UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In The Matter of: The Application of SECURITIES INDUSTRY AND FINANCIAL MARKETS ASSOCIATION, For Review of Action Taken by CAT LLC and Certain Self-Regulatory Organizations in Violation of Exchange Act Sections 19(d) and 19(f)	Admin. Proc. File No. _____

DECLARATION OF LORIN L. REISNER IN SUPPORT OF SIFMA'S APPLICATION PURSUANT TO EXCHANGE ACT SECTIONS 19(d) AND 19(f)

LORIN L. REISNER hereby declares pursuant to 28 U.S.C. § 1746 as follows:

1. I am a partner of the law firm Paul, Weiss, Rifkind, Wharton & Garrison LLP, counsel for Securities Industry and Financial Markets Association ("SIFMA"). This Declaration is respectfully submitted in support of SIFMA's application (the "Application") pursuant to Sections 19(d) and 19(f) of the Securities Exchange Act of 1934 (the "Exchange Act") to set aside actions taken by the self-regulatory organizations (the "SROs") listed in Exhibit A to the Application that prohibit or limit SIFMA members with respect to access to services offered by the SROs in violation of the Exchange Act.

Preliminary Statement

2. Rule 613 was adopted by the Securities and Exchange Commission (the "Commission") to establish a comprehensive consolidated audit trail ("CAT") that would allow regulators efficiently and accurately to track all activity throughout the national securities markets in the United States. The rule required that self-regulatory organizations jointly submit a plan to create, implement and maintain the CAT. The SROs thereafter submitted a proposed CAT NMS Plan and various proposed CAT NMS Plan amendments.

As of August 2019, SRO activities related to the CAT have been conducted through Consolidated Audit Trail, LLC ("CAT LLC"), a company jointly owned by the SROs on an equal basis. Members of the securities industry ("Industry Members") individually and through SIFMA have cooperated extensively with the SROs to advance the goals of the CAT. Among other things, Industry Members have invested substantial resources to develop information technology infrastructures to support the submission of CAT data and have delivered test data to the SROs to assist with the introduction of the CAT. The SROs are responsible for the operation of the CAT and manage the CAT System through CAT LLC.[1]

3. The SROs, through CAT LLC, have asserted that Industry Members will be prohibited from the submission of order and trade data to the CAT System unless the reporting Industry Member executes a proposed CAT Reporter Agreement (the proposed "CRA") developed by the SROs. Industry Members individually and through SIFMA have informed the SROs that this limitation on access to the CAT System is unacceptable and inappropriate. To begin, the CRA improperly purports to impose a limitation of liability for CAT LLC, its participant SROs, and their officers, employees and agents in the event of a CAT data breach, misuse of CAT data or other activities relating to the CAT System. The CRA also purports to require a CAT Reporter to indemnify CAT LLC, its participant SROs and their officers, employees and agents against various third-party claims relating to the misuse of CAT data.[2] These purported limitations on SRO liability and

[1] The "CAT System" is defined in the Limited Liability Company Agreement of CAT LLC (the "CAT NMS Plan") as "all data processing equipment, communications facilities, and other facilities, including equipment, utilized . . . in connection with operation of the CAT and any related information or relevant systems pursuant to this Agreement." (Ex. 1, § 1.1.)

[2] A "CAT Reporter" is defined in the CRA as "the Industry Member or Participant that enters into this Agreement." (Ex. 2, § 1.2.)

indemnification requirements relating to a potential CAT data breach are particularly inappropriate where, as here, the SROs maintain and control the CAT System, the data in the CAT System and the transmission of data from the CAT System. As a matter of fairness and good policy, the SROs should not be permitted to require Industry Members to assume these additional risks and responsibilities relating to a potential CAT data breach when the SROs control the CAT System and are responsible for ensuring the security of the data it contains.

