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October 17, 2025

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”).

In early September, over FINRA’s objections, CAT LLC filed a Plan amendment to re-propose the executed share funding model.² The only substantive difference between the re-proposed version of the funding model and the earlier version is the addition of a new provision stating that each self-regulatory organization (“SRO”) that is a participant in the Plan (“Participant”) “agrees not to ... establish a new fee for assessing on its members [its SRO CAT fees].”³

The Funding Proposal fails to address fundamental issues identified by the Eleventh Circuit when it vacated the previous funding model. FINRA’s concerns center on four principal points.

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- ¹ This letter does not reflect or 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”).
- ³ See Funding Proposal, Proposed Section 11.3(e).

First, the pass-through prohibition is unlawful. Nothing in the Exchange Act or Rule 608 of Regulation NMS authorizes SROs to control how other SROs choose to internally fund their costs.

Second, the Funding Proposal's pass-through provision rests on a false premise and would be ineffective. It is not true that "[e]ach Participant agree[d] not to file with the SEC a proposed rule change ... that would establish a new [pass-through] fee." FINRA objected to the proposal and did not agree. In all events, the pass-through provision would likely be ineffective in addressing the Eleventh Circuit's concern about 100% pass-through of CAT costs, as it prohibits only "new fees" and does nothing to limit Participants from increasing *existing* fees and assessments.

Third, in proposing a permanent funding model, the Funding Proposal is premature. Instead, these issues should be integrated with Chairman Atkins' comprehensive CAT review. FINRA supports recent cost-saving measures, but believes rushing to permanently adopt the same Executed Share Model that was vacated, without understanding the full implications of the potentially significant changes to CAT now underway, would be counterproductive.

As discussed in this letter, FINRA believes there is a path forward to achieve a sensible CAT system that fulfills its purpose while distributing costs fairly. We recommend that the Commission consider a time-limited interim funding solution while the comprehensive review progresses, allowing for a more equitable, sustainable, and transparent permanent funding mechanism to emerge from a thorough assessment of CAT. Specifically, while the comprehensive CAT review remains underway, the Commission could exercise its authority under Rule 608(b)(2) of Regulation NMS⁴ to modify the Funding Proposal so that, by its terms, it would expire after a specified period (*e.g.*, one year) to allow for progress on the CAT cost savings efforts and the comprehensive review, which may provide for a funding bridge in addition to CAT LLC's reserve levels.

The Commission could also use its authority under Rule 608(b)(2) of Regulation NMS to remove the pass-through prohibition unlawfully proposed by CAT LLC. To support the interim approach, FINRA would 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 model). The Commission could explore whether other Participants are willing to

⁴ 17 C.F.R. § 242.608(b)(2).

file similar proposed rule changes to support the interim approach. These individual Participant rule changes, filed pursuant to Section 19(b) of the Exchange Act and Rule 19b-4 thereunder, committing to not establish CAT recovery fees for the specified period could be adopted before Commission action on any interim funding model. This would provide certainty that separate fees would not be sought by the Participants in connection with recovering the costs of prospective fees allocated to the SROs during the interim period.

BACKGROUND

A. The Consolidated Audit Trail And CAT LLC

Responding in part to the Flash Crash of 2010, the Commission proposed a new rule that would require SROs to establish a consolidated audit trail system that would enable regulators to track information related to orders received, routed and executed across the securities markets. The proposed Consolidated Audit Trail “would require [SROs] to act jointly in developing a national market system ... plan to develop, implement, and maintain a consolidated order tracking system, or consolidated audit trail, with respect to the trading of NMS securities.”⁵ The Commission adopted the CAT in 2012, issuing a rule that required the self-regulatory organizations “to submit a national market system ... plan to create, implement, and maintain a consolidated order tracking system, or consolidated audit trail.”⁶

In 2015, the SROs “filed with the [Commission] ... a National Market System Plan Governing the Consolidated Audit Trail.”⁷ Under the CAT NMS Plan, the SROs operate “the CAT through CAT NMS, LLC.”⁸ Each individual SRO—or, for purposes of CAT NMS, LLC, each “Participant”—has a single vote on its Operating Committee.⁹

⁵ Consolidated Audit Trail, 75 Fed. Reg. 32556, 32556 (June 8, 2010).

