



February 14, 2025

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

Re: Latest SRO CAT Fee Filings and Comprehensive Review of the Consolidated Audit Trail (“CAT”)

Dear Ms. Countryman:

The Securities Industry and Financial Markets Association (“SIFMA”)¹ respectfully submits this letter to urge the U.S. Securities and Exchange Commission (the “Commission”) to pause all current and future CAT fees imposed on Industry Members under the current CAT Funding Model until the Commission has the opportunity to complete a comprehensive review of the current structure and operations of the CAT, including its funding and current cost.² We commend the Commission for its recent order granting exemptive relief from the sections of the National Market System Plan Governing the CAT (the “CAT NMS Plan” or “Plan”) that required reporting of certain personal identifying information (“PII”) to CAT.³ This step will increase the security of the CAT without eliminating regulators’ ability to conduct effective surveillance of the U.S. equity and option markets. Consistent with this recent action, the Commission should take additional steps to address other areas of concern regarding the CAT.

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). For more information, visit <http://www.sifma.org>.

² Capitalized terms not otherwise defined in this letter have the same meanings as they do in the CAT NMS Plan and/or the CAT Funding Model. See CAT NMS Plan as of Dec. 12, 2024, available at https://www.catnmsplan.com/sites/default/files/2025-01/LLC_Agreement_of_Consolidated_Audit_Trail_LLC-as-of-12.12.24.pdf; Order Approving an Amendment to the National Market System Plan Governing the Consolidated Audit Trail, Exchange Act Release No. 34-98290, File No. 4-698 (Sept. 6, 2023), 88 FR 62628 (September 12, 2023) (“CAT Funding Model”).

³ Order Granting Exemptive Relief, Pursuant to Section 36(a)(1) and Rule 608(e) of the Securities Exchange Act of 1934, from Certain Provisions of Section 6.4(d)(ii)(C) and Appendix D, Sections 9.1, 9.2 and 9.4 of the National Market System Plan Governing the Consolidated Audit Trail, Release No. 34-102386; File No. 4-698 (Feb. 10, 2025).

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Specifically, SIFMA recommends that the Commission:

- Suspend, institute proceedings to review, and ultimately disapprove the recently submitted rule filings by the self-regulatory organizations (“SROs”) to establish fees for Industry Members related to certain costs of operating the CAT NMS Plan⁴ because the filings do not demonstrate that the fees are consistent with the requirements of the Securities Exchange Act of 1934 (the “Exchange Act”).⁵ Commission suspension of the current filings would be consistent with the Commission’s suspension of the January 2024 SRO fee filings related to historical CAT costs.
- Exercise its broad exemptive authority to pause any ongoing or future collection of CAT fees by the SROs, as well as prohibit the SROs from penalizing Industry Members for nonpayment of fees, by granting Industry Members exemptive relief from relevant portions of the CAT NMS Plan. As discussed below, this exemptive relief would be appropriate in the public interest, consistent with the protection of investors, the maintenance of fair and orderly markets, and the perfection of the mechanisms of a national market system.
- Require that all fees charged by the SROs for CAT must be filed pursuant to Section 19(b) of the Exchange Act and require formal SEC approval that such fees meet the applicable Exchange Act requirements prior to being effective rather than the current process of permitting fees to be filed with immediate effectiveness pursuant to Section 19(b)(3)(A) of the Exchange Act.
- Conduct a comprehensive review of the CAT, including the number and types of databases necessary for regulators to conduct surveillance of market activity, if any; any data elements necessary to be reported and stored; data security measures; and the proper approach to funding those oversight measures.
- *After* granting exemptive relief from all ongoing CAT Fees (historical and prospective), based on the ongoing serious concerns regarding the operations of the CAT and the legality of its Funding Model, request that the Eleventh Circuit Court of Appeals (“11th Circuit”) postpone any decision in the ongoing litigation between certain Industry Members and the Commission until the Commission can complete a comprehensive review of the CAT and its Funding Model.⁶

These steps are necessary and appropriate in the public interest and for the protection of investors because under the current CAT Funding Model, SIFMA members and investors ultimately will be left to pay most of the costs associated with operating the CAT and will not be able recover those costs even if the Commission later rethinks the CAT or if the CAT and/or its Funding Model is later determined to be invalid by the 11th Circuit.

⁴ This series of SRO CAT fee filings seek to implement CAT Fee 2025-1 on Industry Members to partially offset the SROs’ costs of operating the CAT in the first half of 2025. See Appendix for citations to SRO rule filings.

