



December 14, 2022

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

**Re: *Joint Industry Plan; Joint Industry Plan; Notice of Filing of Partial Amendment No. 1 to an Amendment to the National Market System Plan Governing the Consolidated Audit Trail; File No. 4-698***

Dear Ms. Countryman:

The Securities Industry and Financial Markets Association (“SIFMA”)<sup>1</sup> is writing to the U.S. Securities and Exchange Commission (the “Commission”) to express our strong objections to the process of allowing the self-regulatory organizations (“SROs”) to significantly and materially change their previous May 13, 2022 proposal (“May Proposal”) to establish a revised funding model (“Executed Share Model”)<sup>2</sup> for the consolidated audit trail (“CAT”) through a letter submitted to the Commission on November 16, 2022 (“November Submission”).<sup>3</sup> As described below, by including significant changes to the Industry Member responsible for paying CAT Fees and the CAT Fee calculation methodology, as well as omitting critical information necessary to understand the changed model, the November Submission effectively creates a new Executed Share Model (“New Executed Share Model”) that should be treated as an entirely new amendment to the National Market System Plan Governing the Consolidated Audit Trail (the “CAT NMS Plan”). We therefore request that Commission require the SROs to withdraw the May Proposal and re-file the New Executed Share Model contemplated in the November Submission as a new proposed amendment to the CAT NMS Plan under Rule 608 of Regulation NMS.<sup>4</sup> This would restart the period for consideration of the New Executed Share Model under

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<sup>1</sup> 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>.

<sup>2</sup> See Release No. 34-94984 (May 25, 2022), 87 FR 33226 (June 1, 2022) (May Proposal to establish the Executed Share Model).

<sup>3</sup> See Release No. 34-96394 (November 28, 2022), 87 FR 74183 (December 2, 2022) (November Submission).

<sup>4</sup> Capitalized terms not otherwise defined in this letter have the same meanings as they do in the CAT NMS Plan, the May Proposal, and/or the November Submission.

Rule 608(b). Absent such a step, the public will not have an opportunity to fully consider and meaningfully comment on the New Executed Share Model. Notwithstanding this flawed process, we plan to submit a separate comment letter in which we will endeavor to provide substantive comments on the November Submission with the understanding that we may not be able to identify all of our concerns under these circumstances.

The SROs as the participants in the CAT NMS Plan (“Participants”) filed the November Submission as a “Partial Amendment” to the May Proposal and the Commission has published the November Submission for very brief 21-day comment period in the Federal Register. The November Submission would significantly and materially change the Executed Share Model contemplated in the May Proposal by, among other things, completely changing the payment obligation for CAT Fees from Industry Members that are clearing brokers to Industry Members that are executing brokers. While we support changing the payment obligation to executing brokers,<sup>5</sup> as described below, significant details are lacking that would allow Industry Members to understand how this change would impact them. The November Submission also would change the look-back time period used to calculate CAT Fees from 6 to 12 months and would now require that the CAT Fees be evaluated every 6 months to ensure that they continue to be designed to recover solely CAT costs. The November Submission also raises a number of significant questions, such as who would be treated as an executing broker in a transaction and how CAT Fees would be assessed for transactions on an alternative trading system (“ATS”), that are unanswered in the submission.

Rule 608(b) of Regulation NMS sets forth the process and timing for Commission consideration and public review of proposed amendments to NMS plans. Rule 608(b) of Regulation NMS and related guidance on the rule do not provide a clear standard of when a proposed change to a currently-pending proposed amendment to an NMS plan effectively requires the NMS plan participants to withdraw the currently-pending proposed amendment and refile the proposed change as a completely new amendment to the NMS plan under Rule 608.<sup>6</sup> We believe that such a standard exists and that it is based on the materiality of the proposed change. Otherwise, the participants could theoretically file an initial amendment to an NMS plan and then completely change it during the period of Commission consideration of it under Rule 608(b), depriving the public of the opportunity to fully consider and meaningfully comment on the contemplated change.

By profoundly altering the Executed Share Model through the November Submission, the Participants have triggered this standard. As noted, among the significant changes made by the SROs in the New Executed Share Model is a change that we have supported to now impose the obligation to pay Industry Members’ share of CAT costs on executing brokers rather than clearing brokers. In connection with this new obligation, however, the SROs have provided no data in the November Submission that would give Industry Members acting as executing brokers the opportunity or ability to understand the costs they would face under the New Executed Share Model, which is something the SROs have provided in the past in connection with a prior CAT

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<sup>5</sup> See (<https://www.sec.gov/comments/4-698/4698-20145239-310561.pdf>).

<sup>6</sup> See, e.g., Release No. 34-89618 (August 19, 2020), 85 FR 65470 (October 15, 2020).

fee filing.<sup>7</sup> Furthermore, while the SROs suggest that Industry Members could calculate their own fees using their own submitted CAT data, they have failed to provide any definition on who would be treated as an “executing broker” in a transaction that would facilitate such an undertaking.<sup>8</sup> A clear definition is critical for Industry Members to understand when and in what situations they would be assessed costs under the New Executed Share Model. Similarly, the SROs have not addressed at all how the CAT Fees for transactions executed on an ATS would be assessed, such as which party to an ATS transaction would be treated as the “executing broker(s).” Based on the significance of the changes in the November Submission as well as the multitude of unanswered questions, the Participants should be required to withdraw the May Proposal and re-file the New Executed Share Model as a new proposed amendment to the CAT NMS Plan

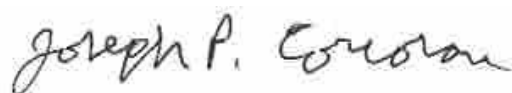
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SIFMA appreciates the opportunity to submit this comment letter on the November Submission that would establish the New Executed Share Model. As the foregoing demonstrates, the SROs through the November Submission have materially and significantly altered the Executed Share Model such that they should be required to withdraw the May Proposal and re-file the New Executed Share Model as a new amendment to the CAT NMS Plan under Rule 608 of Regulation NMS. Absent such a step, Industry Members and other affected members of the public will be deprived of the opportunity to fully consider and meaningfully comment on the New Executed Share Model. If you have any questions or require additional information, please do not hesitate to contact us by calling Ellen Greene at [REDACTED] or Joe Corcoran at [REDACTED].

Sincerely,



Ellen Greene  
Managing Director  
Equities & Options Market Structure



Joseph Corcoran  
Managing Director, Associate General Counsel  
SIFMA

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<sup>7</sup> See Release No. 34-91555 (April 14, 2021), 86 FR 21050.

<sup>8</sup> The term “executing broker” is used in a variety of contexts in the industry and is sometimes applied to various brokers who have a role in the lifespan of a single order.

Cc: The Hon. Gary Gensler, Chair  
The Hon. Hester M. Peirce, Commissioner  
The Hon. Caroline A. Crenshaw, Commissioner  
The Hon. Mark T. Uyeda  
The Hon. Jaime Lizarraga  
Mr. Haoxiang Zhu, Director, Division of Trading and Markets