⁶ Consolidated Audit Trail, 77 Fed. Reg. 45722, 45722 (Aug. 1, 2012).

⁷ Joint Industry Plan; Notice of Filing of the National Market System Plan Governing the Consolidated Audit Trail, 81 Fed. Reg. 30614, 30614 (May 17, 2016).

⁸ *Id.* at 30616.

⁹ *Id.*

B. The 2023 Funding Order

One of the central challenges of building and operating the Consolidated Audit Trail has been funding it. In 2023, seeking to move to a permanent funding model, CAT LLC filed with the Commission a proposed amendment to the CAT Plan to establish a funding model that charges fees based on the executed equivalent share volume of transactions in Eligible Securities (the “Executed Share Model”).¹⁰

FINRA objected to that proposal because, among other things, it forced FINRA (and thus its members) to bear a disproportionate share of the total CAT costs.¹¹ For example, under the Executed Share Model, for each reportable transaction executed otherwise than on an exchange, a fee would be assessed on the Industry Member that is identified as the executing broker, the Industry Member identified as the contra-side executing broker, and FINRA—each would pay a fee calculated by multiplying the number of executed equivalent shares in the transaction by one-third and by the Fee Rate.¹² Specifically, under the Executed Share Model, FINRA would be responsible for paying fees for the entire over-the-counter market. As FINRA then explained, it “would be assessed an estimated 34% of the total CAT costs to be borne amongst the 25 SRO Plan Participants, (based on 2021 data), even though FINRA is the only Participant that does not operate a market” and is “a not-for-profit.”¹³

In September 2023, the SEC issued an order approving the Executed Share Model (“2023 Funding Order”).¹⁴

¹⁰ See Securities Exchange Act Release No. 34–97151 (March 13, 2023), 88 Fed. Reg. 17086 (March 21, 2023) (Notice of Filing of Amendment to the National Market System Plan Governing the Consolidated Audit Trail).

¹¹ FINRA incorporates by reference its prior comment letters concerning the Executed Share Model. See Letter from Marcia Asquith, Executive Vice President, FINRA, to Vanessa Countryman, Secretary, SEC, dated April 11, 2023 at 2. See also Letter from Marcia Asquith, Executive Vice President, FINRA, to Vanessa Countryman, Secretary, SEC, dated May 12, 2021; Letter from Marcia Asquith, Executive Vice President, FINRA, to Vanessa Countryman, Secretary, SEC, dated June 22, 2022 (“June 2022 Comment Letter”); Letter from Marcia Asquith, Executive Vice President, FINRA, to Vanessa Countryman, Secretary, SEC, dated May 25, 2023. (Collectively “FINRA Comment Letters”).

¹² 88 Fed. Reg. 17086.

¹³ See Letter from Marcia Asquith, Executive Vice President, FINRA, to Vanessa Countryman, Secretary, SEC, dated April 11, 2023, at 3.

¹⁴ See Securities Exchange Act Release No. 98290 (Sept. 6, 2023), 88 Fed. Reg. 62628 (Sept.

C. The Eleventh Circuit Vacates The 2023 Funding Order

In October 2023, the American Securities Association and Citadel Securities LLC petitioned for review of the 2023 Funding Order in the U.S. Court of Appeals for the Eleventh Circuit.¹⁵ Among other things, the petitioners challenged the 2023 Funding Order as arbitrary and capricious. In late July 2025, the Court vacated the 2023 Funding Order, finding that it violated the Administrative Procedure Act.¹⁶

First, the Court found that the 2023 Funding Order failed to consider the effects of SROs other than FINRA potentially passing through 100% of their fees to broker-dealers.¹⁷ The Court concluded that the 2023 Funding Order was internally inconsistent because, although it “states that the 2015 Plan ‘requires both [SROs] ... and Industry Members ... to fund the CAT,’” it also “permits the [SROs] to pass through all of their CAT costs onto the broker-dealers.”¹⁸ The Court acknowledged that “no [SRO] other than FINRA has asked for 100% pass-through approval so far,” and that “FINRA may be unique because ... it is the only nonprofit exchange of the twenty-four currently-registered exchanges,” but “the 2023 Funding Order does not limit the potential for 100% pass-through costs to FINRA.”¹⁹ The Court found 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.”²⁰

Second, the Court found that the Commission acted unreasonably in declining to “conduct a new economic analysis or revise its previous economic analysis”²¹ even though the cost of building the CAT “exceeded the Commission’s 2016 estimate by

12, 2023) (the “2023 Funding Order”).

