CITADEL | Securities

January 30, 2026

Ms. Vanessa A. Countryman
Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549–1090

Re: 2025 CAT Funding Proposal (File No. 4-698)

Citadel Securities appreciates the opportunity to provide further comment to the Securities and Exchange Commission (the "Commission") on the CAT Operating Committee's attempt to reinstate the unlawful 2023 funding order ("2023 Order"). In our previous letter,[1] we explained how, among other problems, the 2025 Funding Proposal[2] fails to address the defects identified in the Eleventh Circuit's decision invalidating the 2023 Order[3] and that new fees must not be assessed until the Commission completes its comprehensive review of the CAT.

The Commission has since received additional comments on the 2025 Funding Proposal.[4] Many of those letters simply incorporate by reference arguments contained in prior letters.[5] Certain points, however, require additional response.

I. The CAT Funding Proposal Exceeds the Commission's Authority

Our first letter detailed how the 2025 Funding Proposal exceeds the Commission's authority in multiple respects. Once again, CAT LLC makes no attempt to defend the legality of the multi-billion-dollar surveillance system that it is operating for the Commission and for which it is seeking to collect hundreds of millions of dollars in fees annually from broker-dealers and their customers. Before approving the 2025 Funding Proposal, the Commission must address this critically important issue, as it has a "duty to examine key assumptions"—including ones "regarding [its] statutory authority"—"as part of its affirmative burden of promulgating and explaining a non-arbitrary, non-capricious rule.'"[6]

[1] Letter from Citadel Securities (Oct. 17, 2025), https://www.sec.gov/comments/4-698/4698-669947-2018874.pdf.

[2] 90 FR 44910 (Sept. 17) at 44911, https://www.govinfo.gov/content/pkg/FR-2025-09-17/pdf/2025-17929.pdf.

[3] *Am. Sec. Ass'n, v. SEC*, 147 F.4th 1264 (11th Cir. 2025) (*ASA*).

[4] *See*, *e.g.,* Letter from CAT Operating Committee (Jan. 14, 2026) ("CAT LLC Reserve Letter"), https://www.sec.gov/comments/4-698/4698-692067-2162194.pdf; Letter from CAT Operating Committee (Dec. 18, 2025) ("CAT LLC Letter"), https://www.sec.gov/comments/4-698/4698-685927-2125515.pdf; Letter from Cboe Exchanges (Oct. 31, 2025) ("Cboe Letter"), https://www.sec.gov/comments/4-698/4698-672527-2038054.pdf; Letter from FINRA (Oct. 17, 2025) ("FINRA Letter"), https://www.sec.gov/comments/4-698/4698-670027-2019234.pdf.

[5] Citadel Securities incorporates and restates the comments set forth in all of its prior submissions regarding the CAT.

[6] *Am. Fuel & Petrochemical Mfrs. v. EPA*, 937 F.3d 559, 589 (D.C. Cir. 2019) (cleaned up).

II. The CAT Funding Proposal Does Not Remedy The Commission's Prior Deficient Economic Analysis

Our first letter detailed key aspects of the Commission's 2016 economic analysis that must be updated to reflect "real-world numbers," [7] all of which directly relate to the fundamental question as to whether the 2025 Funding Proposal is consistent with the Exchange Act. Information and data from CAT LLC is essential to this analysis, including with respect to reporting volumes, technological design choices, overall budget, and how fees were allocated in practice under the invalidated 2023 Order. And yet CAT LLC continues to refuse to publicly disclose this information, instead choosing to simply refer back to outdated letters that unsuccessfully attempted to justify the unlawful 2023 Order.[8] In doing so, CAT LLC further underscores that the 2025 Funding Proposal is merely a thinly veiled attempt to reinstate the unlawful 2023 Order.

To accurately assess the economic implications of this specific proposal, the Commission must obtain detailed information from CAT LLC, including:

- Key metrics relating to the system's overall costs, such as (i) the number of executed transactions per day (subdivided by equities and options), (ii) the number of quotation messages per day (subdivided by equities and options), (iii) the number of CAT records created per day, (iv) the number of unique market participants who have transaction records stored in the CAT system, and (v) the usage-related costs (e.g. due to data requests made by the Commission or the SROs) that are now being incurred.