⁵ 15 U.S.C. §§ 78f(b)(3), (4), (5), and (8); 78o-3(b)(5), (6), and (9).

⁶ Am. Sec. Ass’n et al. v. SEC, No. 23-13396 (11th Cir.) (filed Oct. 17, 2023).

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New information has recently come to light that further supports SIFMA’s longstanding position that the fees that are to be allocated to Industry Members pursuant to these 19b-4 filings are not reasonable and, thus, are not consistent with Exchange Act requirements. In particular, the Commission granted exemptive relief from those sections of the CAT NMS Plan that required reporting of certain PII. This exemptive relief comes on the heels of a blog post by the CEO of FINRA confirming that a significant and costly portion of CAT, namely the continuous reporting and collection of PII from every individual investor, is not needed by FINRA (or the other SROs) for market surveillance purposes. If a central (and costly) component of CAT is not necessary for regulatory objectives, it is difficult to see how the costs for this component could be considered reasonable as required by the Exchange Act.

The Commission must specifically answer this question before approving these latest 19b-4 filings. In addition, the Commission should exercise its exemptive authority to pause all ongoing CAT fees imposed on Industry Members by granting Industry Members exemptive relief from certain portions of the CAT NMS Plan. A pause of all CAT fees would provide the Commission with an opportunity to address long-standing concerns held by policymakers regarding the CAT and its Funding Model while serving to protect Industry Members and investors from paying hundreds of millions of dollars in unrecoverable fees should the Commission ultimately take a different approach or should litigation against the CAT Funding Model be successful.⁷ The Commission also should request that the 11th Circuit delay any decision in the ongoing CAT litigation until the Commission completes its comprehensive review, as there are serious questions regarding the current structure and operation of CAT and whether its Funding Model is consistent with the Exchange Act.⁸

SIFMA agrees with policymakers calling for a review of the CAT’s current structure, operations, and funding.

SIFMA has long acknowledged and accepted that Industry Members would be responsible for a reasonable portion of CAT costs (assuming the CAT is upheld in court). However, SIFMA and its members continue to believe that the CAT Funding Model approved by the Commission violates the Exchange Act.⁹ For example, although the CAT Funding Model

⁷ Am. Sec. Ass’n et al. v. SEC, No. 23-13396 (11th Cir.) (filed Oct. 17, 2023). SIFMA continues to believe that the Commission’s order approving the funding model for the CAT is contrary to the Exchange Act and arbitrary and capricious. See Brief of Amicus Curiae SIFMA, Am. Sec. Ass’n et al. v. SEC, No. 23-13396 (11th Cir.) (filed Feb. 15, 2024). SIFMA accordingly reserves all rights.

⁸ In a separate litigation involving Commission rules, Acting Chair Uyeda recently “directed Commission staff to notify the Court of changed circumstances and request that the Court not schedule the case for argument to provide time for the Commission to deliberate and determine the appropriate next steps in these cases.” Statement of Acting Chair Mark T. Uyeda, Acting Chairman Statement on Climate-Related Disclosure Rules (Feb. 11, 2025), available at https://www.sec.gov/newsroom/speeches-statements/uyeda-statement-climate-change-021025?utm_medium=email&utm_source=govdelivery.

⁹ See SIFMA Comment Letter (Mar. 5, 2024), <https://www.sec.gov/comments/sr-finra-2024-002/srfinra2024002-442279-1128282.pdf>; SIFMA Comment Letter (June 5, 2023), <https://www.sec.gov/comments/4-698/4698-199319->

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purportedly allocates one-third of CAT costs to the SROs and two-thirds of CAT costs to Industry Members, it does nothing to prevent the SROs from ultimately deciding to pass along their share of CAT costs to Industry Members. Indeed, FINRA is already passing along its share of CAT costs to its members.¹⁰ And although CAT's operating budget is funded in large part by Industry Members and investors, the CAT Funding Model did not provide these groups with any say in how the CAT sets its budget or spends their money. Furthermore, in the CAT Funding Model, the Commission approved and committed to a process in which it would evaluate the reasonableness of CAT fees and their satisfaction of the other Exchange Act fee requirements through rule filings submitted by the SROs under Section 19(b) of the Exchange Act. However, the process established by the SROs and permitted by the Commission is not consistent with this approved process and allows the SROs to file CAT fees for immediate effectiveness under Section 19(b)(3)(A) of the Exchange Act.