4. In any event, the CRA is not the appropriate method for addressing these important policy issues, and the unilateral action of the SROs to deny access to the CAT System absent execution of the CRA should be set aside by the Commission. Section 19(d) of the Exchange Act expressly provides that if any SRO "prohibits or limits any person in respect to access to services offered by such" SRO, the Commission shall review such action "upon application by any person aggrieved" by such action. 15 U.S.C. §§ 78s(d)(1), (2). The Industry Members on whose behalf SIFMA files this application are aggrieved by the challenged SRO conduct because it limits their access to the CAT System, imposes unfair and unreasonable conditions, and improperly seeks to establish practices, policies and standards pursuant to the CRA that can only be developed through a rule-making process. The CRA and its terms were never filed or approved pursuant to Section 19(b) of the Exchange Act. Exchange Act Section 19(f) therefore requires that the SRO action be set aside. *See id.* § 78s(f). Accordingly, for the reasons described below, the Commission should set aside the actions of the SROs in accordance with Sections 19(d) and 19(f) of the Exchange Act.

The Parties

5. SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global markets. It serves as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. A substantial number of SIFMA member firms are required to comply with CAT reporting under SEC and SRO rules. SIFMA has offices in New York and Washington, D.C.

6. CAT LLC is a Delaware limited liability company jointly created and owned by the SROs. CAT LLC was established to arrange for and oversee the creation, implementation, and maintenance of the CAT. Representatives of the SROs comprise the Operating Committee of CAT LLC that is the governing body of the CAT.

Delivery Of Data By Industry Members To The CAT System

7. The CAT is designed to be a comprehensive record of market and trading activity throughout the United States for exchange-listed equities and options. The SEC directed the creation and implementation of the CAT pursuant to Rule 613, which required that self-regulatory organizations establish a plan to create, implement and maintain the CAT. It is expected that the CAT will collect, store and distribute information delivered by Industry Members on a number of market events, including but not limited to quotes, orders, routes, and trade executions for all exchange-listed equities and options throughout the National Market System ("NMS").[3] It is likely that the CAT will be the most extensive collection of order and trade data ever assembled and will include highly sensitive and proprietary information relating to Industry Members and their customers. For this reason,

[3] The CAT NMS Plan sets forth at Section 6.4(d) the extensive data that Industry Members are required to submit to the CAT for various reportable events. (Ex. 1, § 6.4(d).)

data security and data protection issues relating to the CAT System have been paramount for SIFMA members, the SROs and the Commission.

8. The terms by which the SROs intend to operate the CAT are set forth in the current CAT NMS Plan, the Limited Liability Company Agreement of CAT LLC. (*See* Ex. 1 at 2.)

9. The CAT NMS Plan requires the SROs to promulgate rules requiring that their members deliver certain order and trade data to the CAT System. (*Id.* at § 6.4.) Each SRO has adopted rules requiring its members to comply with various aspects of Rule 613 and the CAT NMS Plan. *See, e.g.*, FINRA Rules 6830, 6893.

The SROs Condition Industry Member Access To The CAT System Upon The Execution Of The CRA

10. The SROs, through CAT LLC, have announced that they will prohibit Industry Members from submitting order and trade data to the CAT System unless the reporting Industry Member has executed the CRA.

11. The CRA includes a number of provisions that Industry Members believe are unfair, inappropriate and bad policy.

12. For example, the CRA purports to effectively extinguish any liability for the SROs, CAT LLC, and their officers, employees and agents in the event of a CAT data breach or other conduct for which CAT LLC or the SROs are responsible. In particular, Section 5.5 of the proposed CRA provides:

> Limitation of Liability. TO THE EXTENT PERMITTED BY LAW, UNDER NO CIRCUMSTANCES SHALL THE TOTAL LIABILITY OF CATLLC OR ANY OF ITS REPRESENTATIVES TO CAT REPORTER UNDER THIS AGREEMENT FOR ANY CALENDAR YEAR EXCEED THE LESSER OF THE TOTAL OF THE FEES ACTUALLY PAID BY CAT REPORTER TO CATLLC FOR THE CALENDAR YEAR IN WHICH THE CLAIM AROSE OR FIVE HUNDRED DOLLARS ($500.00).

(Ex. 2, § 5.5 (capitalization in original).)

