

Debevoise Debrief—SEC Issues Relief from CAT Reporting Requirements in Light of the COVID-19 Outbreak

March 19, 2020

On March 17, 2020, SEC Chairman Jay Clayton issued a public statement¹ announcing that the SEC Division of Trading and Markets has issued [temporary relief](#)² from implementation of the new consolidated audit trail (“CAT”) reporting requirements and that the SEC has issued [a separate order granting conditional relief](#)³ from reporting of certain retail customer data, including (1) individual social security numbers or individual tax payer identification numbers (collectively, “SSNs”); (2) dates of birth and (3) account numbers.

CAT NMS PLAN

The CAT NMS Plan approved by the SEC in November 2016⁴ is a national market system plan requiring FINRA and the national securities exchanges (collectively, the “SROs”) to develop and operate a comprehensive centralized database to track trading activities in U.S. equities and options markets over their order and execution life cycles. Data to be reported to the CAT includes order and execution information as well as information about broker dealers handling the orders and their customers. The purpose of the plan is to facilitate SEC market surveillance, including market monitoring and event reconstruction.

Under the current CAT implementation timeline, large industry members and smaller industry members currently reporting to the Order Audit Trail System established by FINRA (“OATS”) were expected to start reporting orders to the CAT in April 2020,

¹ Public Statement, Chairman Jay Clayton, *Update on Consolidated Audit Trail; Temporary COVID-19 Staff No-Action Letter; Reducing Cybersecurity Risks* (Mar. 17, 2020), available [here](#).

² Michael Simon, SEC No-Action Letter (Mar. 16, 2020), available [here](#).

³ Securities and Exchange Commission, *Order Granting Conditional Exemptive Relief, Pursuant to Section 36 and Rule 608(e) of the Securities Exchange Act of 1934, from Section 6.4(d)(ii)(C) and Appendix D Sections 4.1.6, 6.2, 8.1.1, 8.2, 9.1, 9.2, 9.4, 10.1, and 10.3 of the National Market System Plan Governing the Consolidated Audit Trail*, Release No. 34-88393 (Mar. 17, 2020), available [here](#).

⁴ 81 Fed. Reg. 84696 (Nov. 23, 2016).

while smaller industry members not reporting to OATS would be required to begin reporting in December 2021.⁵

TEMPORARY NO-ACTION RELIEF UNTIL MAY 20, 2020

The Division of Trading and Markets no-action letter provides that the Division staff will not recommend enforcement action against an SRO that refrains from enforcing the CAT implementation deadlines until May 20, 2020. The relief is broad temporary relief from enforcement that is being provided to alleviate the stresses that COVID-19 may have placed on the information technology infrastructure of market participants. As described by Chairman Clayton and the letter, the relief is intended to allow firms to maintain focus on operational readiness and reduce operational risk by freeing personnel who are working on CAT matters to focus their attention on facilitation of business continuity plans. The no-action letter also notes that the relief could potentially be extended beyond May 20, 2020.

RELIEF FROM COLLECTING SENSITIVE RETAIL INVESTOR DATA

The CAT NMS Plan also includes controversial requirements for broker-dealers to report sensitive pieces of investor information to the CAT. The related order issued by the SEC on March 17, 2020 exempts the SROs from collecting or retaining certain retail customer data, including (1) SSNs; (2) dates of birth and (3) account numbers. Instead, broker-dealers would be required to report an account holder's name, address and birth year to the central data repository. According to Chairman Clayton, this limitation of personally identifiable information to "phone book"-type information is an important step in significantly reducing the risk of identity theft, though it does not address the linking of personal information to trading data. Chairman Clayton announced that he has also asked the staff of the SEC to prepare a set of recommendations on improving the data security requirements in the CAT NMS Plan this year. While these actions are not directly related to COVID-19, they are likely to be welcome in the market at a time of heightened awareness of cybersecurity risk.

⁵ Under the CAT NMS Plan large industry members were originally to start reporting by November 2018, while smaller industry members were to begin reporting by November 2019. However, the SROs were unable to establish an operational CAT by those deadlines.

CONSEQUENCES FOR SROS AND INDUSTRY MEMBERS

The temporary no-action relief and its possible extension beyond May 20, 2020 will presumably have ripple effects beyond the relief period and necessitate revisions to the formal implementation timeline for the CAT once more immediate concerns have been addressed. While Chairman Clayton did not make any public statements about how the staff review of data security requirements may affect the implementation timeline, it certainly raises the question of whether the SEC will offer an additional pause while that review is being conducted.



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