In voting against approval of the CAT Funding Model in 2023, Acting Chair Uyeda and Commissioner Peirce expressed similar concerns. For example, Acting Chair Uyeda noted in his dissent that he could not support approval of the CAT Funding Model “because important, overarching issues on CAT have yet to be resolved, including the ballooning expenses for CAT.”¹¹ Similarly, Commissioner Peirce noted in her dissent that “[t]he allocation of fees under these amendments will widen the misalignment of incentives under the plan to control costs,” and that the Funding Model “ensures that most, if not all, of the CAT's costs are borne by parties that have little or no influence over how the CAT is implemented or how its requirements are interpreted or applied.”¹²

More recently, Acting Chair Uyeda and Commissioner Peirce in December 2024 expressed fundamental concerns with the operations and funding of the CAT, stating that:

399182.pdf; SIFMA Comment Letter (May 2, 2023), <https://www.sec.gov/comments/4-698/4698-182799-335422.pdf>; SIFMA Comment Letter (Jan. 12, 2023), <https://www.sec.gov/comments/4-698/4698-20154753-322976.pdf>; SIFMA Comment Letter (Dec. 14, 2022), <https://www.sec.gov/comments/4-698/4698-20152795-320485.pdf>; SIFMA Comment Letter (Oct. 7, 2022), <https://www.sec.gov/comments/4-698/4698-20145239-310561.pdf>; SIFMA Comment Letter (June 22, 2022), <https://www.sec.gov/comments/4-698/4698-20132695-303187.pdf>; Virtu Comment Letter (Mar. 5, 2024), <https://www.sec.gov/comments/sr-finra-2024-002/srfinra2024002-441719-1121682.pdf>; Virtu Comment Letter (July 13, 2023), <https://www.sec.gov/comments/4-698/4698-222219-467223.pdf>; Virtu Comment Letter (June 22, 2022), <https://www.sec.gov/comments/4-698/4698-20132715-303206.pdf>; Virtu Comment Letter (May 12, 2021), <https://www.sec.gov/comments/4-698/4698-8790127-237768.pdf>; Citadel Comment Letter (Mar. 5, 2024) <https://www.sec.gov/comments/sr-finra-2024-002/srfinra2024002-442099-1120722.pdf>.

¹⁰ Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend FINRA Rule 6897 (Consolidated Audit Trail Funding Fees) to Establish Fees for Industry Members Related to Prospective Costs of the National Market System Plan Governing the Consolidated Audit Trail, Release No. 34-102053, File No. SR-FINRA-2024-023 (Dec. 30, 2024), 90 FR 700 (Jan. 6, 2025).

¹¹ Mark T. Uyeda, *Statement on Consolidated Audit Trail Revised Funding Model* (Sept. 6, 2023), available at <https://www.sec.gov/newsroom/speeches-statements/uyeda-statement-cat-funding-090623>.

¹² Hester M. Peirce, *Who's Paying?: Statement on the CAT's' Funding Model* (Sept. 6, 2023), available at <https://www.sec.gov/newsroom/speeches-statements/peirce-statement-cat-funding-090623>.

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*The CAT is a system that one would expect to find in a dystopian surveillance state, not the shining beacon for liberty and the free world. The CAT system is expensive and essentially funded by the public but operates outside the direct oversight or authorization of Congress. The Commission must reflect on the costs—both monetary and societal—of its quest to have an omnibus surveillance system that tracks every investment move of its citizens, including the cyber vulnerabilities of that very system.*¹³

Even with the granting of the recent PII Exemptive Order, many of these concerns, including funding, remain unaddressed.

The CEO of FINRA recently expressed similar concerns regarding the operation of the CAT, stating that “[i]n light of our collective experience since 2012, it would be timely and appropriate to conduct a comprehensive review of CAT.”¹⁴ He also noted that, “[w]e do not need a comprehensive review of CAT, however, to conclude that one part of it should be eliminated: the systematic collection and storage of personal information regarding individual investors.”¹⁵ Shortly after this statement, the Commission granted exemptive relief from reporting of certain PII—names, addresses, and year of birth—to CAT.¹⁶