13. In addition, the CRA requires Industry Members to indemnify CAT LLC, the SROs, their officers, employees, agents and others against various third-party claims relating to the misuse of CAT data. In particular, Section 5.2 of the proposed CRA provides:

> CAT Reporter shall defend, indemnify and hold harmless CATLLC, each of the Participants,[4] the Plan Processor and any other subcontractors of the Plan Processor or CATLLC providing software or services in connection with the CAT System, and any of their respective Affiliates and all of their directors, managers, officers, employees, contractors, subcontractors, advisors and agents ("Representatives") against any third party claim arising out of (a) a breach of the foregoing representation and warranty, (b) a failure by CAT Reporter or any of its CAT Reporting Agents to protect and secure CAT Data under its control, including any PII[5] that is part of the CAT Data, (c) a failure by CAT Reporter or any of its CAT Reporting Agents to protect its own systems from misuse (including from unauthorized use and malware infections) or unauthorized access to the CAT System by or through CAT Reporter's systems, or (d) a failure by CAT Reporter or any of its CAT Reporting Agents to comply with its obligations under this Agreement. Each of CATLLC, the Participants and the Plan Processor and each of their subcontractors shall be considered an intended third-party beneficiary of this Section 5.2, and each such Person may enforce this Section 5.2 against CAT Reporter.

(*Id.* at § 5.2.)

14. The SROs have limited or prohibited access to the CAT System by Industry Members absent execution of the CRA.

15. In fact, the proposed CRA itself provides that its execution is a condition of access to the CAT System. It states: "Whereas, [the Industry Member] desires to access and use the CAT System to comply with its obligations under the CAT NMS Plan, SEC

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[4] The term "Participants" refers to the SROs. (Ex. 1, § 1.1.)

[5] The term "PII" refers to "personally identifiable information, including a social security number or tax identifier number or similar information; Customer Identifying Information and Customer Account Information." (*Id.*)

Rule 613 and [SRO] rules, as applicable, . . . *CATLLC is making the CAT System available to [the Industry Member] pursuant to the terms and conditions of this [CAT Reporter] Agreement*." (*Id.* at 1 (emphasis added); *see also id.* at § 2.1 ("*Subject to the terms of this Agreement*, CATLLC hereby grants CAT Reporter access to the CAT System and the ability to use the CAT System" (emphasis added)).)

16. Formal industry alerts published by CAT LLC set forth similar conditions and limitations. For example, a December 2019 CAT Alert stated: "Before Industry Member (IM) CAT Reporters can be entitled to access the CAT Reporter Portal and the IM Test Environment and submit data for testing, they have been required to sign a CAT Reporter Agreement." (Ex. 3 at 1.) That alert further asserts that Industry Members "may not submit production data" to the CAT System absent an executed CRA. (*Id.*)

17. The liability limitation and indemnification provisions of the proposed CRA are fundamentally unfair and inappropriate from a policy standpoint. The CAT System is likely to be the largest collection of customer and trading data ever collected and consolidated. It will contain extraordinarily sensitive and proprietary data that must be carefully and aggressively protected against exploitation by hackers and bad actors, as well as misuse for improper competitive purposes. As Chairman Clayton has observed, "the SROs must be mindful of the volume of data that the CAT collects, and its sensitive nature, and be responsible in their collection and use of that data" as "the nature of the data to be included in the CAT necessitates robust security protections." (Ex. 4 at 1–2; *see also* Ex. 5 at 2 ("I understand and share the concern regarding the risk and impact of potential data breaches," requesting that the Staff "prepare a recommendation for the Commission on improving the data security requirements in the CAT NMS Plan this year" and raising

questions for consideration).) A CAT data breach could have a devastating impact on market integrity, impose significant harm to market participants and inflict serious competitive harm to Industry Members if their proprietary information is misused or misappropriated. A CAT data breach also could expose those responsible for the CAT and data contained in the CAT to significant legal risk and potential liability. *See, e.g.*, *In re Equifax Inc. Customer Data Security Breach Litigation*, No. 1:17-md-2800-TWT, 2020 WL 256132, at *2 (N.D. Ga. Mar. 17, 2020) ($380.5 million payment by Equifax relating to data breach that affected 150 million individuals in U.S.).

18. These issues are magnified to the extent that the SROs intend to engage in bulk downloads of CAT data. Any of the 24 SROs that jointly operate the CAT may download onto their servers vast amounts of customer and trading data, thus multiplying the sources of a potential data breach and increasing the risk that data is misappropriated, misused or lost.