- Why the Commission's 2016 cost estimates were so inaccurate and the key cost drivers that led to the dramatic increase. This should be informed by the cost savings analysis that CAT LLC has undertaken in connection with recent Commission efforts to reduce overall costs.[9] Simply attributing those cost overruns to an unanticipated increase in market volume is not accurate or sufficient, as we are now witnessing the CAT budget start to decrease as a result of addressing certain key cost drivers (such as options market maker quotes and data retention requirements), despite the persistence of record trading volumes.

- Estimated future trajectory of the CAT budget, including (i) an average annual rate of increase, (ii) costs associated with the implementation of approved (but not yet implemented) Commission rules, such as the Tick Sizes and Access Fees rule (which is expected to significantly increase equities message traffic), [10] and (iii) costs associated with the implementation of approved (but not yet implemented) SRO rules, such as the launch of newly approved equities and options exchanges (e.g. 24X Exchange, the Texas Stock Exchange, the Green Impact Exchange, and IEX Options)

[7] *ASA*, 147 F.4th at 1269.

[8] CAT LLC Letter at FN 10.

[9] *See, e.g.,* CAT Cost Savings Amendment, Release No. 34-104504 (Dec. 23, 2025), https://www.sec.gov/files/rules/sro/nms/2025/34-104504.pdf.

[10] 89 FR 81620 (Oct. 8, 2024), available at: https://www.govinfo.gov/content/pkg/FR-2024-10-08/pdf/2024-21867.pdf.

and the launch of overnight on-exchange trading (both of which will significantly increase equities and options message traffic).

- How fees were allocated in practice among broker-dealers under the 2023 Order, including (i) the total number of broker-dealers invoiced by CAT LLC, (ii) how fees were allocated across equities and options trading (and whether this was reasonable and equitable based on estimated CAT system costs associated with each),[11] (iii) how fees were allocated to retail broker-dealers (and whether this unfairly weighted trading in low-priced NMS stocks), (iv) how fees were allocated to market makers (and whether this was reasonable and equitable based on the key CAT cost drivers).

As the above list illustrates, much has changed since the Commission approved the 2023 Order – even the number of SROs has meaningfully increased, and yet this funding model would reduce the per-SRO allocation while offloading the same percentage of total costs to broker-dealers and their customers. The Commission must rigorously assess the economic implications of the proposed funding model, taking into account related costs already being borne by broker-dealers, including (i) annual CAT reporting costs and (ii) reporting and compliance costs related to the Electronic Blue Sheets system, which is continuing to operate alongside the CAT. After completing the required economic analysis, it will be clear that allocating at least two-thirds of CAT system costs (and likely far more as detailed immediately below) to broker-dealers and their customers in the manner contemplated by the 2025 Funding Proposal is not reasonable and equitable under the Exchange Act.

III. The CAT Funding Proposal Does Not Sufficiently Prohibit SRO Pass-Throughs

Our first letter explained how the 2025 Funding Proposal leaves the door wide open for SROs to pass through their allocated portion of CAT fees to broker-dealers: by prohibiting only a "new fee" for pass-throughs, the Proposal leaves unchanged language in the CAT NMS Plan allowing SROs to "subsume [CAT costs] *in other fees or assessments*."[12] Preserving that method for pass-throughs flouts the Eleventh Circuit's ruling that the Commission must either (a) prohibit SRO pass-throughs altogether or (b) acknowledge that SROs may pass-through up to 100% of the entire CAT budget to broker-dealers and their customers, explain that departure from the Commission's longstanding approach to funding the CAT, and account for SRO pass-throughs of up to 100% when considering whether the 2025 Funding Proposal is consistent with the Exchange Act.[13]

Rather than fix the problem, the CAT Operating Committee has dug in its heels. The 2025 Funding Proposal offers no explanation for why SROs should be permitted to pass-through 100% of the entire CAT budget, nor does it offer the Commission a way to account for the economic effects of SRO pass-throughs. Rather, it asks the Commission to pay lip service to the fallacy that SRO pass-throughs will be stemmed by prohibiting them via a "new fee," while silently allowing them through other unmodified language in the CAT NMS Plan. That is the exact opposite of a

[11] For example, CAT LLC has found that more efficiently processing and storing options market maker quotes has resulted in "better than anticipated" savings of "approximately $30 million in the first year." *Supra* note 9 at FN 8.

