



August 11, 2025

Paul S. Atkins, Chairman
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

**Re: Request for the Commission to End Consolidated Audit Trail (“CAT”) Fees
Imposed under the Unlawful CAT Funding Model**

Dear Chairman Atkins:

SIFMA¹ submits this letter to the Securities and Exchange Commission (“Commission” or “SEC”) urging the Commission to act immediately to stop the payment of CAT fees under the CAT Funding Model² that a unanimous three-judge panel of the 11th Circuit Court of Appeals held as unlawful.³ As self-regulatory organizations (“SROs”), the exchanges and FINRA should act on their own accord to prevent the improper collection of CAT fees given that the legal foundation upon which their fee collection rules stand has been declared unlawful. But if they refuse to do so, the SEC should immediately step in to prevent irreparable harm to broker-dealers and investors. Both the SROs and the Commission have ample means to relieve Industry Members from paying millions in unrecoverable fees. We urge the SROs and Commission to do so.

Immediate action to halt fees under the unlawful CAT Funding Model is necessary to protect broker-dealers and investors from irreparable harm while the SROs and the Commission consider the Court’s order. Without an immediate halt, broker-dealers (and investors) will be forced to pay tens of millions of dollars in CAT fees per month. And once those sums are paid to

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 one million employees, we advocate on 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).

² *Order Approving an Amendment to the National Market System Plan Governing the Consolidated Audit Trail*, Release No. 34-98290, (Sept. 6, 2023), 88 FR 62628 (Sept. 12, 2023). Capitalized terms not defined in this letter have the same meaning as in the CAT NMS Plan.

³ *Am. Sec. Ass’n et al. v. SEC*, No. 23-13396 (11th Cir.) (July 25, 2025) (“Opinion”). The Court held that the vacated CAT Funding Model violated the Administrative Procedure Act (“APA”) because the Commission did not adequately justify its decisions to (1) allow the Plan Participants to pass 100% of their costs on to broker-dealers, and (2) rely on the economic analysis the Commission performed in 2016 rather than updating it to account for the significant changes in the costs of building and operating CAT since that time.

the SROs, the SROs have taken the position that they are unrecoverable.⁴ This places Industry Members in a manifestly unfair position because they are obligated to pay CAT fees that they cannot recover under a funding model that has been invalidated.

An immediate halt is also necessary to address the significant uncertainty and confusion for broker-dealers and their customers. Broker-dealers are now faced with uncertainty as to when future CAT fees may cease, as well as the associated problem of when they should stop passing through such fees to customers to the extent they do so now.

In its recent decision vacating the CAT Funding Model, the Court stayed its decision for 60 days and remanded the matter to the Commission to “conduct the appropriate economic analysis that was lacking in the 2023 Funding Order and reconsider the allocation of historical and prospective CAT costs in accordance with this opinion.”⁵ It is SIFMA’s understanding that the 60-day stay may not become effective for some time depending on when the Court formally issues its judgment, which could be further delayed if the decision is appealed. As a result, without SRO or Commission intervention, broker-dealers and investors could continue to pay CAT fees under the now-unlawful CAT Funding Model for an extended period. Therefore, the SROs or the Commission should immediately intervene to stop the payment of CAT fees while they consider a path forward.

The SROs should act immediately to stop the effect of their CAT fee rules now that the legal foundation upon which the rules stand has been declared unlawful. The SROs should simply use the same authority under Section 19(b)(3) of the Securities Exchange Act of 1934 (“Exchange Act”) to stop the CAT fees as they did to impose them. Specifically, Exchange Act Section 19(b)(3) allows the SROs to make proposed rule changes immediately effective when the change is designated by an SRO as “establishing or changing a due, fee, or other charge imposed by the SRO.” The SROs should rely on that provision to immediately propose rules that would “chang[e]” the current CAT fee rules by deleting them. If, for whatever reason the SROs desired to keep their rules under the unlawful CAT Funding Model intact, they could also simply state in writing that industry members may suspend payment of CAT fees during the pendency of any further litigation or Court-imposed stay, and that the SROs will take no enforcement actions in response to non-payment of CAT fees unless and until the Court’s decision is overturned or a lawful funding model is approved.

If the SROs refuse to take action, the Commission should step in to prevent irreparable harm to broker-dealers and investors. The Commission has several tools at its disposal to do so, including (i) issuing an exemptive order covering all prospective and historical CAT fees; (ii) publishing a no-action letter covering all prospective and historical CAT Fees; (iii) suspending the latest set of CAT fee filings the SROs recently submitted to the Commission at the end of June 2025 for prospective CAT costs for the period July 1, 2025 through December 31, 2025

⁴ As self-regulatory organizations are regulators of Industry Members, historically they have been given regulatory immunity by the courts.

