



MODERN MARKETS
INITIATIVE

June 21, 2022

By electronic mail to rule-comments@sec.gov

Vanessa Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-0609

Re: Notice of Filing of Amendment to the National Market System Plan Governing the Consolidated Audit Trail (*File No: 4-698*)

Dear Ms. Countryman:

Modern Markets Initiative (“MMI”), the education and advocacy organization devoted to the role of technological innovation in creating the world’s best markets, appreciates the opportunity to provide written comments to the U.S. Securities and Exchange Commission (the “SEC” or “Commission”) in connection with the Notice of Filing of Amendment to the National Market System Plan Governing the Consolidated Audit Trail (*File No: 4-698*)(or “the Proposed Funding Model”).¹ MMI stands in broad support of global regulatory efforts to establish holistic, data-driven policies to best ensure the stability of the markets for all participants, and to offer tools for the advancement of secure savings and investment through innovation.

By way of background, MMI members collectively employ more than 2000 people in over 50 markets globally, and account for approximately 20 percent of daily trading volume in the US equity markets. MMI’s members deploy automated trading technology systems to enhance efficiency of trading for retail and institutional investors.

¹Notice of Filing of Amendment to the National Market System Plan Governing the Consolidated Audit Trail (*File No: 4-698*)(or “the Proposed Funding Model” (June 1, 2022) at https://www.federalregister.gov/documents/2022/06/01/2022-11675/joint-industry-plan-notice-of-filing-of-amendment-to-the-national-market-system-plan-governing-the?utm_source=federalregister.gov&utm_medium=email&utm_campaign=subscription+mailing+list

Although the Proposed Funding Model is an improvement over prior versions, further clarification is needed for transparency, avoidance of conflict of interest, and accountability. MMI urges the SEC to convene a direct sit-down between the SROs and broker-clients, leveraging the collective expertise of industry, to streamline the process of providing feedback on practical aspects of implementation. Such a sit-down would help facilitate a more transparent conversation, and utilize the breadth of industry expertise with practical relevant experience, about building a thoughtful, resilient governance and funding model for the CAT.

Areas of Improvement and Needed Clarification

We respectfully submit that the following items should be further reviewed:

1. Proposed Funding Model Should Offer Language that Clarifies that SRO's May Not Pass on their 1/3rd of CAT Fees to Broker-Clients, in order to Improve Transparency and Accountability and Minimize Potential for Conflicts of Interest

Accountability and transparency on the fee structure of the CAT are vital for avoiding potential conflicts of interest. Under the Proposed Funding Model, the CAT fee is assessed such that on each trade, the Buyer, Seller, and responsible SRO will each pay 1/3rd of the CAT fees. MMI is concerned there is no language to prevent SROs from explicitly passing through their portion of fees to their broker-members. If SROs are allowed to pass through fees, we are concerned exchanges may, in fact, bear none of the cost and none of the responsibility for CAT. We believe the funding model will be most robust when key participants all have "skin in the game." The Proposed Funding Model states that it seeks to require a greater level of accountability, but should ensure it.

Notably, the Proposed Funding Model elaborates in several places that when a clearing firm is charged the fees, it is free to pass them through to its broker-clients, and the broker-clients are free to pass them through to the end account. However, the Proposed Funding Model is silent about whether the SROs may do the same.

MMI supports the inclusion of clear language that SROs may not pass through CAT fees, either directly or as an increase to Section 31 fee recapture.

2. Assignment of Fees Should be to Seller Only (Not Seller and Purchaser)

It is well-established in industry systems that Section 31 fees are assessed on sellers, but not purchasers. Charging the buyer as well as the seller would require industry participants to alter existing systems. Such industry-wide system modifications would come not only at great cost to industry, but also introduce complexity due to change, without stated benefit.

We believe the Proposed Funding Model should be modified to include a discussion of the cost-benefit analysis of incurring a CAT fee on both the purchase and sale of securities, or alternatively be amended to a fee solely on sellers, to conform with existing frameworks and business practices.

