



October 21, 2025

Ms. Vanessa Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

**Re: Joint Industry Plan; Notice of Filing of Amendment to the National Market System Plan Governing the Consolidated Audit Trail ("CAT NMS Plan")
Regarding the CAT Funding Model; File No. 4-698**

Dear Ms. Countryman:

The Securities Industry and Financial Markets Association ("SIFMA")¹ submits this letter to the U.S. Securities and Exchange Commission ("Commission" or "SEC") to urge the Commission to disapprove the proposal ("Proposal"),² filed by the self-regulatory organizations ("SROs") as the Participants in the CAT NMS Plan, to re-adopt the legacy CAT Funding Model, with a slight modification, that the 11th Circuit Court of Appeals held as unlawful.³ The Participants' Proposal is a flawed attempt to circumvent the Court's Opinion invalidating the prior funding model. The Commission should reject this attempt by immediately disapproving the Proposal. Moreover, as we have stated previously, the legacy CAT Funding Model should be abandoned in favor of a new CAT funding approach involving the fee process in Section 31 of the Securities Exchange Act of 1934 ("Exchange Act"). While broker-dealers would still pay for CAT through the Section 31 process,⁴ inclusion in the SEC's budget would serve to better align incentives to control costs and address longstanding concerns about ineffective governance, as well as provide a basis for a more transparent allocation of CAT costs.

¹ 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 one million employees, we advocate on 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).

² Release No. 34-103960 (Sept. 12, 2025), 90 FR 44910 (Sept. 17, 2025).

³ *Am. Sec. Ass'n et al. v. SEC*, No. 23-13396 (11th Cir.) (July 25, 2025) ("Opinion").

⁴ Under Section 31 of the Exchange Act, the Commission charges Section 31 fees to SROs on certain transactions to reimburse the Commission for its budget. The SROs in turn under their rules charge their broker-dealer members to recover the Section 31 fees.

The Court's Opinion

As the Participants note in the Proposal, the Court invalidated the CAT Funding Model for two reasons. First, the Court found that the Commission did not adequately justify its decision to allow the Participants to pass through 100% of their CAT costs to Industry Members.⁵ Second, the Court found that the Commission failed to update its 2016 economic analysis of the CAT conducted when it approved the CAT NMS Plan, even though the costs to build and operate the CAT have skyrocketed since 2016. The Court held that these flaws in the CAT Funding Model were serious and warranted vacatur of the Funding Model.

The Participants Seek to Circumvent the Court's Opinion Through the Proposal

In submitting the Proposal, the Participants attempted to address the first reason why the Court vacated the CAT Funding Model by proposing to amend the CAT NMS Plan to prevent SROs from filing rule changes *to establish new fees* to pass through their share of CAT costs to members. However, as described below, this action by the Participants is a flawed attempt to circumvent the Court's Opinion. The Commission should therefore disapprove the Proposal.

In the Proposal, the Participants seek to amend the CAT NMS Plan to prevent each Participant from filing a rule change with the SEC to establish "a new fee" for passing through to its members the CAT costs charged to such Participant in accordance with the CAT NMS Plan. By using the term "new fee," the Participants raise the specter of adding CAT costs to existing fees the SROs already charge their members to recoup their CAT costs, thus doing indirectly what they cannot do directly. The Court was clear in its holding that the SROs could not pass through their share of CAT costs to broker-dealers absent some new Commission finding that the ultimate allocation of cost burdens was consistent with the Exchange Act and otherwise lawful. The Commission has not made, nor do we believe it can make, such a finding. Therefore, the Commission should disapprove the Proposal as it directly contradicts the Court's Opinion.

Participants also seek to circumvent the Court's Opinion regarding the Commission's deficient economic analysis by attempting to force the Commission to act on the Proposal without providing any updated data that would feed into the Commission's statutorily required analysis. There is a whole host of information that the Commission must obtain and assess to conduct this analysis, including (i) the current and future trajectory of the CAT budget (including the key cost drivers and a detailed explanation as to why the 2016 estimates proved to be so inaccurate),⁶ (ii) the CAT reporting costs that already have been, and continue to be, incurred by

⁵ The term "Industry Member" is defined in the CAT NMS Plan to mean "a member of a national securities exchange or a member of a national securities association."

⁶ See Release No. 34-79318 (Nov. 15, 2016), 81 FR 84696, 84863 (Nov. 23, 2016), where the Commission estimated, "In aggregate, the Commission believes that that industry will spend \$2.4 billion to implement CAT, and \$1.7 billion per year in ongoing annual costs." The Commission also stated that it, "continues to recognize that the methodology and data limitations used to develop these cost estimates could result in imprecise estimates that may

broker-dealers (including conducting a new “Reporters Study” to inform the analysis), (iii) whether the proposed funding model unfairly favors one group of market participants over another, (iv) the potential cost of security breaches given that there is more public information around security incidents and data breaches than there was in 2016,⁷ (v) the continued cost of duplicative reporting that CAT was supposed to replace,⁸ and (vi) the market-wide impacts on liquidity and competition associated with allocating at least two-thirds of CAT costs in perpetuity to broker-dealers and their customers. The Participants’ submission of the Proposal therefore reflects another attempt to circumvent the Court’s Opinion, and the Commission should disapprove the Proposal on this basis as well.

The Legacy CAT Funding Model Should be Abandoned in Favor of a New Approach

The SROs through the CAT Operating Committee have for years sought to establish a funding model for the CAT without meaningful industry input.⁹ These efforts culminated in the adoption of a funding model over the strong objections of Industry Members, which have been validated by the Court’s recent decision vacating the CAT Funding Model. The Court’s Opinion discusses in detail many of the significant flaws with the CAT Funding Model that SIFMA and others have raised before it was approved. Given these significant flaws, instead of simply reimposing the same broken model as the SROs’ Proposal attempts to do, it is time to adopt a new approach regarding CAT funding. SIFMA believes that the new approach should involve funding CAT through the fee process found in Section 31 of the Exchange Act.