The change recommended by FINRA’s CEO—and the Commission’s subsequent grant of exemptive relief—is noteworthy for several reasons and rightfully deserved the Commission’s immediate attention. First, of the 26 SROs responsible for administering the CAT NMS Plan, FINRA, which is responsible for a significant amount of cross-market surveillance, arguably is the most familiar with CAT surveillance, queries, and data. FINRA’s call to cease collecting and storing customer information and replace the current system with a “request and response” process demonstrates that there will be little, if any, negative impact on the SROs’ ability to effectively and efficiently surveil equities and options markets without this information. FINRA’s statement also acknowledged the potentially significant cost savings eliminating these data element could have: “It is also worth noting that eliminating the collection and storage of investors’ personal information in the customer database would likely result in material cost

¹³ Dissenting Statement on Electronic Submission of Certain Materials Under the Securities Exchange Act of 1934 and Amendments Regarding the FOCUS Report (Dec. 16, 2024), *available at* <https://www.sec.gov/newsroom/speeches-statements/peirce-uyeda-statement-focus-report-121624>. In addition, then-Commissioner Uyeda called for a comprehensive review of the CAT in an interview at an industry conference in November 2024. Interview by Larry Tabb with Commissioner Mark T. Uyeda, SEC 2025: What’s In Store (Nov. 19, 2024), *available at* <https://www.bloomberg.com/professional/insights/webinar/full-session-sec-2025-whats-in-store/>.

¹⁴ Robert Cook, *CAT Should Be Modified to Cease Collecting Personal Information on Retail Investors*, FINRA Blog (Jan. 17, 2025), *available at* <https://www.finra.org/media-center/blog/cat-should-be-modified-to-cease-collecting-personal-information-on-retail-investors>.

¹⁵ *Id.*

¹⁶ *See* CAT Exemptive Relief Order, *supra* n. 3.

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savings—a welcome outcome given the overall cost concerns associated with CAT and the minimal regulatory impact the removal of this information would have.”¹⁷

SIFMA agrees with these policymakers that a comprehensive review of the structure, operations, and funding of the CAT is urgently needed. But through the SROs’ recent series of fee filings, SIFMA members and investors are in the untenable position of paying unrecoverable CAT fees while the Commission rethinks the CAT and while the CAT and its Funding Model are being challenged in court.

The Commission should suspend the current SRO fee filings and ultimately disapprove them.

Following the Commission’s approval of the CAT Funding Model in September 2023, each of the SROs submitted CAT fee filings in January 2024 to charge Industry Members certain historical costs associated with operating the CAT. The Commission subsequently suspended these SRO filings to review whether they complied with the Exchange Act.¹⁸ In August and September 2024, prior to further Commission action following the suspensions, the SROs withdrew the January 2024 filings and submitted new fee proposals to recover historical CAT costs (“Historical CAT Assessment 1”)¹⁹ as well as proposed prospective fees associated with operating the CAT from July 16, 2024 through December 31, 2024 (“CAT Fee 2024-1”).²⁰ Unlike the January 2024 filings, the Commission did not suspend the August and September 2024 SRO CAT fee filings within 60 days. As a result, since September 2024, the SROs have assessed, charged, and invoiced Industry Members for historical and prospective CAT fees at the rates described in those filings.

SIFMA continues to believe the Commission should have suspended the August and September 2024 filings (i.e., both Historical CAT Assessment 1 and CAT Fee 2024-1), consistent with the Commission’s suspension of the initial historical CAT fee filings in January 2024, because the SROs did not demonstrate that the fee filings complied with the Exchange Act. As we noted in our prior letter,²¹ the SRO fee filings for Historical CAT Assessment 1 were

¹⁷ FINRA Blog, *supra* n. 14, at n. 7. FINRA also stated: “With respect to the overall cost of CAT, FINRA supports efforts to update the SEC-mandated CAT requirements to reduce costs, while maintaining CAT’s core functionality.” *Id.*, at n. 4.

¹⁸ On January 17, 2024, the Commission suspended the initial CAT fee proposals to collect certain historical CAT costs and instituted proceedings pursuant to Section 19(b)(3)(C) of the Exchange Act “to determine whether to approve or disapprove” the proposals. *See, e.g.*, 89 FR 10,887 (Feb. 13, 2024).

¹⁹ *See, e.g.*, Cboe EDGX Exchange, Inc., Release No. 34-100943, File No. SR-CboeEDGX-2024-054 (Sept. 5, 2024), 89 FR 74480 (Sept. 12, 2024).

²⁰ *See, e.g.*, Cboe EDGX Exchange, Inc., Release No. 34-100836, File No. SR-CboeEDGX-2024-052, (Aug. 27, 2024), 89 FR 71601 (Sept. 3, 2024).