19. Pursuant to Rule 613 and the CAT NMS Plan, CAT LLC and the SROs are responsible for ensuring the security and confidentiality of the information reported to the CAT System. (*See* Ex. 1, §§ 6.5(f), (g); 17 C.F.R. § 242.613(e)(4)(i).) Since the SROs control and maintain the CAT System, it is entirely inappropriate for the SROs to force Industry Members to assume the additional risks and responsibilities relating to a potential CAT data breach contemplated by the CRA. The SROs should not be permitted to disclaim liability in the event of a data breach—let alone shift liability risk to Industry Members—when the SROs control the CAT System and are responsible for establishing and maintaining the information security safeguards designed to prevent a breach.

20. SIFMA and its members repeatedly have communicated their concerns about the CRA, its liability limitations, indemnification requirements and other provisions. The SROs nevertheless have continued to insist on the execution of the CRA before Industry Members are permitted to access the CAT System to deliver order and trade data. For example, on January 8, 2020, SIFMA proposed an amended version of the CRA that, among other things, eliminated the objectionable liability limitation and indemnification provisions.[6] (*See* Ex. 7.) Despite extensive correspondence and communications between SIFMA and the SROs, the SROs have refused to remove the objectionable provisions from the CRA.

21. Based on the refusal by the SROs to remove objectionable terms from the CRA, certain Industry Members have declined to execute the CRA. These Industry Members collectively represent a substantial percentage—if not the majority—of the equity and options trading market and thus are responsible for submitting a significant proportion of the order and trade data that is expected to be maintained in the CAT System. Although other Industry Members executed the CRA after the SROs presented it as a condition to obtaining the access to the CAT System necessary to comply with CAT reporting obligations, a number of these Industry Members have informed SIFMA that they signed the CRA only because they believed they had no other practical choice.

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[6] SIFMA also sought to limit SRO use of CAT data to non-commercial, regulatory purposes. (*See* Ex. 6 at 3; *see also* Ex. 7 at 6). Under Rule 613(a)(1)(ii), CAT data shall be available to SROs "to perform surveillance or analyses, or for other purposes as part of their *regulatory* and oversight responsibilities." 17 C.F.R. § 242.613(a)(1)(ii) (emphasis added). Under Section 6.5(h) of the CAT NMS Plan, however, the SROs "may use the Raw Data it reports to the Central Repository for regulatory, surveillance, *commercial* or other purposes as otherwise not prohibited by applicable law, rule or regulation." (Ex. 1, § 6.5(h) (emphasis added).) Thus, in addition to using CAT data for purposes outside those permitted by Rule 613, the SROs have sought to preserve their ability to use CAT data for commercial purposes—further heightening the risk that data is misused or lost—while limiting their liability in the event of a data breach pursuant to the proposed CRA.

The SROs Prohibit Industry Members From Supplying Production Data To The CAT System

22. In an effort to advance the goals of the CAT and faced with the unacceptable and improper demands by the SROs with respect to the proposed CRA, in December 2019, a number of Industry Members executed a CAT Industry Member Limited Testing Acknowledgement Form (the "CAT LTA Form"), which allowed Industry Members to deliver obfuscated data ("Test Data") to the CAT System but, at the insistence of the SROs, expressly prohibited the delivery of actual customer data ("Production Data"). (*See* Ex. 8.) The CAT LTA Form re-asserted the SRO prohibition on the delivery of order and trade data by Industry Members unless the CRA is executed. It stated: "Prior to being entitled to the CAT System production environment, each Industry Member must enter into a CAT Reporter Agreement with CATLLC. . . . The CAT Reporter . . . hereby certifies and acknowledges that it will not submit production data and will only submit fabricated test data and/or obfuscated production data . . . to the CAT System test environment." (*Id.*) Subsequent negotiations between SIFMA and the SROs that would allow Industry Members to submit Production Data into the CAT test environment without executing the CRA failed.

23. On and after April 15, 2020, a number of Industry Members provided notice to the SROs that they were rescinding their execution of the CAT LTA Form and intended to begin the submission of Production Data to the CAT System without executing the CRA.

