



September 24, 2020

**Via Electronic Mail ([rule-comments@sec.gov](mailto:rule-comments@sec.gov))**

Ms. Vanessa Countryman  
Secretary  
U.S. Securities & Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549-1090

Re: File No. SR-FINRA-2020-024; Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.: Notice of Filing of Proposed Rule to Eliminate the Order Audit Trail ("OATS") Rules

Dear Ms. Countryman:

The Securities Industry and Financial Markets Association ("SIFMA")<sup>1</sup> submits this letter to the Securities and Exchange Commission ("Commission") to comment on the above-referenced proposed rule changes filed by the Financial Industry Regulatory Authority ("FINRA") to eliminate the Order Audit Trail ("OATS") rules in the FINRA Rule 7400 Series and FINRA Rule 4554 once members are effectively reporting to Consolidated Audit Trail ("CAT") and the CAT's accuracy and reliability standards have been achieved. The elimination of duplicative systems is one of the CAT's most critical issues, and we support FINRA's proposal to eliminate the reporting rules for the OATS<sup>2</sup>. However, as discussed further below, we believe the proposal should not be approved unless and until the standards for retirement are amended as we suggest in more detail below so that the duplicative systems are eliminated in an efficient and timely manner.

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<sup>1</sup> SIFMA is the leading trade association for broker-dealers, investment banks, and asset managers operating in the U.S. and global capital markets. On behalf of our industry's nearly 1 million employees, we advocate for legislation, regulation and business policy, affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit <http://www.sifma.org>.

<sup>2</sup> See Securities Exchange Act Release No. 89679 (Aug. 26, 2020), 85 FR 54461, 54463 (Sept. 1, 2020) ("Proposal"). SIFMA encourages FINRA to delete or amend additional FINRA rules as proposed in the rule filing, including the reporting rules requiring the submission of "non-tape" regulatory reports relating to riskless principal and agency transactions, recording of quotation information and synchronization of member business clocks.

### **Accuracy and Reliability Standards**

FINRA should ensure the proposed accuracy and reliability standards allow the retirement of OATS in a reasonable time. Under the proposal, FINRA would require that, before OATS can be retired, the CAT would generally need to achieve a sustained error rate for Industry Member reporting of at least 180 days of 5% or lower, measured on a pre-correction or as-submitted basis and 2% or lower on a post-correction basis (measured at T+5).<sup>3</sup> The 5% pre-correction and 2% post-correction thresholds would be measured by averaging the error rate across the period, rather than establishing a 5% pre-correction and 2% post-correction maximum each day for 180 consecutive days. FINRA will begin calculating the accuracy rates once Interfirm Linkages and TRF/Exchange Linkages are reported, which means April 2021 will be the earliest possible date for eliminating OATS. SIFMA and FINRA are aligned in that we want the OATS to be eliminated in 2021.

SIFMA supports the proposed categories for measuring error rates that are limited to data currently reported to OATS. Accordingly, we believe requiring a pre-correction error rate of 95% and a post-correction error rate of 98% to be appropriate for the rejection rates and data validations, intra-firm linkages, inter-firm linkages and exchange and TRF/ORF match rate categories. Correspondingly, SIFMA supports measuring error rates only for equity securities and not using any error rates from phase 2c of industry member reporting for determining when to retire OATS. Relatedly, we expect FINRA and the other Plan Participants to achieve similar acceptable error rates since this will be considered part of the overall data efficacy for retirement of OATS.

While SIFMA agrees that creating linkages of order information to create an order lifecycle will improve the quality of the equity audit trail, SIFMA disagrees with the proposal to include order linkages between the representative street side order and the order being represented when the representative order was originated as a threshold for retiring OATS.<sup>4</sup> Phase 2a of industry member reporting requires linkage between the representative street side order and the order being represented when the representative order was originated specifically to represent a single order (received either from a customer or another broker-dealer) and there is: (1) an existing direct electronic link in the firm's system between the order being represented and the representative order, and (2) any resulting executions are immediately and automatically applied to the represented order in the firm's system. Considering such linkages are not required in OATS today, FINRA needs a compelling reason for measuring the reporting accuracy of information that goes beyond what is currently available in OATS for determining retirement. Whether the order linkages “represent a significant enhancement to the data currently available in OATS”<sup>5</sup> is irrelevant for determining whether OATS can be eliminated. OATS should be retired immediately once the CAT data replicates the data in OATS today, and therefore, FINRA should not consider the error rates for the types of order linkages described above.

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<sup>3</sup> *Id.*

<sup>4</sup> *Id.* at 54464.

<sup>5</sup> *Id.*

To facilitate the rapid retirement of OATS, FINRA should begin incorporating the CAT data into its automated surveillance program as soon as possible. FINRA should initially run surveillance patterns and other queries against CAT data in parallel to the processes using OATS data to ensure the data is accurate and reliable. FINRA should clarify it will not wait for industry reporting to hit the applicable error rates for 180 days before beginning to test its systems.

### **Conclusion**

For the reasons stated above, we broadly support the proposal to allow for a swift retirement of OATS. To allow for a more timely retirement of OATS, FINRA should amend the proposal to only measure error rates for data currently available in OATS.

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SIFMA greatly appreciates the Commission’s consideration of the issues raised above and would be pleased to discuss these comments in greater detail with the Commission and the Staff. If you have any questions, please contact either me (at 212-313-1287 or [egreene@sifma.org](mailto:egreene@sifma.org)).

Sincerely,



Ellen Greene  
Managing Director  
Equity & Options Market Structure

cc: The Honorable Jay Clayton, Chairman  
The Honorable Hester M. Peirce, Commissioner  
The Honorable Elad L. Roisman, Commissioner  
The Honorable Allison Herren Lee, Commissioner  
The Honorable Caroline A. Crenshaw, Commissioner

Brett Redfearn, Director, Division of Trading and Markets  
David S. Shillman, Associate Director, Division of Trading and Markets  
Manisha Kimmel, Senior Policy Advisor to the Chairman