⁵ Opinion at 28.

along with relief that addresses historical CAT recovery fees; or (iv) use any other form of relief consistent with the Commission's views.

As we have stated previously, we strongly support the recent announcement that instructs Commission staff "to undertake a comprehensive review of the CAT," which is appropriate and long overdue. We support the Commission using this exercise to also meaningfully review and consider a path forward for the fair funding of the CAT. In the interim, Industry Members and investors should not be forced to pay significant amounts of unrecoverable fees under the unlawful CAT Funding Model.

Plan Participants will not be adversely impacted if CAT fees are stopped because they may have the ability to collect past and future CAT costs under a new (and legal) CAT model. By stopping CAT fees, CAT funding would revert back to the status that existed prior to the Commission's approval of the now-invalidated CAT Funding Model. The Plan Participants were responsible for developing the now invalid CAT Funding Model. Instead of working with Industry Members, the Plan Participants repeatedly placed Industry Members in the position of responding to formal proposals by the CAT Operating Committee instead of through a collaborative dialogue with Plan Participants. Despite this history, SIFMA members stand ready to work with the Plan Participants on CAT-related issues, including reforms.

Going forward, whatever the Commission ultimately decides with respect to CAT, it should be done on a fair basis between Industry Members and the SROs in terms of cost sharing, governance, and transparency. The Commission should use this opportunity to facilitate a more collaborative dialogue between the Plan Participants and Industry Members that results in meaningful reforms to CAT, inclusive of a durable mechanism for funding CAT that appropriately reflects the input of the parties responsible for paying for it.⁶ While we ultimately believe that the Commission should assume the responsibility for funding CAT should the Commission retain the CAT, we stand ready to work with the Commission and the Plan Participants to consider meaningful reforms of CAT.⁷

⁶ As indicated in the 11th Circuit's opinion, Industry Members' ability to provide comments in response to immediately effective fee filings was not an adequate avenue to raise fairness and other concerns regarding the fees. In addition, although the Commission had previously stated it would analyze the CAT's budget in connection with the SROs' 19b-4 filings, the Commission ultimately did not affirmatively review and approve those filings nor did it respond to SIFMA's request that the Commission suspend the SROs fee filings to impose CAT Fee 2025-1 on Industry Members. See 88 FR 62628, 62655, n. 601; SIFMA Comment Letter to SEC re: SRO CAT Fee Filings (Feb. 14, 2025), available at <https://www.sifma.org/wp-content/uploads/2025/02/SIFMA-Comment-Letter-SRO-CAT-Fee-Filings-2025-2.14.25.pdf>.

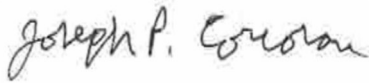
⁷ The Court acknowledged the Commission failed to consider in its approval of the CAT Funding Model the misaligned incentives that exist with the model, which was one of the factors that led the Court to vacate the CAT Funding Model. The Court observed that "[t]he 2023 Funding Order creates the potential for a classic free-rider problem that the Commission only acknowledges in passing", and that "[t]he 2023 Funding Order's disregard of these misaligned incentives lacks reason".⁷ Opinion at 18, 19. SIFMA members agree with the Court and believe that the Commission should ultimately assume the responsibility of funding CAT. Such a mechanism would allow for existing frameworks to pay for the regulatory function the CAT provides. SIFMA members stand ready to work

Paul S. Atkins
Chairman
U.S. Securities and Exchange Commission
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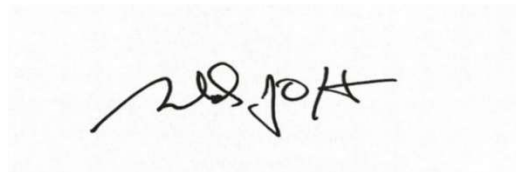
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SIFMA appreciates your consideration of our request for the Commission to act immediately to end the collection of CAT fees under the unlawful CAT Funding Model. If you have any questions or need any additional information, please contact Joe Corcoran at (202) 962-7383 or Gerald O'Hara at (202) 962-7343.

Sincerely,



Joseph Corcoran
Managing Director and Associate
General Counsel



Gerald O'Hara
Vice President and Assistant
General Counsel

Cc: Hon. Caroline A. Crenshaw, Commissioner
Hon. Hester M. Peirce, Commissioner
Hon. Mark T. Uyeda, Commissioner
Jamie Selway, Director of the Division of Trading and Markets

Brandon Becker, CAT Operating Committee Chair

collaboratively with Plan Participants and the Commission towards establishing this durable mechanism including any regulatory changes needed.