



**Marcia E. Asquith**  
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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](mailto: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:

The Financial Industry Regulatory Authority, Inc. (“FINRA”)<sup>1</sup> is submitting this letter in connection with the Securities and Exchange Commission’s (Commission) consideration of the above-captioned proposed amendments to the National Market System Plan Governing the Consolidated Audit Trail (“Plan” or “CAT NMS Plan”) submitted by CAT LLC in September 2025 and modified in December 2025.<sup>2</sup> This letter offers a practical path forward that both addresses the Eleventh Circuit’s concerns and respects the statutory framework Congress established for SRO governance, while supporting interim CAT funding given the Commission’s comprehensive review. This letter supplements the letter submitted today by Wilson Sonsini on FINRA’s behalf.<sup>3</sup>

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<sup>1</sup> FINRA is submitting this letter solely in its capacity as a participant of the CAT NMS Plan. This letter does not reflect or represent the views of FINRA CAT, LLC, which is a distinct corporate subsidiary of FINRA that acts as the CAT Plan Processor pursuant to an agreement with Consolidated Audit Trail, LLC.

<sup>2</sup> See Securities Exchange Act Release No. 103960 (Sept. 12, 2025), 90 FR 44910 (Sept. 17, 2025); and letter from Robert Walley, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission (Dec. 18, 2025) (together, the “Funding Proposal”).

<sup>3</sup> See Letter from Steffen N. Johnson, Wilson Sonsini Goodrich & Rosati, P.C., on behalf of FINRA, to Vanessa Countryman, Secretary, Commission (Jan. 30, 2026).

FINRA has previously submitted a letter to the Commission regarding our concerns with the legal and practical limitations of the proposed passthrough prohibition in the Funding Proposal, particularly as it relates to the scope of CAT LLC's authority under the Exchange Act.<sup>4</sup> In our prior letter, FINRA supported the Commission's comprehensive review of the CAT and advocated for a temporary alternative to address funding needs while the comprehensive review of CAT moves forward.<sup>5</sup> To propose a legally valid, near-term option to address the passthrough issues identified by the Eleventh Circuit, FINRA suggested an approach where SROs voluntarily could commit not to file rule changes seeking to pass through their CAT costs for a specified period of time to coincide with the duration of an interim funding model.<sup>6</sup>

While the initial passthrough provision in the Funding Proposal inaccurately stated that the SRO participants to the CAT NMS Plan ("Participants") agreed to not pass through fees, CAT LLC subsequently has acknowledged that its statement was not correct because not all Participants voted to approve the passthrough prohibition.<sup>7</sup> CAT LLC has since proposed a further amendment to delete the phrase "[e]ach Participant agrees" not to file new pass through fees and to replace it with the phrase to "[n]o Participant will file" such fees.<sup>8</sup> While this formulation is more accurate, it is no more lawful because FINRA did not vote in favor of this modified formulation, in part because **SROs may not use the mechanism of a national market system plan to control the fees of other SROs that are participants in the plan.**<sup>9</sup>

The Exchange Act carefully delineates the scope of NMS Plan authority and individual SRO fee-setting authority. Regulation NMS Rule 608's scope regarding fees is limited to "[t]he method by which any fees or charges collected on behalf of all of the sponsors and/or participants..." will be determined and imposed.<sup>10</sup> Because of the unlawfulness of the passthrough prohibition in the Funding Proposal, it cannot address the Eleventh Circuit's finding that the 2023 Funding Order was unreasonable and violated the Administrative Procedure Act because it allowed "[SROs] to pass through

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<sup>4</sup> See 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").

<sup>5</sup> See FINRA Letter.

<sup>6</sup> See *id.*

<sup>7</sup> See Funding Proposal.

<sup>8</sup> See *id.*

<sup>9</sup> See FINRA Letter. See also Letter from Patrick Sexton, EVP, General Counsel & Corporate Secretary, Cboe, to Vanessa Countryman, Secretary, Commission (Oct. 31, 2025) ("Cboe Letter").

<sup>10</sup> See Securities Exchange Act Rule 608(a)(5)(ii).

100% of their fees to broker-dealers—without considering the effects of that choice.”<sup>11</sup>

While the Eleventh Circuit found that the 2023 Funding Order failed to adequately consider the economic effects of pass-throughs, it did not conclude that SRO fees to recover CAT costs are impermissible in all cases; nor did it establish specific requirements or parameters for the CAT funding model. FINRA believes that, while SRO pass-through fees remain permissible under the CAT NMS Plan, there are various approaches that could adequately address the issues raised by the Eleventh Circuit other than bluntly seeking to permanently prohibit passthroughs through improper means.

In the near term, to support the continued funding of CAT while the comprehensive review is underway and while preserving individual SRO fee authority, FINRA makes the following firm commitment: should the Commission approve a CAT funding model on a temporary or interim basis, FINRA will not establish any CAT recovery fees for a period of two years from approval of such temporary funding model (or for a shorter period designated by the Commission in an approval order as the effective period of such interim funding model).<sup>12</sup> This commitment is intended to provide an expedient, short-term path forward on CAT funding in support of a comprehensive evaluation of the CAT.

Cboe has previously expressed that it is “open to discussing a voluntary agreement by all of the SROs not to make rule filings seeking to pass through their CAT costs for a specified period.”<sup>13</sup> The other CAT Plan Participant votes were in support of the Funding Model, and therefore those SROs already have individually determined and committed to not establish CAT recovery fees. SRO commitments adequately address, for an interim period, the Court’s finding that the 2023 Funding Order was unreasonable and violated the Administrative Procedure Act because it allowed for “[SROs] to pass through 100% of their fees to broker-dealers—without considering the effects of that choice.”<sup>14</sup> An approach whereby individual SROs commit temporarily to forego passthrough fees supports short-term funding stability for CAT operations without displacing the statutory NMS Plan governance structure or prejudging the outcome of the Commission’s comprehensive CAT review.

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<sup>11</sup> See Am. Sec. Ass’n, 147 F.4th at 1277.

<sup>12</sup> The effectiveness of this temporary commitment to not file passthrough fees for a period of no more than two years is intended to coincide with the sunset provision of a temporary funding model approved by the Commission. As discussed in prior FINRA comment letters, a permanent passthrough prohibition does not comport with the economic realities of FINRA’s funding structure, particularly given FINRA’s status as a non-profit, member-funded national securities association. See *e.g.*, FINRA Letter.

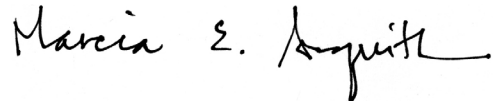
<sup>13</sup> See Cboe Letter.

<sup>14</sup> See Am. Sec. Ass’n, 147 F.4th at 1277.

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FINRA remains committed to working collaboratively with the Commission in pursuit of developing an appropriate long-term funding solution that addresses the legitimate needs of all impacted parties.

Sincerely,

A handwritten signature in black ink that reads "Marcia E. Asquith". The signature is fluid and cursive, with a long horizontal stroke at the end.

Marcia E. Asquith  
Corporate Secretary, EVP  
Board and External Relations