¹⁵ See *Am. Sec. Ass’n v. U.S. SEC*, No. 23-13396 (11th Cir. filed Oct. 17, 2023).

¹⁶ See *Am. Sec. Ass’n v. U.S. SEC*, 147 F.4th 1264 (11th Cir. 2025) (“ASA Citadel Decision”).

¹⁷ See *Am. Sec. Ass’n*, 147 F.4th at 1275.

¹⁸ See *Am. Sec. Ass’n*, 147 F.4th at 1274.

¹⁹ See *Am. Sec. Ass’n*, 147 F.4th at 1279. FINRA is registered as a national securities association pursuant to Section 15A of the Securities Exchange Act of 1934. FINRA is a not-for-profit association whose members are registered broker-dealers. FINRA is not a national securities exchange and does not operate a securities market.

²⁰ See *Am. Sec. Ass’n*, 147 F.4th at 1277.

²¹ See *Am. Sec. Ass’n*, 147 F.4th at 1278.

eight times” and “the annual cost of operating the system going forward appears likely to exceed the Commission’s 2016 estimate by nearly four times.”²²

Based on these conclusions, the Court vacated the 2023 Funding Order, while staying its decision for 60 days after issuance of the mandate, and remanded the matter to the Commission for further proceedings.²³ The Court provided its short stay to “afford the Commission an opportunity 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.”²⁴

D. CAT LLC’s Funding Proposal

On September 12, 2025, over FINRA’s objections, CAT LLC filed the Funding Proposal with the Commission.²⁵ The substantive difference between the re-proposed version of the funding model and the model approved by the 2023 Funding Order is the addition of 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 each Participant.” CAT LLC’s proposal states that this pass-through provision is intended to “address the Eleventh Circuit’s opinion regarding the potential for Participants to pass-through 100% of their CAT fees to Industry Members.”²⁶

The Funding Proposal acknowledges that Executed Share Model would force FINRA to bear a disproportionate share of CAT costs: “the size of FINRA’s fee is calculated based on the activity in the over-the-counter market, which is substantial” because recent data show that “approximately 40% of the executed equivalent share volume in Eligible Securities took place in the over-the-counter market.”²⁷ But the

²² See *Am. Sec. Ass’n*, 147 F.4th at 1269.

²³ See *Am. Sec. Ass’n*, 147 F.4th at 1280. The Court issued its mandate on September 30, 2025, and the stay of the Court’s judgment will end 60 days from the mandate date. See also *Mandate to Petitioners, Am. Sec. Ass’n v. U.S. SEC*, No. 23-13396 (11th Cir. Sept. 30, 2025).

²⁴ See *Am. Sec. Ass’n*, 147 F.4th at 1280.

²⁵ See Funding Proposal *supra* note 3.

²⁶ See Funding Proposal, *supra* note 3, 90 Fed. Reg. 44910, 44930.

²⁷ See Funding Proposal, *supra* note 3, 90 Fed. Reg. 44932.

proposal does not grapple with these implications, particularly given FINRA's status as a non-profit, member-funded national securities association.

ANALYSIS

I. CAT LLC's Proposed Pass-Through Prohibition Is Unlawful.

CAT LLC proposed a pass-through prohibition seeking to dictate how an individual SRO could—or could not—choose to fund its costs to comply with their individual operational, legal, and other requirements. However, even acting under the guise of the Plan, SROs are not legally authorized to control, in any manner, the fees charged by other SROs. Most particularly, 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. That proposition is clear from the Exchange Act, from Rule 608, and from the history of national market system plan structure.