²¹ Letter from Ellen Greene and Joe Corcoran, Managing Directors, SIFMA to Ms. Vanessa Countryman, Secretary, U.S. Securities and Exchange Commission re: Request for the Commission to Suspend, Institute Proceedings, and Disapprove the Self-Regulatory Organizations’ (“SROs”) Fee Proposals for Certain Prospective and Historical Costs

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nearly identical in substance to the suspended January 2024 fee filings, except for the exclusion of \$19,628,791 in costs, \$13,085,861 of which were not passed on to Industry Members.²² The Commission did not explain why this minor, largely unexplained reduction of the total historical CAT costs the SROs are attempting to recoup through the fee filings could have addressed the many problems with the January 2024 fee filings and whatever concerns the Commission had regarding the filings that led to their suspension. Therefore, the Commission also should have suspended CAT Fee 2024-1, as the SROs did not meet their burden under the Exchange Act to demonstrate that the fees are reasonable, equitably allocated, not unreasonably discriminatory, and not an undue burden on competition.²³

Similarly, the Commission should suspend the current fee filings, as they shed no more light on the proposed CAT fees than the January 2024 (or August/September 2024) fee filings, and they contain the same fundamental flaws such that the SROs have not demonstrated that the fees are consistent with the Exchange Act fee filing requirements.

The unexplained minor reduction in the overall total cost associated with Historical CAT Assessment 1 between the January 2024 and the August/September 2024 filings also demonstrates that the Commission must affirmatively review and either approve or disapprove the SROs' CAT fee filings and explain the Commission's reasoning for doing so. The SROs continue to file CAT fees with the Commission as immediately effective fee filings under Section 19(b)(3)(A) of the Exchange Act. As we have stated previously, this provision of the Exchange Act should not be used for the fees SROs are imposing on Industry Members to operate the CAT pursuant to the current Funding Model. Short circuiting the Commission's review and approval process also is inconsistent with the Commission's statements in the CAT Funding Model Approval Order that the Commission would meaningfully evaluate the reasonableness of the CAT budget and associated fees. Specifically, the Commission stated:

The Commission acknowledges a commenter's suggestion that the Commission

Related to the Consolidated Audit Trail ("CAT") (Aug. 29, 2024), available at <https://www.sifma.org/wp-content/uploads/2024/08/SIFMA-Comment-Leter-SRO-CAT-Fee-Filings-8.29.24.pdf>.

²² The January 2024 filings, which the Commission suspended, would have imposed on Industry Members a historical CAT assessment until \$225,125,740 was collected (out of \$337,688,610 in total historical CAT costs). See, e.g., 89 FR at 10187. The August 2024 filings, which the Commission did not suspend and allowed to go into effect, included Historical CAT Assessment 1 that will remain in place until \$212,039,879.34 is collected from Industry Members (out of \$318,059,819 in total historical CAT costs). There is little explanation in the filings for the approximately six percent reduction in the costs imposed on Industry Members from the January 2024 to August 2024 filings. See, e.g., 89 FR at 74072. As discussed, because the SROs filed all of the CAT fee filings to date as immediately effective rule filings under Section 19(b)(3)(A) of the Exchange Act, the Commission has not affirmatively evaluated the SROs' fees filings or explained its rationale for allowing the August 2024 Historical and Prospective fee filings to take effect.

²³ In addition, as we previously noted in our letters dated March 5, 2024 and August 29, 2024, the CAT Funding Model is also flawed because Industry Members are not able to reconcile the CAT invoices received from FINRA CAT, the Plan Processor, with their trading activity. Firms' ability to fully reconcile CAT fees charged should be a baseline requirement for the CAT Funding Model, yet this issue continues unaddressed.

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*perform its own analysis of the budget increases. Under the Proposed Amendment, the Participants must submit Rule 19b-4 filings that include a discussion of the budget that was used to calculate the Fee Rate. At such time the Commission, Industry Members and the public will have an opportunity to analyze the budget. This Order, which approves the Funding Model, does not weigh-in on the budgets or the resulting Fee Rates.*²⁴

Despite this statement, because the fee filings were filed under Section 19(b)(3)(A), the Commission still has not “weighed-in” on the CAT budget or the resulting Fee Rates, even though the Commission has mandated the existence of the CAT. We believe it is critical for the Commission to review the CAT’s operating budget and expenses and publicly explain whether the budget is reasonable. Immediately effective SRO fee filings should not be the vehicle the Commission uses to review the reasonableness of the CAT’s operating budget and the resulting fees charged to Industry Members.