For example, the Court’s Opinion discusses the flaws with relying on the SRO rule filing process to establish CAT fees. In trying to support its decision to allow for 100% pass-through of CAT costs to Industry Members, the Commission asserted that it would review the appropriateness of any attempt by the SROs to pass-through CAT costs through the SRO fee filing process under Section 19(b) of the Exchange Act. This was the process provided for in the

significantly differ from actual costs.” *Id.* SIFMA believes that the Commission’s original estimate is significantly lower than the actual costs borne by the industry to implement and annually report to CAT.

⁷ See *id.* at 84874, where the Commission stated, “The Commission explained its belief that it is difficult to form reliable economic expectations for the costs of security breaches because there are few examples of security breaches analogous to the type that could occur under the CAT NMS Plan.” Given years of data since 2016, SIFMA believes that there is sufficient information in the public domain available for the Commission to conduct an economic analysis that outlines the ongoing costs to protect CAT data as well as costs resulting from potential breaches of CAT data.

⁸ SEC Rule 613(a)(1)(ix) is much broader than just FINRA’s Order Audit Trail System (“OATS”) (retired in Sept. 2021) as it requires a plan to eliminate any rules and systems “rendered duplicative by the consolidated audit trail.” See also 81 FR at 84777, where the Commission stated, “Specifically, the Commission believes that, going forward, CAT will provide Commission Staff with much of the equity and option data that is currently obtained through equity and option cleared reports and [Electronic Blue Sheets], including the additional transaction data captured in connection with Rule 13h-1 concerning large traders.” Broker-dealers continue to incur the costs of complying with duplicative rules well past the original Commission estimate of 2 to 2.5 years.

⁹ Indeed, the current Proposal was filed without prior consultation with Industry Members.

CAT Funding Model for the Commission to assess the SROs' changes to CAT fees over time. However, the Court rejected this argument and found that the Commission's *post hoc* review of SRO fee filings was an insufficient mechanism to determine whether it was appropriate for the SROs to pass through their share of CAT costs because, among other things, the filings were immediately effective and not subject to any judicial review unless the Commission suspended the filings. Notwithstanding the Court's findings, the Participants in the Proposal seek to perpetuate this problematic aspect of the funding model.

The Court's Opinion discusses other flaws with the CAT Funding Model that SIFMA and others raised while the model was under consideration at the Commission. Seeking to re-adopt essentially the same, now-vacated, CAT Funding Model is the wrong approach. The Court's decision vacating the funding model is clear evidence that an objective third-party recognized the significant flaws with the model.

SIFMA believes it is time to chart a new path forward regarding CAT funding. Consistent with earlier SIFMA comments, we recommend that the SEC fund the CAT through its standard budget process, as it does with other tools and technology used by the Commission. Importantly, this would make CAT costs—which would ultimately be funded through the regular Section 31 process—subject to Congressional review and oversight. In connection with this recommendation, we note that the Section 31 fee collection process itself needs to be updated to allow the Commission to adjust fees when volumes are higher or lower than projections even when Congress has not funded the government through a “regular appropriation.”¹⁰

We greatly appreciate the recent efforts by the Commission and the SROs to reduce CAT costs and look forward to further engagement on this front as well as on other significant CAT reforms the Commission should consider as part of its ongoing comprehensive review of the CAT.¹¹ However, without an SEC funding obligation for CAT, the SEC may not have an incentive to consider the costs associated with operating the CAT because these costs are borne primarily by broker-dealers and their customers. In other words, the SEC would have no “skin in the game” (or meaningful oversight) regarding how much it costs to operate the CAT and whether it could be done more efficiently. To address this disconnect, we recommend that the CAT be included in the SEC's budget.

As the CAT is a regulatory system used by the SEC, it should be part of the SEC's budget. While the industry will still pay for CAT through the Section 31 process, inclusion in the SEC's budget will serve to better align incentives to control costs and address longstanding

¹⁰ The fee adjustment process under Section 31 is triggered by a “regular appropriation” for the Federal government's fiscal year and is impacted when this does not occur. SIFMA would welcome the opportunity to explore this and possibly other updates to the Section 31 fee collection process.

¹¹ Paul S. Atkins, Chairman, Prepared Remarks Before SEC Speaks, May 19, 2025, <https://www.sec.gov/newsroom/speeches-statements/atkins-prepared-remarks-sec-speaks-051925>. We expect that CAT governance will be evaluated as part of these efforts.

concerns about ineffective governance.¹² We anticipate that CAT would be a line item in the SEC's budget subject to Congressional review as part of the SEC's appropriations process. As we have previously stated, the CAT ultimately should be subject to the checks and balances of the appropriations process for the SEC.

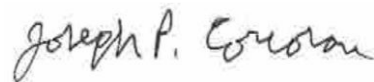
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As discussed above, SIFMA urges the Commission to disapprove the proposal. Among the Proposal's flaws, it represents an attempt to circumvent the Court's Opinion and therefore should be disapproved. SIFMA also calls on the SEC and SROs to chart a new path forward regarding CAT funding, with the SEC ultimately assuming CAT funding through the Section 31 process. If you have any questions or need any additional information, please contact Katie Kolchin at (212) 313-1239, Joe Corcoran at (202) 962-7383, or Gerald O'Hara at (202) 962-7343.

Sincerely,



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Joseph Corcoran
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General Counsel

¹² Following a Section 31-like process may provide a more traceable path between a customer's trading activity and the fee if a firm chooses to pass along the fee.