Congress adopted Section 11A of the Securities Exchange Act to establish a framework for a national market system. Among other things, the statute empowers the Commission to “... authorize or require self-regulatory organizations to act jointly with respect to matters as to which they share authority under this title in planning, developing, operating, or regulating a national market system (or a subsystem thereof) or one or more facilities thereof.”²⁸ Given the legal and market structure concerns that drove the passage of Section 11A, the statute sought to strike a balance between strengthening the U.S. markets by facilitating a national market system and permitting joint coordination and action for tightly circumscribed purposes—activities that otherwise could run afoul of antitrust laws. Congress permitted a narrow scope of joint action subject to oversight and regulation by the Commission.²⁹

Nothing in Section 11A authorizes SROs to dictate what rules other SROs propose or how other SROs fund their operations. On the contrary, Section 11A concerns only matters over which SROs “act jointly” and “share authority” with respect to national market system plans. Separately, Section 19(b) grants “each self-regulatory organization” the right to propose rule changes.³⁰ And it recognizes that each SRO

²⁸ Section 11A(a)(3)(B) of the Securities Exchange Act.

²⁹ See H.R. Report No. 94-123 (1975) (adopting former Section 20A(a)(6) of the Exchange Act).

³⁰ 15 U.S.C. § 78s(b)(1).

needs the flexibility to propose rule changes appropriate to its individual circumstances.

The Commission preserved this careful balance when, in 1981, it adopted SEA Rule 11Aa3-2.³¹ That rule established procedures related to the filing of joint industry plans by SROs for the planning, developing, operating, or regulating of a national market system or one or more facilities thereof.³² Many of these procedures ultimately became a part of today’s Rule 608 of Regulation NMS.³³ Regulation NMS provides that every national market system plan or plan amendment filed by SROs include a description of the manner in which any facility contemplated by the plan or plan amendment will be operated, including to the extent applicable: “[t]he method by which any fees or charges collected ***on behalf of all of the sponsors and/or participants*** in connection with ***access to, or use of, any facility contemplated by the plan or amendment will be determined and imposed*** (including any provision for distribution of any net proceeds from such fees or charges to the sponsors and/or participants) and the amount of such fees or charges.”³⁴

Critically, the above language focuses narrowly on fees and charges collected on behalf of *all plan participants* in connection with *access to or use of an NMS plan facility*, and *not* on fees charged individually by plan participants—a line that the Commission deliberately drew in adopting this provision. The fact that Rule 608’s scope of fee authority is limited to *joint* fees for NMS plans is not only abundantly clear from the face of the *text*, but even clearer in light of the *history* of Rule 608’s predecessor.

When the Commission first proposed SEA Rule 11Aa3-2(b)(5)(ii) relating to joint SRO fees, it included similar, though less specific language, requiring that SROs submitting NMS plans and amendments thereto describe:

³¹ See Securities Exchange Act Release No. 17580 (Feb. 26, 1981), 46 Fed. Reg. 15866 (March 10, 1981) (“Rule 11Aa3-2 Adopting Release”).

³² *Id.*

³³ SEA Rule 11Aa3-2 was redesignated as Rule 608 in 2005 when Regulation NMS was adopted.

³⁴ See 17 C.F.R. § 242.608(a)(5)(ii) (emphasis added); *see also* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 Fed. Reg. 37496 (June 29, 2005).

“The method by which any fees or charges in connection with access to, or use of, any facility contemplated by the plan will be determined and imposed (including any provision for distribution of any net proceeds from such fees or charges to the sponsors and/or participants) and the amount of such fees or charges.”³⁵

However, exchange commenters voiced concern that the language “might be broad enough to require a description of the fees or charges collected on behalf of ***an individual SRO rather than all NMS Plan sponsors jointly***.”³⁶ In response, the SEC modified the original proposal to by adding the emphasized language below:

“The method by which any fees or charges ***collected on behalf of all of the sponsors and/or participants*** in connection with access to, or use of, any facility contemplated by the plan or amendment will be determined and imposed (including any provision for distribution of any net proceeds from such fees or charges to the sponsors and/or participants) and the amount of such fees or charges.”³⁷

It is clear that the carefully calibrated Exchange Act framework does not authorize SROs to act jointly to impose restrictions on, or otherwise govern, individual SRO fees. But the proposed pass-through prohibition would do just that: It does not control CAT LLC fees; instead, it purports to control how a Participant SRO funds its own SRO costs through separate SRO fees. In the terms of Rule 608, the notional “pass-through” fees that CAT LLC seeks to address through an NMS Plan fail to relate not only to “access to, or use of, any facility contemplated by the plan or amendment,” but also to fees “collected on behalf of all of the sponsors and/or participants.” This unlawful action by CAT LLC could potentially establish a dangerous precedent and enable similar overreach in other NMS plans, including those governing securities information processing.