The Commission should pause ongoing and future collection of CAT fees from Industry Members by granting Industry Members exemptive relief from portions of the CAT NMS Plan.

The Commission should pause all CAT fees (historical and prospective) so that it can review the CAT NMS Plan and the current funding model by granting Industry Members exemptive relief from relevant portions of the Plan. Section 36 of the Exchange Act gives the Commission broad powers to “conditionally or unconditionally exempt any person, security, or transaction . . . from any provision or provisions of [the Exchange Act] or of any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.”²⁵ Rule 608(e) of Regulation NMS similarly grants the Commission the authority to “exempt from [Rule 608], either unconditionally or on specified terms and conditions, any self-regulatory organization, member thereof, or specified security, if the Commission determines that such exemption is consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets and the removal of impediments to, and perfection of the mechanisms of, a national market system.”²⁶

The Commission can and should exercise these authorities without notice and comment rulemaking.²⁷ As Acting Chair Uyeda noted in a statement accompanying his vote against the CAT Funding Model, “much of the cost [of CAT] will be borne by investors in the capital

²⁴ 88 FR at 62655, n. 601.

²⁵ 15 U.S.C. 78mm(a)(1).

²⁶ 17 CFR 242.608(e).

²⁷ 17 C.F.R. § 240.01-12.

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markets[.]”²⁸ If the current, ongoing CAT fees are not suspended now, and the CAT is later reconsidered by the Commission or the CAT and/or its Funding Model is later invalidated by the 11th Circuit, the fees paid by Industry Members (and ultimately investors) will be unrecoverable.²⁹

Specifically, in addition to suspending the current set of SRO fee filings to impose CAT Fee 2025-1 (as well as any future CAT fees the SROs attempt to impose under the current funding model), the Commission should exercise its exemptive authority to suspend the imposition of fees on Industry Members through CAT Fee 2024-1 and CAT Historical Assessment 1, which are ongoing, by granting Industry Members exemptive relief from the portions of the CAT NMS Plan that require payment of CAT fees and permit SROs to penalize any nonpayment of fees.³⁰

Suspending all current CAT fees imposed on Industry Members will provide the Commission and interested parties with a clean slate to conduct a comprehensive review of the current structure and operations of the CAT, including its funding and current cost, without further harming Industry Members and investors by removing their requirement to pay unrecoverable fees. Such a review would allow the Commission to address concerns noted above expressed by Acting Chair Uyeda and Commissioner Peirce regarding the CAT.

The Commission’s exemptive relief from the reporting of PII of individual investors also calls into significant question whether the current CAT Funding Model and resulting SRO fees

²⁸ See Acting Chair Uyeda statement supra n. 11; see also, Commissioner Peirce statement supra n. 12 (noting that most of the CAT’s costs “ultimately will come out of investor pockets”).

²⁹ The Commission also should suspend all ongoing CAT fees because it would be unfairly discriminatory, unequitable, and unreasonable for some investors and Industry Members to pay for CAT fees now while similarly situated future investors and Industry Members would not have to pay if the CAT litigation is successful or the Commission takes a different approach to the CAT and/or its funding. In a recent suspension order regarding options regulatory fees (“ORF”), the Commission recognized the potential unfairness of such an outcome. See Suspension of and Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change to Waive the Options Regulatory Fee (ORF) for December 2024, Release No. 34-102274, File No. SR-NYSEARCA-2024-90 (Jan. 23, 2025), 90 FR 8413 at 8415 (“[T]he Exchange’s statements in support of the proposed rule change are general in nature and lack detail and specificity. For example, the proposal states that the proposed temporary waiver of the assessment of the ORF is equitable and not unfairly discriminatory because it would not place certain market participants at an unfair disadvantage and would apply equally to all OTP Holders on all their [relevant] transactions . . . However, the proposal lacks specificity regarding how assessing the ORF for participants that execute transactions from January 1– November 30, 2024, but waiving the assessment of the ORF for participants that execute transactions in December 2024 constitutes a reasonable, equitable, and not unfairly discriminatory fee when such ORF revenue is used to offset the Exchange’s 2024 regulatory expenses, including those incurred in connection with transactions occurring in December 2024.”).

³⁰ Specifically, the Commission should provide Industry Members exemptive relief from the portions of the CAT NMS Plan in sections 11.1, 11.3, and 11.4 requiring Industry Members to pay CAT fees, and the portions of sections 3.11 and 11.4 allowing SROs to penalize nonpayment of those fees.