24. In response, the limited CAT System access that had been provided under the CAT LTA Form was terminated and Industry Members were blocked entirely from any use of the CAT System. A notice on behalf of CAT LLC sent to Industry Members following revocation of the CAT LTA Form stated: "In absence of a signed CAT Reporter

Agreement or Limited Testing Acknowledgement form, access to CAT systems will be removed for [Firm]. Access to the CAT test environment can be restored by signing a CAT Reporter Agreement or a Limited Testing Acknowledgement form." As a result, those Industry Members are unable to submit Production Data to the CAT System.

The Challenged SRO Action Violates Sections 19(d) and 19(f) Of The Exchange Act

25. The actions of the SROs limit and prohibit access to the CAT System in violation of Sections 19(d) and 19(f) of the Exchange Act.

26. Section 19(d)(1) of the Exchange Act provides that: "[i]f any [SRO] . . . denies membership or participation to any applicant, or ***prohibits or limits any person in respect to access to services offered by such organization*** . . . the [SRO] shall promptly file notice thereof with the appropriate regulatory agency." 15 U.S.C. § 78s(d)(1) (emphasis added).[7]

27. Section 19(d)(2) of the Exchange Act provides that "any action" for which an SRO is required to file notice "shall be ***subject to review by the appropriate regulatory agency*** for such member, participant, applicant, or other person, on its own motion, or upon ***application by any person aggrieved thereby*** filed within thirty days after the date such notice was filed . . . or within such longer period as such appropriate regulatory agency may determine." *Id.* § 78s(d)(2) (emphasis added). The Industry Members on whose behalf SIFMA brings its application are "persons aggrieved" pursuant to Section 19(d)(2). *See In re Sec. Indus. & Fin. Mkts. Ass'n,* Admin. Proc. Rulings Release No. 1921, 2014

[7] The SROs were required to, but did not, file notice of their denial of access in the manner set forth in Section 19(d)(1).

WL 12655078 (Oct. 20, 2014) (recognizing organizational standing of SIFMA to pursue relief on behalf of its members under Section 19 of the Exchange Act).

28. Under Exchange Act Section 19(f), the Commission "shall set aside the action of the [SRO] and require it to . . . grant . . . access to services offered by the [SRO]" unless it finds that: "[1] the specific grounds on which such denial, bar, or prohibition or limitation is based exist in fact, [2] that such denial, bar, or prohibition or limitation is in accordance with the rules of the [SRO], and [3] that such rules are, and were applied in a manner, consistent with the purposes of this chapter." 15 U.S.C. § 78s(f). As described below, no such finding can be made here, and the SRO denial of access should be set aside by the Commission.

The SRO Action Should Be Set Aside Because It Prohibits Or Limits Access To SRO Services Without Required Rule-Making

29. The SRO insistence that Industry Members execute the CRA as a condition of access to the CAT System improperly "prohibits or limits" Industry Member "access to services offered by" the SROs.[8] The CAT System is clearly a service offered by the SROs. In approving Rule 613, the Commission observed that the CAT is a facility of the SROs and that "a facility of an SRO is subject to the rule filing requirements of Section 19(b) of the Exchange Act." Exchange Act Release No. 67457, at 202 (July 18, 2012), 77 Fed. Reg. 45722, at 45775 (Aug. 1, 2012) (approving Rule 613).

30. The SROs have not filed any notice of proposed rule-making with respect to the imposition of the CRA or its terms.

[8] The SROs also have sought to use click-through agreements to impose conditions of use on the CAT System. Insofar as the SROs seek to use click-through agreements to impose the same or similar terms to those found in the CRA, it would be improper for the same reasons.

31. The SRO action thus cannot possibly be sustained under Section 19(f) as in "accordance with the rules of the [SRO]," because there are no rules that authorize the imposition of the CRA or its terms. 15 U.S.C. § 78s(f). For similar reasons, the SROs could not have applied "such rules" in a manner "consistent with the purposes of" the Exchange Act. *Id.* The action of the SROs therefore should be set aside and the SROs should be ordered to permit Industry Member access to the CAT System without executing the proposed CRA.

