

Consolidated Audit Trail

FINRA Provides Updates on Regulatory Coordination Concerning CAT Reporting Compliance

Summary

FINRA is issuing this *Regulatory Notice* to provide members an update on regulatory coordination efforts concerning compliance with CAT reporting rules (the “CAT compliance rules”). In particular, FINRA and the national securities exchanges, as CAT NMS Plan Participants, have entered into a Rule 17d-2 Plan and corresponding Regulatory Services Agreements (RSAs) to coordinate regulation of the CAT compliance rules through FINRA. Relatedly, FINRA and the exchanges developed a coordinated approach for enforcement of the CAT compliance rules under the Participants’ respective Minor Rule Violation Plans. Details on these developments are provided below.

Questions concerning this *Notice* should be directed to:

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- ▶ Kathryn Moore, Associate General Counsel, Office of General Counsel (OGC), at (202) 728-8200 or kathryn.moore@finra.org; or
- ▶ Alex Ellenberg, Associate General Counsel, OGC, at (202) 728-8152 or alexander.ellenberg@finra.org.

Questions relating to CAT industry member registration or reporting, interpretive guidance, or technical specifications should be directed to the FINRA CAT Help Desk, at (888) 696-3348 or help@finracat.com.

Background

FINRA adopted the CAT compliance rules in the Rule 6800 Series to implement the National Market System Plan Governing the Consolidated Audit Trail (the “CAT NMS Plan” or “Plan”). The CAT NMS Plan was filed by the Plan Participants to comply with Rule 613 of Regulation NMS under the Exchange Act,¹ and each Participant accordingly has adopted the same compliance rules that FINRA has in its Rule 6800 Series. The common compliance rules adopted by each Participant are designed to require industry members to comply with the provisions of the CAT NMS Plan, which broadly calls for industry members to record and report timely and accurate customer, order and trade information relating to activity in NMS securities and OTC equity securities.

June 29, 2020

Notice Type

- ▶ Guidance

Suggested Routing

- ▶ Compliance
- ▶ Legal
- ▶ Operations
- ▶ Senior Management
- ▶ Systems
- ▶ Trading

Key Topics

- ▶ Consolidated Audit Trail (CAT)
- ▶ NMS Securities
- ▶ OTC Equity Securities
- ▶ Regulatory Inquiries

Referenced Rules & Notices

- ▶ FINRA Rule 6800 Series
- ▶ FINRA Rule 9216(b)
- ▶ FINRA Rule 9217
- ▶ Notice to Members 04-19
- ▶ SEA Rule 17d-2

Regulatory Coordination Through Rule 17d-2 Plan and RSAs

The Participants have developed a coordinated approach for harmonized and consistent enforcement of the CAT industry member compliance rules. This approach includes a Rule 17d-2 Plan and corresponding RSAs. As a result, regulation of the CAT compliance rules for all industry members will be coordinated through FINRA.

The Participants recently received approval from the Securities and Exchange Commission (“SEC”) for a Rule 17d-2 Plan to allocate responsibility for the regulation of the CAT compliance rules.² The purpose of the Plan is to reduce regulatory duplication in the surveillance, examination, investigation and enforcement of the CAT compliance rules for industry members that are members of more than one Participant (“common members”). Under the Rule 17d-2 Plan, the regulation of CAT compliance rules with respect to common members that are members of FINRA is allocated to FINRA, and responsibility for common members of multiple other Participants, not including FINRA, is allocated among those other Participants. For members allocated to other Participants under the Rule 17d-2 Plan, or members only of a single other Participant, FINRA has entered into RSAs to perform surveillance, examination, investigation and enforcement of the CAT compliance rules on behalf of those Participants.

Coordinated Effort to Add the CAT Compliance Rules to Minor Rule Violation Plans

In connection with the Rule 17d-2 Plan and corresponding RSAs, the Participants are pursuing a coordinated approach to make the CAT compliance rules eligible for disposition under Minor Rule Violation Plans (MRVPs). As a result, if such plans are all approved by the SEC, there will be a harmonized framework for application of the Participants’ MRVPs to the CAT compliance rules, and the framework will be consistent with the approach FINRA has long taken for enforcement of OATS rules.

FINRA’s MRVP allows FINRA to impose a fine of up to \$2,500 on any member or person associated with a member for a minor violation of an eligible rule.³ The purpose of the MRVP is to provide reasonable but meaningful sanctions for minor or technical violations of rules when the conduct at issue does not warrant stronger, immediately reportable disciplinary sanctions. The option to use the MRVP gives FINRA additional flexibility to administer its enforcement program in the most effective and efficient manner.

FINRA recently received approval for a proposed rule change to add the CAT compliance rules to its MRVP.⁴ As FINRA discussed in the proposed rule change, the CAT compliance rules are highly similar to existing audit trail-related rules already covered in FINRA’s MRVP. For example, the CAT industry member compliance rules in the Rule 6800 Series include rules relating to clock synchronization (Rule 6820), the recording and reporting of order and trade data (Rules 6830, 6840, 6850, 6860, 6870, 6880 and 6893), and recordkeeping (Rule

6890). FINRA's current MRVP includes the same kinds of audit trail-related rules relating to clock synchronization (Rule 4590), the recording and reporting of order audit trail data (Rules 7440 and 7450), and recordkeeping (Rule 4510 Series, and SEA Rule 17a-3(a) and 17a-4). FINRA plans to employ the MRVP for CAT compliance rules consistent with the way it has for these similar existing audit trail rules.⁵ To further promote consistency, all of the Participants are incorporating the CAT compliance rules into the same MRVP framework.⁶

While we are highlighting the uniform approach adopted by the Participants with respect to MRVPs, we note that the inclusion of a rule in an MRVP does not minimize the importance of compliance with the rule, nor does it preclude a Participant from choosing to pursue violations of eligible rules through an Acceptance, Waiver and Consent (AWC) or complaint if the nature of the violations, prior disciplinary history or other factors warrant more significant sanctions.

Endnotes

1. 17 CFR 242.613.
2. See Securities Exchange Act Release No. 88366 (March 12, 2020), 85 FR 15238 (March 17, 2020).
3. See Rule 9216(b).
4. See Securities Exchange Act Release No. 88870 (May 14, 2020), 85 FR 30768 (May 20, 2020) (Notice of Filing and Order Granting Accelerated Approval of File No. SR-FINRA-2020-013) (adding the CAT compliance rules to the list of rules in Rule 9217 eligible for disposition under FINRA's MRVP).
5. See FINRA [Notice to Members 04-19](#) (March 2004) (providing specific factors used to inform dispositions for violations of OATS reporting rules).
6. See, e.g., File No. SR-NYSE-2020-51.