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imposed on Industry Members are reasonable.³¹ The reporting, collection, and storage of individual customer information was one requirement of the CAT that significantly added to its complexity, security risk, and overall cost. The Commission’s action underscores that reporting, collection, and storage of PII is not necessary to efficiently and effectively conduct the surveillance to protect investors, the integrity of the markets, and the public interest.³² As FINRA readily acknowledges, this approach will not affect the SROs’ ability to surveil the markets and also would save significant costs that are currently being absorbed by the SROs and passed on to Industry Members and investors under the current CAT Funding Model.³³

As part of its comprehensive review of the effectiveness of CAT, the Commission also should consider whether the reporting requirements and scenarios addressed in the CAT NMS Plan at its inception in 2016 remain relevant. Without a comprehensive review of past decisions on the direction of CAT, Industry Members will continue to expend significant time and resources creating, implementing, and maintaining systems to report the information required by the CAT NMS Plan, even where such information may not be necessary or even possible.³⁴ For example, the Commission recently granted temporary conditional exemptive relief *for the fifth time* from the reporting requirements in the “CAT NMS Plan related to lifecycle linkages between customer orders and representative orders, for representative order scenarios in which Industry Members do not have a systematic or direct link between their order management systems and execution management systems.”³⁵ In this fifth order, the Commission stated that “additional time is needed to identify and evaluate appropriate long-term solutions for certain trading scenarios.”³⁶ These are the types of CAT reporting scenarios the Commission should analyze as part of a comprehensive review of CAT, with a view to eliminating all CAT reporting that is not necessary or possible.³⁷

³¹ As part of its review, the Commission could consider alternative funding models, including whether the CAT should be funded in whole or in part through the fines imposed in Commission enforcement actions, particularly those actions that originated with or were aided by CAT data.

³² As the Commission’s exemptive order notes, there may be customer-specific reporting elements included in the customer database that would be important to retain going forward, such as the CAT Customer ID (“CDID”), so that the information can be linked to the transaction database when a request and response is necessary.

³³ As FINRA notes, this approach also would reduce the risk that this information can be accessed for nefarious purposes.

³⁴ See, e.g., Letter from Howard Meyerson, Managing Director, Financial Information Forum, to Commission (Dec. 9, 2024), available at <https://fif.com/index.php/working-groups/category/271-commentletters?download=3057:fif-request-to-the-commission-for-a-six-month-extension-of-the-currentexemption-relating-to-cat-representative-order-linkage&view=category>.

³⁵ Order Granting Temporary Conditional Exemptive Relief, Pursuant to Section 36(a)(1) of the Securities Exchange Act of 1934 and Rule 608(e) of Regulation NMS Thereunder, From Certain Requirements of Appendix D, Section 3 of the National Market System Plan Governing the Consolidated Audit Trail, Release No. 34–102234 (Jan. 17, 2024), 90 FR 8078 (Jan. 23, 2025).

³⁶ Id.

³⁷ At a minimum, the Commission should make permanent all current exemptive relief orders related to CAT to

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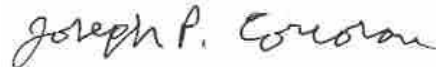
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As discussed above, we believe the Commission should suspend and ultimately disapprove the current SRO fee filings and exercise its exemptive authority to freeze all other CAT fees imposed on Industry Members under the current CAT Funding Model. Such actions will allow the Commission to address long-standing concerns held by policymakers regarding the CAT and its Funding Model while serving to protect Industry Members and investors from having to pay hundreds of millions of dollars in unrecoverable fees while the Commission rethinks the CAT or should the litigation against the CAT Funding Model be successful. If you have any questions or need any additional information, please contact Ellen Greene at (212) 313-1287 or Joe Corcoran at (202) 962-7383.

Sincerely,



Ellen Greene
Managing Director
Equities & Options Market Structure



Joseph Corcoran
Managing Director, Associate General
Counsel

Cc: The Hon. Mark T. Uyeda, Acting Chair
The Hon. Hester M. Peirce, Commissioner
The Hon. Caroline A. Crenshaw, Commissioner
Mr. David Saltiel, Acting Director, Division of Trading and Markets
Mr. David Shillman, Associate Director, Division of Trading and Markets

minimize costs and reduce collection and storage of data not presently necessary to create robust surveillance lifecycle events.