32. It is clear that the CRA and its objectionable terms involve standards, policies and practices that require rule-making. Under the Exchange Act, a rule includes any "stated policy, practice or interpretation" of an SRO and is defined as: (i) "[a]ny material aspect of the operation of the facilities of the [SRO]," or (ii) "[a]ny statement made generally available to the membership of, to all participants in, or to persons having or seeking access . . . to facilities of, the [SRO] . . . that establishes or changes any standard, limit, or guideline with respect to: (A) [t]he rights, obligations, or privileges of specified persons or . . . persons associated with specified persons; or (B) [t]he meaning, administration, or enforcement of an existing rule." 17 C.F.R. § 240.19b-4(a)(6); *see also In re Bloomberg L.P.*, Exchange Act Release No. 49076, 2004 WL 67566, at *3 (Jan. 14, 2004).

33. The CRA and its objectionable terms involve both (i) a "material aspect of the operation" of SRO facilities and (ii) a "statement made generally available" to "persons having or seeking access . . . to facilities" of the SRO that "establishes . . . a[] standard, limit, or guideline with respect to . . . [t]he rights, obligations or privileges" of Industry Members. 17 C.F.R. § 240.19b-4(a)(6). The CRA and its terms plainly purport to govern

key aspects of SRO facility operations (the "rules of the road" of CAT access by Industry Members), as well as establish standards, limits and guidelines for the rights and obligations of Industry Members with respect to liability, indemnification, and other issues. As described above, the CRA provisions directly and significantly impact the rights and obligations of Industry Members and impose rights and responsibilities that are unfair and inappropriate.

34. The proposed CRA and its terms do not fall within the narrow exceptions to required rule-making because they are not "reasonably and fairly implied by an existing rule" of the SRO or "concerned solely with the administration" of the SRO and not "a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule" of the SRO. *Id.* § 240.19b-4(c). As the Commission explained in *In re Bloomberg*, limitations that are "not apparent from the face" of an existing rule are not "reasonably and fairly implied" by a rule, and the "concerned solely with the administration" exception applies narrowly to "deal solely with 'housekeeping matters.'" *In re Bloomberg L.P.*, 2004 WL 67566, at *4; *see id.* at *5 ("The restrictions involve far more than, and have policy implications that extend beyond, mere 'housekeeping' matters"). The CRA and its terms are not apparent from the face of any existing rule and do not deal solely with housekeeping matters.

35. Thus, in order to impose the CRA and its terms on Industry Members, the SROs are required, but failed, to pursue a rule-making process that provides interested stakeholders notice and the opportunity to comment, and affords the Commission the

opportunity to consider and determine whether such rules should be adopted.[9] 15 U.S.C. § 78s(b)(1).

36. In fact, the Commission previously has set aside SRO action under Section 19(d) in similar circumstances where an SRO sought to impose rules by contract without engaging in the rule-making process.

37. In *In re Bloomberg*, Bloomberg, L.P. commenced a Section 19(d) proceeding alleging that the New York Stock Exchange ("NYSE") improperly denied access to services by restricting the display and use of liquidity data. *See In re Bloomberg L.P.*, 2004 WL 67566. The NYSE had required that Bloomberg execute a "Vendor Agreement" that contained restrictions on the dissemination of such data and rejected particular data displays proposed by Bloomberg. *Id.* at *2.

38. The Commission ruled that the NYSE limitations and restrictions on data usage amounted to a "denial of access" to SRO services and had no proper basis because they amounted to "rules" imposed without following the required rule-making process. *Id.* at *3. In reaching that conclusion, the Commission noted that the proposed restrictions related to a "material aspect" of the NYSE operations and also established a "standard, limit, or guideline" affecting vendor rights, obligations and privileges. *Id.* Accordingly, the Commission concluded that "the NYSE's action was not taken in accordance with the Exchange's rules and, therefore, should be set aside under Section 19(f)." *Id.* For similar

[9] Section 19(b)(1) of the Exchange Act provides that each SRO "shall file with the Commission . . . any proposed rule or any proposed change in, addition to, or deletion from the rules of such [SRO] . . . accompanied by a concise general statement of the basis and purpose of such proposed rule change." 15 U.S.C. § 78s(b)(1). As soon as practicable after receipt of the SRO's filing, the Commission shall "publish notice thereof together with the terms of substance of the proposed rule change or a description of the subjects and issues involved," and "give interested persons an opportunity to submit written data, views, and arguments concerning such proposed rule change." *Id.* "No proposed rule change shall take effect unless approved by the Commission or otherwise permitted in accordance with the provisions of [Section 19(b)]." *Id.*

reasons, the Commission should reject and set aside the actions of the SROs that limit access by Industry Members to the CAT System and impose the CRA and its terms without a proper rule-making process.

