn@davispolk.com.

Sincerely,



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