[12] Citadel Securities Letter at 9 (internal quotation omitted).

[13] S*ee ASA*, 147 F.4th at 1274–75, 1277; FINRA Letter at 10–11.

"reasoned justification or explanation" for the sort of "about-face" the CAT Operating Committee is again urging the Commission to adopt.[14]

The CAT Operating Committee also insists that the Eleventh Circuit was concerned only with SRO pass-throughs via *new* fees because the court "specifically cited the CAT cost recovery fees implemented by FINRA to directly pass-through to its members 100% of the CAT fees allocated to FINRA."[15] That contention misreads the Eleventh Circuit's decision. While the court cited FINRA's new fee as an example of an SRO pass-through, the relevant problem in the 2023 Order was that it shifted from "a *mandate* that both self-regulatory organizations and broker-dealers fund the CAT to an *allowance* for self-regulatory organizations to pass through 100% of their CAT costs."[16] The problem is, therefore, permitting SRO pass-throughs *in general*, and that problem exists whether those pass-throughs are implemented through new fees or through inflation of extant ones. Both methods effectively nullify any nominal allocation the Commission assigns to the SROs and leaves broker-dealers and their customers holding the bag. So, just as the unlawful 2023 Order did, the 2025 Funding Proposal would make the longstanding requirement that both SROs and broker-dealers bear the costs of the CAT "quietly vanish[]."[17]

Other comments by members of the CAT Operating Committee make clear that the largest SROs fully expect to pass-through any fees purportedly allocated to them under the 2025 Funding Proposal. Indeed, both FINRA and the Cboe Exchanges contend that CAT LLC cannot restrict individual SRO pass-throughs at all.[18] Even if that were true, the Exchange Act and Rule 608 clearly authorize *the Commission* to prohibit individual SRO pass-throughs. Sections 6(b)(4) and 15A(b)(5) of the Exchange Act require SRO rules to provide for "reasonable … fees."[19] And Rule 608 empowers the Commission to make "changes" to and impose "conditions" on NMS Plan amendments "as the Commission may deem necessary or appropriate," if it finds the amendment is "necessary or appropriate in the public interest … or otherwise in furtherance of the purposes of the Act."[20] The Commission may, therefore, conclude that including a prohibition on SRO pass-throughs in the Plan is "necessary" and "appropriate" in furtherance of "the purposes of the Act" because any SRO pass-throughs would not result in "reasonable … fees" under Sections 6(b)(4) and 15A(b)(5), since they would undercut the Plan's allocation of CAT costs.

Indeed, the Commission took that exact approach when imposing the Plan's Financial Accountability Milestones ("FAMs") in 2020. The Commission explained that fees eventually imposed after continued delays in the CAT's implementation would not be "reasonable" under

[14] *ASA*, 147 F.4th at 1275.

[15] CAT LLC Letter at 4.

[16] *ASA*, 147 F.4th at 1274.

[17] *Id.* at 1275.

[18] FINRA Letter at 7–9; Cboe Letter at 1–2.

[19] 15 U.S.C. § 78f(b)(4) (national securities exchanges); 15 U.S.C. § 78o-3(b)(5) (national securities associations).

[20] 17 C.F.R. § 242.608(b)(2).

Sections 6(b)(4) and 15A(b)(5), so it incorporated limits on those fees into the Plan itself.[21] The Commission has the same authority here to get ahead of another form of unreasonable fees—and an "allocation" in name only—by prohibiting SRO pass-throughs.