Industry Members Cannot Meet CAT Deadlines Because The SROs Have Denied Access To The CAT System

39. The CAT System is the sole means by which Industry Members can meet their CAT reporting obligations under SEC and SRO rules. A timetable published by the SROs requires Industry Members to certify readiness to submit CAT data by May 6, 2020 and to begin submitting CAT data by May 20, 2020. Although the SROs informed Industry Members on March 17, 2020 that the SROs would not take disciplinary action against their members before May 20, 2020 with respect to CAT deadlines (*see* Ex. 9), the SROs stated that Industry Members must complete testing and certification fourteen calendar days prior to the date on which they intend to begin reporting. (*Id.*; *see also* Ex. 10 at 3 (SEC no-action letter in which the Staff expressed its position that it does not intend to recommend enforcement action against SROs should they choose not to enforce CAT deadlines against their members through May 20, 2020).) On April 20, 2020, the Commission granted a request for exemptive relief from the SROs such that the deadline for initial equities reporting for Industry Members was extended to June 22, 2020.

40. Without access to the CAT System, however, Industry Members cannot meet CAT deadlines. SIFMA therefore was compelled to file its application and accompanying motion for a stay so that Industry Members can remain in compliance with applicable SEC and SRO rules and requirements. A stay will enable Industry Members to submit CAT data and advance the purposes of the CAT without the improper limitations on access to the CAT System imposed by the SROs.

41. A stay is appropriate so that the SROs are prevented from limiting access to the CAT System and the ability of Industry Members to meet CAT reporting deadlines while the Commission considers SIFMA's Application. All four factors that are properly considered weigh heavily in favor of granting a stay. *See In re Bloomberg L.P.*, Exchange Act Release No. 83755, 2018 WL 3640780, at *7 (July 31, 2018).

42. SIFMA therefore respectfully requests that the Commission set aside the challenged actions of the SROs and grant SIFMA's application for relief in accordance with Exchange Act Sections 19(d) and 19(f).

Exhibits

43. True and correct copies of the following documents are set forth in the Appendix of Exhibits accompanying this Declaration:

a. Exhibit 1 consists of excerpts from the Amended CAT NMS Plan, filed by the SROs on August 29, 2019.

b. Exhibit 2 is the CRA proposed by the SROs.

c. Exhibit 3 is the CAT Alert entitled "Industry Member Testing Update," published December 17, 2019.

d. Exhibit 4 is Chairman Clayton's statement published September 9, 2019 on the status of the CAT.

e. Exhibit 5 is Chairman Clayton's March 17, 2020 Update on Consolidated Audit Trail.

f. Exhibit 6 is a letter dated November 11, 2019 from Kenneth E. Bentsen, Jr., SIFMA President and CEO, to the Honorable Jay Clayton.

g. Exhibit 7 is a letter dated January 8, 2020 from Ellen Greene, SIFMA Managing Director, to Michael Simon of CAT LLC.

h. Exhibit 8 is the CAT LTA Form.

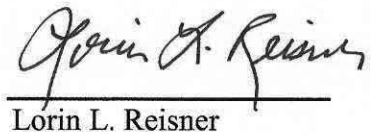
i. Exhibit 9 is the SRO statement published March 17, 2020 regarding the SEC's no-action relief.

j. Exhibit 10 is the no-action letter dated March 16, 2020 from Brett W. Redfearn, Director, SEC Division of Trading and Markets.

k. Exhibit 11 is the CAT Timeline published by CAT LLC on its website at http://www.catnmsplan.com/timeline.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: New York, New York
April 22, 2020



Lorin L. Reisner