Ms. Vanessa Countryman
 Secretary
 U.S. Securities and Exchange Commission
 February 14, 2025

Appendix

SRO	SEC Release Number	File Number	Commission Publication Date	Federal Register Cite	Federal Register Publication Date
Financial Industry Regulatory Authority (FINRA)	34-102053	SR-FINRA-2024-023	12/30/2024	90 FR 700	01/06/25
Long-Term Stock Exchange, Inc. (LTSE)	34-102054	SR-LTSE-2024-11	12/30/2024	90 FR 714	01/06/25
MEMX LLC (MEMX)	34-102061	SR-MEMX-2024-49	12/31/2024	90 FR 715	01/06/25
Cboe BYX Exchange, Inc. (CboeBYX)	34-102064	SR-CboeBYX-2024-050	12/31/2024	90 FR 698	01/06/25
Cboe Exchange, Inc. (CBOE)	34-102063	SR-CBOE-2024-059	12/31/2024	90 FR 702	01/06/25
Cboe EDGX Exchange, Inc. (CboeEDGX)	34-102069	SR-CboeEDGX-2024-088	12/31/2024	90 FR 715	01/06/25
Cboe C2 Exchange, Inc. (C2)	34-102066	SR-C2-2024-025	12/31/2024	90 FR 701	01/06/25
Cboe BZX Exchange, Inc. (CboeBZX)	34-102067	SR-CboeBZX-2024-130	12/31/2024	90 FR 703	01/06/25
Cboe EDGA Exchange, Inc. (CboeEDGA)	34-102068	SR-CboeEDGA-2024-052	12/31/2024	90 FR 700	01/06/25
Investors Exchange LLC (IEX)	34-102072	SR-IEX-2024-29	1/2/2025	90 FR 1561	01/08/25
BOX Exchange LLC (BOX)	34-102073	SR-BOX-2024-31	1/2/2025	90 FR 1558	01/08/25
NYSE National, Inc. (NYSENAT)	34-102110	SR-NYSENAT-2024-34	1/3/2025	90 FR 2054	01/16/25
NYSE American LLC (NYSEAMER)	34-102109	SR-NYSEAMER-2024-81	1/3/2025	90 FR 2042	01/16/25
New York Stock Exchange LLC (NYSE)	34-102111	SR-NYSE-2024-86	1/3/2025	90 FR 2043	01/16/25

Ms. Vanessa Countryman
Secretary
U.S. Securities and Exchange Commission
February 14, 2025

SRO	SEC Release Number	File Number	Commission Publication Date	Federal Register Cite	Federal Register Publication Date
NYSE Arca (NYSEARCA)	34-102112	SR-NYSEARCA-2024-115	1/3/2025	90 FR 2053	01/16/25
NYSE Chicago, Inc. (NYSECHX)	34-102113	SR-NYSECHX-2024-38	1/3/2025	90 FR 2044	01/16/25
Miami International Securities Exchange, LLC (MIAX)	34-102153	SR-MIAX-2024-49	1/10/2025	90 FR 4821	01/16/25
MIAX SAPPHIRE, LLC (SAPPHIRE)	34-102150	SR-SAPPHIRE-2024-43	1/10/2025	90 FR 4818	01/16/25
MIAX Emerald, LLC (EMERALD)	34-102152	SR-EMERALD-2024-31	1/10/2025	90 FR 4819	01/16/25
MIAX PEARL, LLC (PEARL)	34-102154	SR-PEARL-2024-64	1/10/2025	90 FR 4824	1/16/25
Nasdaq BX, Inc. (BX)	34-102208	SR-BX-2025-001	1/16/2025	90 FR 8069	01/23/25
Nasdaq GEMX, LLC (GEMX)	34-102209	SR-GEMX-2025-01	1/16/2025	90 FR 8072	01/23/25
The Nasdaq Stock Market LLC (NASDAQ)	34-102213	SR-NASDAQ-2025-002	1/16/2025	90 FR 8077	01/23/25
Nasdaq ISE, LLC (ISE)	34-102210	SR-ISE-2025-01	1/16/2025	90 FR 8068	01/23/25
Nasdaq MRX, LLC (MRX)	34-102211	SR-MRX-2025-01	1/16/2025	90 FR 8060	01/23/25
Nasdaq PHLX LLC (Phlx)	34-102212	SR-PHLX-2025-01	1/16/2025	90 FR 8069	01/23/25