More generally, FINRA and Cboe appear to argue that the Commission must wait to disapprove SRO pass-throughs as part of its review of each individual Rule 19b-4 fee-filing, but that approach is both inefficient and contrary to the Eleventh Circuit's decision on the 2023 Order.[22] As that court recognized, policing pass-throughs at the Rule 19b-4 stage is "insufficient" because those filings purport to take effect immediately, they do not focus on "the market-wide allocation formula," and the SEC's refusal to institute proceedings is not judicially reviewable.[23] Moreover, the Eleventh Circuit never questioned the Commission's ability to prohibit SRO pass-throughs in the Plan; to the contrary, the court faulted the Commission for *not* doing so and failing to explain that decision.[24]

Fundamentally, it is clear that the largest (if not all) of the SROs fully intend to pass-through any fees purportedly allocated to them under the 2025 Funding Proposal. The Commission must take this into account when determining whether the proposed funding model is lawful – even if only FINRA and the Cboe Exchanges were to pass-through their allocation, that would mean broker-dealers and their customers would be bearing more than 80% of the total CAT budget.

IV. The CAT Funding Proposal Unlawfully Circumvents Commission Rule 608

Our first letter detailed why the 2025 Funding Proposal unlawfully circumvents Commission Rule 608 by contemplating that CAT costs will be allocated to broker-dealers and their customers via immediately effective fee filings under Rule 19b-4. In contrast, Rule 608 requires that fee filings relating to NMS Plans (including CAT) must be approved by the Commission prior to becoming effective.

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[21] 85 Fed. Reg. 31322, 31330 (May 22, 2020), https://www.govinfo.gov/content/pkg/FR-2020-05-22/pdf/2020-10963.pdf; 84 Fed. Reg. 48458, 48465–66 (Sept. 13, 2019), https://www.govinfo.gov/content/pkg/FR-2019-09-13/pdf/2019-19852.pdf.

[22] Given its disagreement with CAT LLC's proposal, FINRA also suggests that the Commission adopt what FINRA calls "a time-limited interim funding solution" by (1) amending the 2025 Funding Proposal to remove the bar on pass-throughs via new fees; (2) amending the 2025 Funding Proposal so that it will expire "after a specified period (e.g., one year)," and (3) asking the SROs to file rule changes committing not to pass through their allocated portion of CAT fees for the specified period. As even CAT LLC recognizes, the fundamental defect in that "solution" is that it would not address the problem of pass-throughs identified by the Eleventh Circuit. The substance of FINRA's proposed amendment would be identical to the 2023 Order: there would be no prohibition on SRO pass-throughs, and no "reasoned justification or explanation for the Commission's about-face" on its prior position that CAT should be funded by SROs and broker-dealers alike. FINRA's proposal still would leave SRO pass-throughs to the discretion of the SROs, and nothing would stop them from reversing course on a hypothetical informal agreement not to pass through their portion of CAT costs. The Commission cannot simply reenact the unlawful 2023 Order on a "temporary" basis. *See* FINRA Letter; CAT LLC Letter; *ASA*, 147 F.4th at 1275.

[23] *ASA*, 147 F.4th at 1276.

[24] *Id.* at 1274–77.

In response, CAT LLC simply points back to the 2016 CAT NMS Plan as permitting fee filings under Rule 19b-4.[25] However, the Commission amended Rule 608 in 2020 to require Commission approval of these fee filings, *several years after* it approved the CAT NMS Plan. In doing so, the Commission specifically referenced the CAT NMS Plan multiple times throughout the release, clearly conveying the expectation that fee filings under the CAT NMS Plan would be subject to Commission approval going forward.[26] The 2025 Funding Proposal cannot be reasonable and equitable if it allows the SROs to recoup clearly unreasonable costs from broker-dealers and their customers pursuant to filings that are deemed immediately effective and immune from judicial review, contrary to explicit Commission rules.

V. The Commission Must Independently Confirm That The Financial Accountability Milestones Have Been Satisfied

Our first letter explained why the Commission must independently assess whether CAT LLC has fulfilled the FAMs before approving the 2025 Funding Proposal. In particular, CAT LLC continues to rely on various exemptive orders issued by the Commission that provide relief from specific CAT NMS Plan requirements, including exemptive orders that were issued *after* the relevant FAM compliance date.

