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January 30, 2026

Ms. Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090
Via Email to rule-comments@sec.gov

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

Dear Ms. Countryman:

We write on behalf of the Financial Industry Regulatory Authority, Inc. ("FINRA")[1] in connection with the above-captioned proposed amendments to the National Market System Plan Governing the Consolidated Audit Trail ("Plan" or "CAT NMS Plan"). This letter supplements FINRA's October 17, 2025, letter and responds to the December 18, 2025, letter submitted by CAT LLC.

The Funding Proposal re-proposes the executed share funding model with only one material difference: the addition of a new provision seeking to bar each self-regulatory organization ("SRO") that is a participant in the Plan from establishing new fees to pass through CAT costs. That pass-through prohibition is unlawful, ineffective, and fails to cure the defects identified by the Eleventh Circuit.[2] For reasons stated in FINRA's earlier letter, CAT LLC's attempts to justify this prohibition are unpersuasive. FINRA submits this further letter to address CAT LLC's response.

First, CAT LLC attempts to defend proposed Section 11.3(e)—which precludes Participants from filing "new" fees to pass through CAT costs—by arguing that Rule 608(a)(4)(ii) authorizes such a prohibition as a "written understanding relating to the

[1] This letter does not represent the views of FINRA CAT, LLC ("FCAT"), a distinct corporate subsidiary of FINRA that acts as the CAT Plan Processor pursuant to an agreement with Consolidated Audit Trail, LLC.

[2] *See* Securities Exchange Act Release No. 103960 (Sept. 12, 2025), 90 Fed. Reg. 44910 (Sept. 17, 2025) (the "Funding Proposal").

interpretation of the CAT NMS Plan."[3] This argument conflates interpreting the plan with controlling individual SRO actions, and thus rests on a flawed reading of Rule 608's text and purpose.

Rule 608 requires proposed amendments to include "description[s]" of how they "will be implemented" and "any written understandings or agreements between or among plan sponsors or participants relating to [their] interpretation."[4] These are "procedur[al]" requirements designed to facilitate transparency, by requiring disclosure to the Commission and the public of how internal operations of the Plan—not the external relationship between a distinct SRO and its members—will be managed.[5] They do not grant substantive authority of any sort, much less authority for a majority of Plan Participants to effectively suspend Section 19(b) of the Exchange Act, the plain text of which grants individual SROs the right to file their own fee rules. What is more, proposed Section 11.3(e) is not a "written understanding" reflecting an agreement among Participants.[6] As CAT LLC belatedly admits, it is instead a provision "intended to impose an obligation on all Participants," including those who objected to it.[7] Rule 608(a)(4)(ii) cannot support proposed Section 11.3(e).

Lacking any basis in Rule 608 for its proposal, CAT LLC observes that the CAT NMS Plan "currently includes provisions that prevent the Participants from collecting Post Amendment Industry Member Fees." But these provisions are nothing like proposed Section 11.3(e).[8] Unlike proposed Section 11.3(e), the provisions cited by CAT LLC involve joint fees "establish[ed]" by the CAT LLC Operating Committee,[9]

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[3] Letter from Robert Walley, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission (Dec. 18, 2025) ("CAT LLC Letter") at 5.

[4] 17 C.F.R. § 242.608(a)(4)(ii); *see also* CAT LLC Letter at 5.

[5] 70 Fed. Reg. 37620, 37571 n.664 (June 29, 2005) ("Exchange Act Rule 11Aa3–2 (redesignated as Rule 608) codifies the procedures that SROs must follow to seek approval for or amendment of a national market system plan.").

[6] CAT LLC Letter at 5.

[7] CAT LLC Letter at 5.

[8] CAT LLC Letter at 5-6 (citing CAT NMS Plan at Section 11.3(a)(iii); *id.* at Section 11.3(a)(ii)(B)(III); *id.* at Section 11.6(a)(ii)-(iii)).

[9] CAT NMS Plan at Section 11.3(a) (providing that "[t]he Operating Committee will establish fees ('CAT Fees') to be payable by Participants and Industry Members with regard to CAT costs not previously paid by the Participants ('Prospective CAT Costs')"); *id.* at Section

or fees to recover costs "incurred by or for" CAT LLC.[10] None of these provisions are analogous to the proposed pass-through prohibition, and none of them support the proposition that the CAT NMS Plan may lawfully restrict how an individual Participant SRO funds its own SRO costs through separate SRO fees.

Second, CAT LLC argues (at 5) that prohibiting all pass-throughs is lawful because the Eleventh Circuit implicitly held that "prior to 2023 the CAT NMS Plan did not contemplate 100% pass-throughs via individual SRO fees." That is a false dichotomy. The Eleventh Circuit vacated the 2023 Funding Order because it allowed —without explanation or "reason"—for the possibility that all SROs would pass through 100% of CAT costs, leaving "broker-dealers … on the hook for [the CAT's] *entire cost*."[11] Nothing in the Eleventh Circuit's decision hinted that it viewed 100% pass-through by FINRA as unlawful or inconsistent with the prior CAT NMS Plan. On the contrary, the Court acknowledged that "FINRA may be unique[ly]" justified in passing through its CAT costs, as it is "the only nonprofit exchange."[12]

Third, CAT LLC's initial Funding Proposal proposed adding a new provision stating that "[e]ach Participant agrees not to file with the SEC a proposed rule change … that would establish a new fee for passing through to its members the CAT fee charged to such Participant in accordance with Section 11.3(a)."[13] But as FINRA and other commenters pointed out, this statement was not correct.[14] And CAT LLC has now acknowledged as much, stating that not "all Participants voted to approve the Proposed Amendment."[15]

11.3(b) (providing that "[t]he Operating Committee will establish one or more fees (each a 'Historical CAT Assessment') to be payable by Industry Members with regard to CAT costs previously paid by the Participants ('Past CAT Costs')"); *id.* at Section 11.6

[10] CAT NMS Plan at Section 11.6.