In addition, given that the Plan imposes substantial and disproportionate costs on FINRA, if the Funding Proposal were adopted—potentially forbidding FINRA

³⁵ See Securities Exchange Act Release No. 16410 (Dec. 7, 1979), 44 Fed. Reg. 72606 (Dec. 14, 1979).

³⁶ See Rule 11Aa3-2 Adopting Release, *supra* note 31, 46 Fed. Reg. 15866, 15870 (emphasis added).

³⁷ See *id.* at 15871 (emphasis added).

from recouping those costs—the Plan may violate FINRA’s due process rights and run afoul of the Takings Clause.³⁸

II. The Proposed Pass-through Prohibition Rests On A False Premise And, In All Events, Does Not Respond To The Court’s Finding That The 2023 Funding Order Violates The APA.

CAT LLC’s Funding Proposal purports to “address the Eleventh Circuit’s opinion regarding the potential for Participants to pass-through 100% of their CAT fees to Industry Members” simply by 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).”³⁹ But that assertion is not true. FINRA is a “Participant,” and it emphatically did *not* agree “not to file with the SEC ... a new fee for assessing on its members [SRO CAT costs].” While, as noted, FINRA would contemplate agreeing not to file new fees for passing through SRO CAT costs *under certain conditions*, it has not yet done so and did not agree to do so under the terms of this amendment. CAT LLC’s proposed remedy thus rests on a manifestly false premise.

In addition, the pass-through provision—*i.e.*, that the SROs agree not to file a proposed rule change “that would establish a new fee” for assessing CAT fees—does not specifically address, much less expressly preclude, the possibility that Participants may pass through 100% of their CAT fees to Industry Members. The proposed pass-through provision only prohibits “new fee[s],” leaving SROs free to pass CAT costs through to members via *existing* fees and assessments. Indeed, the Funding Proposal owns this, explaining that CAT LLC intentionally left untouched Appendix C of the CAT NMS Plan, which provides that “Participants may charge their members to cover the CAT NMS Plan costs either explicitly or *subsume those costs in other fees or assessments*.”⁴⁰

Because the Funding Proposal does not explain this choice further or discuss the implications of the difference among SROs noted above, it raises concerns that it is designed to continue to permit the Participants to pass through 100% of their CAT costs to Industry Members, so long as they do so through increases to existing fees

³⁸ See *Armstrong v. United States*, 364 U.S. 40, 49 (1960).

³⁹ See Funding Proposal, *supra* note 3, 90 Fed. Reg. 44910, 44930.

⁴⁰ See *id.* at 44911 n.22 (emphasis added).

and assessments. This result would not address the issues raised by the Eleventh Circuit, and the Funding Proposal does not provide the SEC any grounds to remedy this fundamental deficiency.

In addition, regrettably, the Funding Proposal also does not meaningfully engage with the economic realities of CAT cost allocation, how different SROs are funded, and the impact of fees on different SROs' members—leaving it largely to the Commission to analyze who ultimately bears CAT costs. The Funding Proposal simply declares that any “new fee” for passing on the SRO costs of CAT should be prohibited, without serious discussion of the underlying impact among the Participants and industry members that animated the Eleventh Circuit's decision.

CAT LLC's Funding Proposal did not account for such issues. Its theoretical limit on pass-through fees is not only factually inaccurate and fails to prevent a 100% pass-through but also ignores the reality of FINRA's funding structure. The Funding Proposal suggests that FINRA, “just like the exchange Participants,” will need to determine for itself how to obtain the funds needed to pay its CAT fees.⁴¹ But FINRA and the exchange Participants are not similarly situated. Like FINRA, each exchange Participant is subject to statutory provisions requiring “the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons” using exchange facilities or any facility or system that the association operates or controls.⁴² Unlike FINRA, however, exchanges have a diverse set of potential revenue sources—members, issuers, persons subscribing to its market data or using other facilities—whereas FINRA's costs are predominantly funded by fees allocated among its members. Thus, FINRA is not “just like the exchange Participants”—the Funding Proposal rests on an apples-to-oranges comparison.

