

FINANCIAL INFORMATION FORUM

December 6, 2024

By electronic mail to rule-comments@sec.gov

Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090
Attn: Secretary

Re: File Number 4-698: Order Instituting Proceedings to Determine Whether to Approve or Disapprove an Amendment to the National Market System Plan Governing the Consolidated Audit Trail Regarding Reporting of Certain Verbal Activity, Floor and Upstairs Activity

Dear Secretary,

The Financial Information Forum (“FIF”)¹ appreciates the opportunity to comment on the Order Instituting Proceedings (the “OIP”) published by the Securities and Exchange Commission (the “Commission”) on November 18, 2024 to determine whether to approve or disapprove an amendment to the National Market System Plan Governing the Consolidated Audit Trail (the “CAT NMS Plan”) regarding reporting of certain verbal floor and upstairs activity (the “rule filing”).² The rule filing, which was filed by Consolidated Audit Trail, LLC on behalf of the Participants of the CAT NMS plan (the “CAT Plan Participants”) on August 2, 2024, proposes to amend the CAT NMS Plan to permanently exclude certain verbal activity described in the rule filing (“Exempt Activities”) from reporting to the consolidated audit trail (“CAT”).³ On August 14, 2024, the Commission published a Notice of Filing to

¹ FIF (www.fif.com) was formed in 1996 to provide a centralized source of information on the implementation issues that impact the securities industry across the order lifecycle. Our participants include broker-dealers, exchanges, back office service bureaus, and market data, regulatory reporting and other technology vendors in the securities industry. Through topic-oriented working groups, FIF participants focus on critical issues and productive solutions to technology developments, regulatory initiatives, and other industry changes.

² Securities Exchange Act Release No. 101648 (Nov. 18, 2024), 89 FR 92726 (Nov. 22, 2024) (Joint Industry Plan; Order Instituting Proceedings To Determine Whether To Approve or Disapprove an Amendment to the National Market System Plan Governing the Consolidated Audit Trail Regarding Reporting of Certain Verbal Activity, Floor and Upstairs Activity).

³ Letter from Brandon Becker, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Securities and Exchange Commission (Aug. 2, 2024), available at <https://catnmsplan.com/sites/default/files/2024-08/08.02.24-Proposed-Amendment-to-CAT-NMS-Plan-Verbal-Quotes.pdf>.

seek comment on the rule filing.⁴ On September 9, 2024, FIF submitted a comment letter in support of the rule filing.⁵

For the same reasons as discussed in the September 2024 FIF comment letter, FIF members continue to support the amendment to the CAT NMS Plan proposed by the CAT Plan Participants to permanently exclude the Exempt Activities from CAT reporting. In the prior comment letter, FIF members explain that the Exempt Activities represent pre-order communications because a trade execution cannot result from any Exempt Activity unless there is an intervening order. Any such intervening order would be reportable to CAT, which reduces the surveillance value of the pre-order communications. This also raises significant doubts as to how a pre-order communication could be considered an “order” subject to CAT reporting, as defined in Commission Rule 613(j)(8).⁶

The prior comment letter also presented the following Table 1 to highlight the lower surveillance value and extremely high cost of mandating that these pre-order communications be reported to CAT:

Table 1

	Base level cost	Very high cost	Extremely high cost
Higher surveillance value	Electronic orders	Manual orders	
Lower surveillance value		Electronic pre-order communications	Manual pre-order communications

These extremely high costs include (i) compliance costs previously estimated by FIF members at more than \$4.4 billion per year (unless market participants determine to cease engaging in this trading activity),⁷ and (ii) the likelihood of significant disruption to floor trading and upstairs trading activity that has developed over many years. Trading on the New York Stock Exchange (including Exempt Activities) goes back to 1792.⁸ OTC options trading in the United States (including Exempt Activities) similarly dates back to the late 18th century, and the Chicago Board Options Exchange recently celebrated the 50th anniversary of exchange-traded options (including Exempt Activities).⁹

⁴ Securities Exchange Act Release No. 100727 (Aug. 14, 2024), 89 FR 67499 (Aug. 20, 2024) (Joint Industry Plan; Notice of Filing of Amendment to the National Market System Plan Governing the Consolidated Audit Trail Regarding Reporting of Certain Verbal Activity, Floor and Upstairs Activity).

⁵ Available at <https://www.sec.gov/comments/4-698/4698-518035-1490942.pdf>.

⁶ 17 CFR §242.613(j)(8).

⁷ Letter from FIF to the Commission (Dec. 16, 2022), available at <https://fif.com/index.php/working-groups/category/271-comment-letters?download=2668:fif-letter-to-the-sec-on-cat-reporting-for-verbal-activity&start=60&view=category>.

⁸ See, for example, <https://www.nyse.com/history-of-nyse>.

⁹ Howard Baker, “50 Years of Exchange-Traded Options, Cboe Marks Golden Anniversary,” *Financial History* (Spring 2023), available at <https://www.moaf.org/publications-collections/financial-history-magazine/145/res/id=Attachments/index=0/Cboe%2050th%20Anniversary.pdf>, at 20.

FIF members note more generally that with billions of records reported to CAT on average for each trading day, CAT is not cost efficient for manual processes. While manual orders are reportable to CAT, there are currently a number of CAT reporting requirements that the Commission is considering that will all involve costly manual processes. These include the following:

- The requirement to report Exempt Activities (as discussed in this comment letter)
- The requirement for a routing firm to report default settings applied by a receiving firm¹⁰
- Certain requirements relating to linkage of representative orders
- The requirement to report RFQ responses that are not actionable.

The CAT Plan Participants have estimated total CAT operating expenses for 2025 of \$248,846, 076.¹¹ This represents a 14.8% increase over the 2024 estimated CAT operating expenses for 2024.¹² This type of annual cost increase is not sustainable over the long-term. In conducting any cost-benefit analysis for CAT, it is important for the Commission to consider both the costs of operating the CAT system and the costs incurred by industry members for CAT reporting. The Commission should focus on ways to reduce CAT operating costs (for example, through reconsideration of the current mandated CAT processing timeframes) prior to introducing any new mandates to CAT (such as the requirement to report Exempt Activities) that would involve significant costs for industry members (and ultimately customers), including disruption of current trading practices that have developed over many years.

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FIF appreciates the opportunity to comment on the rule filing and the OIP. If you would like clarification on any of the items discussed in this letter or would like to discuss further, please contact me at howard.meyerson@fif.com.

Very truly yours,

/s/ Howard Meyerson

Howard Meyerson
Managing Director, Financial Information Forum

¹⁰ This requirement is currently in effect. The Commission has granted the CAT Plan Participants partial exemptive relief from this requirement. Exchange Act Release No. 98848 (Nov. 2, 2023), 88 FR 77128 (Nov. 8, 2023). FIF members have requested that the Commission grant additional exemptive relief from this requirement.

¹¹ Consolidated Audit Trail, LLC, 2025 Financial and Operating Budget, available at https://catnmsplan.com/sites/default/files/2024-11/11.20.24-CAT-LLC-2025-Financial_and_Operating-Budget.pdf.

¹² Consolidated Audit Trail, LLC, 2024 Financial and Operating Budget - Mid-Year Update - July 2024, available at https://catnmsplan.com/sites/default/files/2024-08/07.31.24-CAT-LLC-2024-Financial_and_Operating-Budget.pdf.