In response, the CAT Operating Committee points to the SROs self-certifying compliance with the FAMs in a "Quarterly Progress Report" provided to the Commission that invoked Commission exemptive relief.[27] However, the Commission has never independently concluded – in the various exemptive orders or otherwise – that it is in the public interest to permit the SROs to allocate hundreds of millions of CAT costs to broker-dealers and their customers even though they have failed to comply with specific CAT NMS Plan requirements and the express terms of the FAMs. The Commission must decide *now* whether the FAMs have been satisfied before giving the green light for immediately effective CAT fees under a new funding model.[28]

Further, the CAT Operating Committee makes no attempt to explain how a Commission exemptive order issued *after* a FAM deadline could retroactively bring the SROs into compliance with the relevant FAM, thus allowing them to recoup historical costs under the NMS Plan. Under the CAT NMS Plan, in order for the SROs to recoup *any* historical costs, all of the requirements

[25] CAT LLC Letter at 8.

[26] *See, e.g.,* 85 Fed. Reg. 65470 (Oct. 15, 2020), https://www.govinfo.gov/content/pkg/FR-2020-10-15/pdf/2020-18572.pdf at 65471, 65481-83, 65490. As detailed in our first letter, even if subsequent fee filings are permitted under Rule 19b-4, the Commission must assess *now* whether the actual costs that may be allocated are fair and reasonable as part of determining whether the 2025 Funding Proposal complies with the Exchange Act. The Eleventh Circuit has clearly stated that the Commission's "post hoc review of fee filings is insufficient," since they are considered immediately effective without Commission approval and appear immune from judicial challenge. *ASA*, 147 F.4th at 1276.

[27] CAT LLC Letter at 11; *see* Q2 & Q3 2024 Quarterly Progress Report 7 (July 29, 2024), https://www.catnmsplan.com/sites/default/files/2024-07/CAT_Q2-and-Q3-2024-QPR.pdf.

[28] As the Eleventh Circuit explained, review at the fee-filing stage is "insufficient" to address global defects in the imposition of CAT fees *because* those filings purport to "take effect immediately upon filing" and the Commission's assessment of those filings "will not be subject to judicial review." *ASA*, 147 F.4th at 1276.

associated with "Period 1" must have been completed by July 31, 2020.[29] However, according to the Commission, one such "Period 1" requirement is the reporting of responses to electronic requests for quotes ("RFQs") that are not immediately actionable. This requirement was never completed, and, instead, the Commission eventually granted exemptive relief in May 2024, nearly three years after the due date.[30] This belated exemptive relief cannot retroactively bring the SROs into compliance with the July 31, 2020 deadline and, by the same token, retroactively authorize them to impose hundreds of millions in historical costs on broker-dealers. Granting the SROs an extension of the relevant FAM deadlines *after those deadlines already have passed* is a major policy change from the Commission's rationale in establishing the FAMs—particularly because doing so retroactively imposes significant financial burdens on broker-dealers and their customers. Even if the Commission could somehow justify that about-face, it has not done so.

VI. The CAT Funding Proposal Enables the Unlawful Over-Collection of Fees

The 2025 Funding Proposal permits the SROs to establish a reserve fund of "not more than 25% of the annual budget."[31] However, it does not provide for any Commission oversight to ensure that the 25% limit is enforced or to approve how collected reserve amounts are ultimately spent by the SROs.

This lack of Commission oversight has resulted in disastrous consequences under the unlawful 2023 Order.[32] First, CAT LLC improperly over-collected fees to fund the reserve, allowing it to balloon far beyond the 25% limit over the course of 2025. CAT LLC's 2026 budget disclosed a reserve amount of approximately $120 million to start the year.[33] Based on CAT LLC's original 2025 budget of $248.8 million, that reserve is *nearly double* the amount that was allowed under the 2023 Order. But the true overage is even higher because CAT LLC's actual 2025 expenses (and thus the 25% cap) decreased, with expenses expected to top out at $187.5 million.[34] Thus, over the course of 2025, CAT LLC collected *tens of millions* more in fees than even the unlawful 2023 Order allowed.

Second, CAT LLC is unlawfully spending down the excess reserve—not to "offset future fees," as the CAT NMS Plan requires,[35] but to fund its operations in 2026, even in the absence of any Commission-approved funding model. Without a Commission-approved funding model, there

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[29] 85 FR 31322 (May 22, 2020) at 31348, https://www.govinfo.gov/content/pkg/FR-2020-05-22/pdf/2020-10963.pdf.