(3) Need for Clarification in Proposed Funding Model on How Executed Share Volume Will be Calculated for Each Reporter

The Proposed Funding Model does not include an explanation of how Executed Share Volume will be calculated.² We believe this is critical to provide clarity on how the model would be implemented and strongly urge this to be included in a revision of the Proposed Funding Model. There should be a clear set of “business rules” for calculating. The rule should require FINRA CAT to publish a detailed specification for calculating the numbers. Industry firms should have an opportunity to review both in detail, before any billing takes place. For example, factors in such a calculation might include:

- CAT requires multiple different versions of “a trade” to be reported to the repository, by various Reporters. (For example, an MEOT reports an original trade and matches with the consolidated tape. An MEOF report captures the fulfillment

² The Proposed Funding Model lacks an explanation of how the SROs plan to calculate the executed share volume for each reporter. The Proposed Funding Model should be required to state this, such that FCAT has clear guidance on this calculation. MMI believes that the executed share volume should count only MEOT shares. However, further clarification is needed on (1) how do the SROs attribute those shares to each reporter? (2) Who do they consider to be the Buyer and Seller on each share? (3) How may the SROs know, *accurately*, who is the clearing firm for each of those shares? For example, what if the CAT reporter has multiple clearing firms?

of a customer order. Allocation events report the movement of shares to the account of the beneficial owner of a trade.) Which of these events would be used to calculate any member's fees, and how will the Operating Committee ensure that no over- or under-counting occurs?

- How will the Operating Committee and/or FINRA CAT determine the clearing firm for the seller and/or buyer on each share traded? We believe such a determination is often not clear cut and requires explicit guidance. MMI requests that the Operating Committee and FINRA CAT document this in detail.
- Following on the above, we would like to see detail on how calculations are proposed to be made if the buyer or seller operates with multiple clearing firms.
- The Operating Committee should provide estimated fees per CAT Reporter, as was provided in previous proposals, so that Reporters may see the impact. Further, since the proposal is to bill the Reporter's clearing firm, the estimates should indicate which clearing firm(s) would be charged for which portion(s) of the Reporter's traded shares. (The current proposal instead shows estimated fees per clearing firm. Since the proposal anticipates that clearing firms will likely pass through the fees to their broker clients, this is not particularly useful.)

(4) Need for Protocol for Authentication and Validation of Fees

We strongly recommend the Proposed Funding Model set forth a requirement that the Operating Committee and FINRA CAT will provide detailed data to each clearing firm and to each CAT reporter so that fees may be validated. Such data should be in a machine-readable format and provided in a timely manner each month. CAT reporters should be able to download these files in the same manner as all other CAT "feedback" files.

Industry participants have previously voiced concerns about the need for greater clarity and accountability in Section 31 fees. Often, the brokers charged Section 31 fees by SROs are not the end-customer, and therefore brokers must rebill those fees. If the first broker charged is not given detailed information from the SRO (or, in this case, from FINRA CAT and the Operating Committee), then the rebilling process is fraught with errors. The current process, with prior accumulation of an "unavailable balance" of over \$6 billion due in part to prior historical features of its Section 31 fee structure,

is inefficient.³ MMI urges the Commission to mandate mitigation of this problem for Section 31 fees at the same time, as the same solution could be used.

The Proposed Funding Model should set forth parameters to avoid inefficiencies in the calculation of fees that would result in a mismatch between fees collected and fees required to cover the cost of operating the CAT.

The Proposed Funding Model should set forth clear procedures to avoid miscollection of fees and should provide industry participants the necessary data and metrics to be able to validate and authenticate fees.

Conclusion

MMI supports the overall objectives of the CAT and provides the comment above in an effort to move the process to completion while ensuring a fair and equitable funding model. To that end, MMI believes discussions about the Proposed Funding Model should accelerate by leveraging the collective expertise of exchanges, FINRA, and other industry members.

Thank you for your consideration.

Very truly yours,



Kirsten Wegner
Chief Executive Officer
Modern Markets Initiative

³ See GAO Report, Federal User Fees, (2015), page 20 at <https://www.gao.gov/assets/680/672572.pdf>