



October 28, 2019

Via Electronic Mail (rule-comments@sec.gov)

Ms. Vanessa Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street NE., Washington, DC 20549

Re: ***File No. S7-13-19: SIFMA Comment Letter on Proposed Amendments to the National Market System Plan Governing the Consolidated Audit Trail***

Dear Ms. Countryman:

The Securities Industry and Financial Markets Association (“SIFMA”)¹ submits these comments on the above-referenced proposal by the U.S. Securities and Exchange Commission (“Commission”) to amend the National Market System Plan Governing the Consolidated Audit Trail (“CAT NMS Plan”). SIFMA supports the CAT, and we appreciate the Commission’s proposal to establish a clear and transparent implementation schedule for the CAT. In fact, SIFMA recently commissioned and published a broker-dealer implementation guide to facilitate our members’ compliance with the CAT reporting requirements.² SIFMA supports the Commission’s actions to solidify the implementation schedule and increase transparency around CAT implementation process, and we support the Commission’s proposal to have formal deadlines to assist member firms’ implementation planning CAT and set financial incentives to avoid further delays. However, we request in this regard that the amendments to the CAT NMS Plan include a formal mechanism to address potential delays in CAT implementation that may arise for legitimate reasons.

¹ SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry’s nearly 1 million employees, we advocate for legislation, regulation and business policy, affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit <http://www.sifma.org>.

² See, Firm’s Guide to the Consolidated Audit Trail (CAT), published by SIFMA and Deloitte (Aug. 20, 2019).

Along with the Commission and the Self-Regulatory Organizations (“SROs”), SIFMA and its members are committed to a timely implementation of CAT reporting. However, the CAT NMS Plan should expressly acknowledge that there may be reasons to modify the implementation deadlines due to a reasonable need for delay or to factors beyond anyone’s control. If the Commission adopts the proposed amendments, the CAT NMS Plan also should include a formal mechanism to allow the SROs to request extensions for unpredictable complications that may arise. The mechanism could be a similar process to the proposed publications of the implementation plan—approval from each SRO’s senior officer and vote by the Operating Committee.³ We hope this delay mechanism would never be triggered, but having a mechanism in place would serve the purpose of completing the CAT in a timely manner while taking into account the operational complexity of the CAT implementation process.

SIFMA also recommends that the Commission take reasonable delays into account in imposing the proposed financial penalties, especially to avoid follow-on effects to broker-dealers. For example, the proposed stage of “Full Implementation of Core Equity Reporting Requirements” provides that reporting be implemented at no more than a 5% Error Rate.⁴ However, if there are legitimate reasons that broker-dealers have not been able to deliver a 5% error rate, and the SROs believe they will be financially penalized for a too-high error rate, then the SROs will be incentivized to bring enforcement actions against broker-dealers solely for the purpose of recouping the lost funding. Thus, rather than inadvertently imposing the penalty on broker-dealers, the Commission should consider suspending the proposed financial penalties based on the cause, foreseeability and attempts to mitigate the impact of the delay.

The Commission’s proposal to impose limits on the SROs’ ability to collect post-amendment fees leads us to reiterate SIFMA’s longstanding and significant concern about the SROs’ funding mechanism under the CAT NMS Plan. SIFMA has repeatedly raised funding of the CAT as a critical issue.⁵ As a threshold matter, the SROs have never provided a financial justification for imposing a CAT fee at all. The self-regulatory model in the securities industry is premised on broker-dealer funding, but broker-dealers already provide the SROs a significant amount of regulatory funding through membership fees, registration and licensing fees, dedicated regulatory fees, options regulatory fees, and monetary fines. As such, there should be no new fee for the CAT until member firms are provided with a fully-documented account of how regulatory fees are currently allocated, how the CAT fee fits into the existing regulatory framework, and why assessing broker-dealers an additive regulatory fee is necessary to fund the creation and operation of the CAT.

³ See Securities Exchange Act Release No. 86901, 84 FR 48458, at 15 (Sep. 9, 2019).

⁴ *Id.* at 38.

⁵ See, e.g., Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, SIFMA to Brent J. Fields, Secretary, Securities and Exchange Commission dated December 22, 2017.

If the Commission permits the SROs to establish a funding mechanism for the CAT, broker-dealers should not be required to reimburse the SROs for any part of costs or expenses of the CAT other than the direct costs to build and operate the system itself. In particular, the SROs should not be permitted, as they have attempted previously, to charge CAT fees that would reimburse the SROs for third-party support fees (historical legal fees, consulting fees, and audit fees), operational reserve, and insurance costs. In addition, as the Commission is aware, earlier this year the SROs replaced Thesys Technologies, which had been acting as CAT processor for two years, with FINRA as the CAT processor. Under no circumstances should the SROs be permitted to use the CAT funding mechanism to recover any payments made to Thesys in connection with the CAT. All of those third-party costs are the sole responsibility of the SROs, which will own and operate the CAT system.

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SIFMA appreciates the Commission's consideration of the issues raised above and would be pleased to discuss these comments in greater detail. If you have any questions or need any additional information, please contact T.R. Lazo (at [REDACTED] or [REDACTED]) or Ellen Greene (at [REDACTED] or [REDACTED]).

Sincerely,



Theodore R. Lazo
Managing Director and
Associate General Counsel



Ellen Greene
Managing Director
Financial Services Operations