[30] *See* 89 FR 45715 (May 23, 2024), https://www.govinfo.gov/content/pkg/FR-2024-05-23/pdf/2024-11360.pdf.

[31] 2025 Funding Proposal at 44915.

[32] *See* Petition for Rulemaking to Amend CAT NMS Plan to Direct Proper Use of CAT LLC Reserve, Citadel Securities (Jan. 15, 2026), https://www.sec.gov/files/rules/petitions/2026/petn4-878.pdf.

[33] https://catnmsplan.com/sites/default/files/2025-12/12.08.25-CAT-LLC-2026-Financial_and_Operating_Budget.pdf.

[34] https://catnmsplan.com/sites/default/files/2025-12/12.22.25_CAT-LLC-2025-Finacial_and_Operating-Budget.pdf.

[35] CAT NMS Plan, § 11.1(a) (Nov. 15, 2016) (*2016 CAT NMS Plan*), https://catnmsplan.com/sites/default/files/2020-02/34-79318-exhibit-a.pdf.

are no "fees" that can be assessed against broker-dealers and their customers. And under the clear provisions of the CAT NMS Plan, the reserve funds cannot be spent until the Commission approves a new funding model that establishes new broker-dealer fees, which then can be offset by any excess reserve amounts.

CAT LLC contends that the NMS Plan's requirement to offset "fees" refers to its "expenses incurred in operating the CAT" rather than "fees imposed …under a funding model."[36] But the same sentence already refers to the CAT's "expenses," and it then uses a different term—"fees"—for what the reserve must be used to "offset."[37] There is no way to interpret the word "fees" as also encompassing the costs and expenses incurred in operating the CAT.

Further, the NMS Plan makes clear that the SROs should in no case obtain a windfall from the reserve—whether as profit or otherwise—and that is precisely what is happening here. By using the unlawfully inflated reserve to fund the CAT in the absence of a Commission-approved funding model, the SROs are avoiding the need to fund the CAT themselves. And doing so makes a mockery of the Eleventh Circuit's decision to vacate the 2023 Order, as broker-dealers and their customers effectively continue to fund the CAT throughout 2026 as if the 2023 Order remains in place.

The Commission cannot approve the 2025 Funding Proposal without addressing these serious deficiencies. Any limit on the size of a reserve must be monitored and enforced to prevent the SROs from once again over-collecting fees with abandon. In addition, any spending of a reserve fund must be approved by the Commission to ensure that doing so complies with the terms of the NMS Plan, instead of being used purely to enrich the SROs.

In addition, the Commission must provide a way for broker-dealers and their customers to be made whole. Every dollar of the reserve spent now without a Commission-approved funding model in place is a dollar less that can and should be used to offset future CAT fees in the event another funding model is approved. The full amount of the improperly collected reserve must be refunded, or at the very least applied against any future payments assessed to broker-dealers and their customers under the 2025 Funding Proposal.

VII. The Commission's Comprehensive Review Should Precede Any New Funding Model

We wholeheartedly agree with Chairman Atkins's call for a "comprehensive review" that covers all aspects of the CAT.[38] The Commission should be allocating its limited resources to conduct this comprehensive review and to chart a new path forward—including funding the CAT through the Section 31 process by including it in the Commission's appropriated budget—rather than becoming embroiled in yet another controversy over the funding of a broken system.

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[36] CAT LLC Reserve Letter at 4.

[37] CAT NMS Plan Section 11.1(c).

[38] https://www.sec.gov/newsroom/speeches-statements/atkins-prepared-remarks-sec-speaks-051925 and https://www.sec.gov/newsroom/speeches-statements/atkins-093025-consolidated-audit-trail-new-day-cat?utm_medium=email&utm_source=govdelivery.

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We thank the Commission for considering our comments.

Please feel free to call the undersigned with any questions regarding these comments.

Respectfully,
/s/ Stephen John Berger
Managing Director
Global Head of Government & Regulatory Policy