[11] *Am. Sec. Ass'n v. SEC*, 147 F.4th 1264, 1275 (11th Cir. 2025) (emphasis added).

[12] *Id.* at 1279.

[13] *See* Funding Proposal, *supra* note 3, 90 Fed. Reg. 44910, 44930.

[14] Letter from Steffen N. Johnson, Wilson Sonsini Goodrich & Rosati, P.C., on behalf of FINRA, to Vanessa Countryman, Secretary, Commission (Oct. 17, 2025) ("FINRA Letter") at 10; Letter from Patrick Sexton, EVP, General Counsel & Corporate Secretary, Cboe, to Vanessa Countryman, Secretary, Commission (Oct. 31, 2025) ("Cboe Letter") at 2.

[15] CAT LLC Letter at 5.

CAT LLC's solution is a new proposal to amend the text of proposed Section 11.3(e) by deleting the phrase "[e]ach Participant agrees" not to file new pass through fees and replacing it with the phrase to "[n]o Participant will file" such fees.[16] That is more accurate, but no more lawful. Indeed, it only underscores and confirms that Section 11.3(e) is not a "written understanding" among consenting parties, but rather a regulation that CAT LLC is attempting to unlawfully impose over the objection of dissenting Participants.

Fourth, CAT LLC elides FINRA's continued objections to a cost allocation methodology based entirely on executed share volume (the "Executed Share Model").[17] In particular, FINRA objected to that model because it disproportionately allocated the Participants' share of CAT costs to FINRA, the only not-for-profit SRO that relies primarily on fees from its members for funding and the only Participant not operating a market. The practical reality is that any allocation of Participants' CAT costs to FINRA will almost certainly be equivalent to allocating those costs to industry members. CAT LLC claims that it had adequately addressed these objections in its July 2023 response letter. Even if that were the case (and it is not), CAT LLC's previous filings cannot speak to the implications of the Eleventh Circuit's 2025 ruling, which requires the Commission to "reconsider the allocation" of CAT costs between SROs and broker-dealers. The Funding Proposal does not grapple with the inherent inequity in the Executed Share Model's allocation between Participants and industry and instead doubles down by purporting to restrict FINRA's ability to fund itself while leaving untouched the commercial revenue generated for exchanges.[18]

Fifth, CAT LLC misapprehends FINRA's statement that, to support an interim funding approach, it would be willing to consider filing a proposed rule change stipulating that it will not file a new recovery fee for a specific finite period (*e.g.*, one year, which would coincide with the one-year sunset provision for the temporary funding

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[16] CAT LLC Letter at 5.

[17] CAT LLC Letter at 3.

[18] Under the Executed Share Model, FINRA's portion of Participant CAT fees is determined based on over-the-counter executions reported to FINRA's reporting facilities, including volume reported to the Trade Reporting Facilities. Each FINRA Trade Reporting Facility is operated by an exchange business member that is also a CAT Plan Participant, and such exchanges retain the trade reporting and market data revenues generated by the Trade Reporting Facilities, subject to certain payments to FINRA for agreed-upon costs.

model).[19] CAT LLC misreads this proposal as entailing merely a "voluntary, non-binding agreement" subject to FINRA's "ongoing discretion."[20] Under FINRA's suggestion, the proposed rule changes by SROs would be submitted under Section 19(b)—and thus durable. To be sure, SROs could submit proposed rule changes permitting new recovery fees before the expiration of the finite period, but that change of course would be subject to oversight by the Commission.[21]

Finally, FINRA continues to urge that a permanent CAT funding model be addressed as part of Chairman Atkins' comprehensive review. Seeking to implement a permanent model now needlessly front-runs this review. While CAT LLC argues (at 12-13) that the timing of the comprehensive review is unknown and that CAT LLC may exhaust operational reserves later this year, that concern may be addressed through an interim funding model, and FINRA stands ready to work collaboratively on an interim solution. The contrary approach that CAT LLC urges—front-running the comprehensive review with an unlawful and flawed Funding Proposal—would foster "uncertainty" rather than resolve it.[22]

* * *

The Funding Proposal, even as revised, remains unlawful and ineffective in addressing the issues identified by the Eleventh Circuit. FINRA remains committed to continued engagement with the Commission and others to develop a sensible, serviceable CAT that fulfills its purpose while distributing costs fairly. FINRA appreciates the Commission's consideration of its concerns and stands ready to help develop a funding solution that addresses the legitimate needs of all stakeholders.

Sincerely,

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

/s/ Steffen N. Johnson
Steffen N. Johnson

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[19] FINRA Letter at 2-3.

[20] CAT LLC Letter at 9.

[21] 17 C.F.R. § 240.19b-4(g).

[22] CAT LLC Letter at 13.