



March 5, 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)

On October 17, 2025, the American Free Enterprise Chamber of Commerce (“AmFree”) submitted a comment letter that urged the Securities and Exchange Commission (“Commission”) to reject the latest Funding Proposal for the Consolidated Audit Trail (“CAT”).<sup>1</sup> Among other things, AmFree expressed concern that both the CAT and its accompanying Funding Proposal depend on the Financial Industry Regulatory Authority (“FINRA”). Without FINRA, Consolidated Audit Trail, LLC (“CAT LLC”) would be unable to collect the transaction-level data that it needs to function—let alone compute the fees that are set forth in the latest Funding Proposal. But as AmFree explained, FINRA’s exercise of regulatory authority over broker-dealers is unconstitutional. And because those constitutional problems cannot be excised from either the CAT itself or the latest proposal to fund it, the proposal should not be approved.<sup>2</sup>

On December 18, 2025, CAT LLC responded to many criticisms of its Funding Proposal.<sup>3</sup> When addressing AmFree’s position, CAT LLC did not dispute that its operations are dependent on FINRA. Nor did CAT LLC defend FINRA’s constitutionality—or otherwise address the substantial probability that one of the many constitutional challenges to that self-regulatory organization’s exercise of regulatory authority will succeed. Instead, CAT LLC rested its entire disagreement with AmFree on the technicality that the “current Plan Processor” of the CAT is not FINRA itself, but instead “FINRA CAT, LLC, a separate legal entity that is a subsidiary of

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<sup>1</sup> Letter from Gentry Collins, CEO, The American Free Enterprise Chamber of Commerce, to Vanessa Countryman, Secretary, Commission (Oct. 17, 2025) (“AmFree Letter”).

<sup>2</sup> In addition to its arguments concerning FINRA, AmFree also argued that the Funding Proposal should be denied because the CAT exceeds the Commission’s statutory authority. *Id.* at 1–2.

<sup>3</sup> Letter from Robert Walley, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission (Dec. 18, 2025) (“CAT NMS Letter”).

[FINRA].”<sup>4</sup> CAT LLC’s response comes nowhere close to addressing the significant constitutional flaws in the Funding Proposal, for two reasons.

*First*, FINRA itself has a central and indispensable role in operating the CAT, regardless of its decision to “carry[] out [CAT-related] obligations” through a subsidiary.<sup>5</sup> Indeed, FINRA delegated the authority through which its subsidiary now serves as the CAT’s Plan Processor.<sup>6</sup> FINRA also selects the subsidiary’s Board of Managers, has the power to “direct” the subsidiary’s conduct, and reserves the right to “take action *ab initio*” in the subsidiary’s “area[s] of responsibility.”<sup>7</sup> And consistent with its control over the subsidiary, FINRA has “ultimate responsibility” for all functions that the subsidiary performs, including the operation of the CAT.<sup>8</sup> The nominal distinction between FINRA and its subsidiary thus lacks any constitutional significance. Because FINRA is unconstitutional, so too is the exercise of FINRA’s authority by a FINRA subsidiary that FINRA may supervise and control.

*Second*, even putting aside the close connections between FINRA and its subsidiary, FINRA’s delegation to that subsidiary cannot solve its own constitutional dilemma. If FINRA is a private entity, then its unilateral authority over broker-dealers violates the private non-delegation doctrine.<sup>9</sup> In that case, FINRA cannot cure its private non-delegation problem by *further* delegating its authority to another private entity.<sup>10</sup> If anything, the additional delegation to FINRA CAT, LLC exacerbates the private non-delegation problem by increasing the “dispersion of responsibility” outside the federal government, and thereby further diminishing the Commission’s supervision of FINRA’s authority.<sup>11</sup> By contrast, if FINRA is a government entity, then its leadership exercises significant governmental authority in contravention of the Appointments Clause<sup>12</sup> The leadership’s authority would then be *ultra vires*, regardless of whether it is wielded directly or delegated to a subordinate subsidiary.<sup>13</sup> FINRA is accordingly unconstitutional, regardless of whether it is a private or governmental entity, and despite the fact that it has delegated some of its authority to a subsidiary.

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<sup>4</sup> *Id.* at 13. CAT LLC also did not disagree with AmFree’s argument concerning the SEC’s lack of statutory authority for the CAT, asserting only that the Eleventh Circuit did not reach the issue when it vacated the 2023 funding order. *Id.* at 6–7.

<sup>5</sup> Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Update the FINRA Manual to Reflect FINRA’s New Subsidiary, FINRA CAT, LLC, 84 Fed. Reg. 20173, 20174 (2019).

<sup>6</sup> FINRA Manual, Plan of Allocation and Delegation of Functions by FINRA to Subsidiaries, § III (last accessed on March 5, 2026), <https://www.finra.org/rules-guidance/rulebooks/corporate-organization/iii-finra-cat>.

<sup>7</sup> *Id.* § I.

<sup>8</sup> *Id.*

<sup>9</sup> See AmFree Letter at 2–4.

<sup>10</sup> See *Sunshine Anthracite Coal Co. v. Adkins*, 310 U.S. 381, 399 (1940) (explaining that delegations of regulatory authority to private entities are lawful only when those entities “function subordinately to” a governmental body).

<sup>11</sup> *Free Enter. Fund v. PCAOB*, 561 U.S. 477, 497 (2010); see *Adkins*, 310 U.S. at 399.

<sup>12</sup> See AmFree Letter at 4.

<sup>13</sup> See *Collins v. Yellen*, 594 U.S. 220, 258 (2021) (noting the usual rule that a “a Government actor’s exercise of power that the actor did not lawfully possess” is “void”).

For those reasons, the regulatory responsibilities of FINRA CAT, LLC, do not affect any of the arguments that AmFree raised against the Funding Proposal. Subsidiary or no, the Funding Proposal is unlawful because it depends on the authority and involvement of an unconstitutional actor. Subsidiary or no, the Funding Proposal fails to justify FINRA's involvement with the CAT. And subsidiary or no, the Funding Proposal does not account for the probability that at least one court will hold FINRA to be unlawful—a conclusion that would necessarily unwind FINRA's delegation of authority to FINRA CAT, LLC.<sup>14</sup>

The Commission should not compel broker-dealers to spend billions of dollars on a program that is administered in significant part by an unconstitutional entity. Instead, AmFree respectfully requests that the Commission reject the Funding Proposal and table all future proposals pending the ongoing reconsideration of the entire CAT.

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

Respectfully,



Gentry Collins  
CEO  
AmFree Chamber

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<sup>14</sup> See AmFree Letter at 4–7 (explaining these defects).