



January 3, 2023

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; File No. 4-698*

Dear Ms. Countryman:

DASH Financial Technologies (“DASH”) is writing to the U.S. Securities and Exchange Commission (the “Commission”) to respectfully express our concerns with the revised funding model (“Executed Share Model”)¹ for the consolidated audit trail (“CAT NMS Plan” or “Plan”) and our strong objections to the letter submitted to the Commission on November 16, 2022, by self-regulatory organizations (“SROs”) (the “November Submission”).²

Fundamentally, DASH agrees with SIFMA’s conclusion that the extensive changes included by the SROs in their November Submission should be treated as an entirely new amendment to the Plan.³ Unlike SIFMA, we believe that positioning Executing Brokers as the collection agents for the Industry Members’ share of CAT costs is shortsighted, inefficient, and could impose material harm on small to medium-sized Executing Brokers. These significant changes have been proposed without providing any economic study or historical analysis as to their impact on Executing Brokers.

In DASH’s view, the proposed CAT Fee for Industry Members should be categorized as a Regulatory Fee, comparable to the Options Regulatory Fee (“ORF”). Generally, Regulatory Fees are accounted for and collected at settlement by the client’s Clearing Firm. This structure or mechanism is in place with ORF, OCC, and SEC-based levies. Clearing Firms are best suited to process the collection of fees as it can occur at trade settlement and the cost is ultimately borne by the end beneficiary of each transaction. This seems prudent from a logistical and efficiency perspective and, in our opinion, also introduces the least financial risk to the industry today. To change this paradigm by obligating Executing Brokers to collect this fee will place an undue burden on these smaller firms and is a step backward for the industry.

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

² See Release No. 34-96394 (November 28, 2022), 87 FR 74183 (December 2, 2022).

³ See Letter from SIFMA, Joseph Corcoran, SIFMA Managing Director, et al., commenting on the Joint Industry Plan CAT, to Vanessa Countryman, Secretary, Commission, dated December 14, 2022 (“SIFMA Letter”).

Executing Brokers have already invested significant time and money in building systems capable of effectively reporting CAT messages. This group already bears much of the regulatory burden in an extremely volatile market environment and, moreover, carries the ongoing responsibility of reporting accurate data in a timely manner. DASH believes in a transparent and efficient regulatory environment, and, thus, supports reporting CAT as a fundamental expectation of today's industry practices. Imposing on Executing Brokers the burden of CAT fee collection for Industry Members inhibits innovation and unduly restricts Executing Brokers who are not well positioned to facilitate settlement of these funds.

This decision also raises a competitive concern. By inserting the Executing Broker into the fee collection process, the Executing Broker is then required to decide whether this fee can be absorbed or passed through to the client. This competitive decision appears in direct contravention of the Securities Exchange Act of 1934 ("Exchange Act"). An environment where Executing Brokers are required to consider regulatory fees as a business consideration is untenable. On this basis alone, the proposal should be rejected.

Furthermore, it is commonplace for one order to traverse multiple Executing Brokers prior to execution at an Exchange. This would burden each Executing Broker to account for this CAT fee and invoice each respective Executing Broker in the chain. Not only would this process be incredibly inefficient and burdensome on the Executing Brokers, but it could also have a deleterious effect on Broker Net Capital positions and introduce financial risk into the system. Executing Brokers are required to adhere to a Net Capital Standard pursuant to FINRA rule 15c3-1.

CAT Fees will generate large cost liabilities on some firms; the firms will be forced to recoup these costs by passing them on to their clients, either in the form of higher commission rates or as a separate transactional fee. Using CMTA commission invoicing and/or SEC 31(b) fees in a broker-to-broker relationship as a proxy, these invoices are generally paid well after the 60-day milestone to qualify the receivable as "good capital." As such, we expect the Net Capital of small and medium-sized Brokers, especially those with healthy businesses, will be impacted significantly. It is also worth noting that Executing Brokers and Clearing Brokers may have competing execution service offerings. Accordingly, requiring Executing Brokers to facilitate the invoicing process of the CAT Fee through the client's Clearing Broker may present a conflict between firms.

As currently proposed in the Executed Share Model, Industry Participants are allocated two-thirds of the ongoing CAT Fee expense; the balance of one-third is allocated to the Participants or SROs. It is worth noting here that DASH expects SROs to adopt new rules, effectively pushing the majority (if not all) of the Participant expense onto the Executing Brokers in the future. Thus, as the SROs' proposed amendment is currently written, it seems plausible that all the CAT Fee expense will be processed by Executing Brokers in the future. This further exacerbates the burden on Executing Brokers and compounds the inefficiencies in the SROs' proposal.

NEW JERSEY
70 Hudson Street
5th Floor
Jersey City, NJ 07302
Phone: (888) 569-3274



CHICAGO
200 South Wacker Drive
Suite 2450
Chicago, IL 60606
Phone: (312) 986-2006

In conclusion, we strongly object to “The New Executed Share Model” and believe the impact this proposal will have on Executing Brokers will cause significant strain on otherwise innovative firms. DASH suggests that the industry consider the structure or mechanism already in place for Regulatory Fees, the efficiencies afforded by the current structure, and the resulting alleviation of risk. Furthermore, DASH welcomes the opportunity to be actively involved in future SRO/Participant conversations and advisory committees on this topic. We believe the Executing Broker segment has been underrepresented in the CAT Fee conversation to date and the current proposal is indicative of that shortcoming.

Sincerely,

A handwritten signature in black ink, appearing to read "Timothy Miller", is positioned above a horizontal blue line.

[Timothy Miller \(Jan 3, 2023 12:30 CST\)](#)

Timothy Miller
Chief Operating Officer
DASH Financial Technologies LLC