In addition, unlike exchanges, FINRA's members include many firms who are not users of the trading facilities for reporting the transactions on which CAT fees are assessed; and the majority of FINRA members are not CAT reporters. For FINRA, the most direct way to allocate FINRA's designated CAT costs among its members (who ultimately will bear costs allocated to FINRA) would be to apply cost recovery fees to the members whose activities most directly contribute to FINRA's

⁴¹ See *id.* at 44924.

⁴² 15 U.S.C. § 78(f)(b)(4) and 15 U.S.C. § 78o-3(b)(5).

designated portion of Participant CAT fees, which is precisely what the Funding Proposal would *prevent*, at least insofar as those fees are new.

The Funding Proposal fails to engage meaningfully with these unique features of FINRA's structure, funding sources, and the range of FINRA members' business models, and the consequences for the Eleventh Circuit's fundamental concern about the allocation of costs among Participants and industry members. Indeed, the Funding Proposal elides the difference between FINRA and exchanges by pointing vaguely to "revenue sources other than membership fees,"⁴³ only expressly identifying revenue generated through the Regulatory Services Agreements ("RSAs") that FINRA has entered into with various exchanges to perform regulatory oversight and market surveillance functions. Yet RSA-related revenues cover FINRA's costs of regulatory services provided to the exchanges. They have not been—and, as voluntary commercial contracts, cannot reasonably be viewed as—a reliable source of sustainable CAT funding sufficient to replace membership fees at the levels required by the Executed Share Model.

Nor does FINRA currently directly receive fees from its trade reporting facilities for listed stocks ("TRFs") that would cover CAT costs. 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 TRFs. While TRF reporters pay reporting fees for using the TRFs, FINRA does not retain either TRF trade reporting or market data revenues. Each FINRA TRF 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 TRFs, subject to certain payments to FINRA for agreed-upon costs.

Therefore, the exchanges have direct revenue streams from the operation of the facilities on which the transactions that are taxed using the Executed Share Model occur, whereas FINRA generally does not retain such revenue for OTC transactions in listed securities. This mismatch represents another key distinction between FINRA's and the exchanges' funding structures: FINRA is charged CAT fees based on TRF activity but does not directly derive revenue from TRF reporting or data. And to date the exchange business members that operate the TRFs have not conceded that TRF revenues will be available to cover any amount of FINRA's designated portion of CAT costs based on TRF-reported trades.

⁴³ See Funding Proposal, *supra* note 3, 90 Fed. Reg. 44910, 44924.

The Funding Proposal's declaration that "[a]ny review of how the Participants obtain their funds to pay CAT fees is beyond [its] scope" therefore does not change the practical reality that any allocation of Participants' CAT costs to FINRA will almost certainly be equivalent to allocating those costs to industry members.⁴⁴ The Funding Proposal's vague references to "revenue sources other than membership fees" do not begin to explain how it could result in a workable and equitable allocation of costs in light of FINRA's broad membership and not-for-profit funding structure.⁴⁵

III. A Decision On A Permanent Funding Model Should Be Part Of The Comprehensive Review of CAT, Which Should Consider Plan Governance.

Ultimately, FINRA believes that a full analysis of the allocation of costs among Participants and industry members should await further progress on the comprehensive review of CAT that has been initiated by Chairman Atkins,⁴⁶ which FINRA strongly supports.⁴⁷

Since CAT was first adopted, FINRA, other regulators, and industry members have gained useful experience from its operation, and FINRA is prepared to share its experience in the Commission's review. FINRA applauds the Commission's recent

⁴⁴ See Funding Proposal, *supra* note 3, 90 Fed. Reg. 44932.

⁴⁵ The Eleventh Circuit also raised the issue of aligning incentives in the CAT structure so as to better control CAT costs. See *Am. Sec. Ass'n*, 147 F.4th at 1272-73, 1275-76. FINRA is very cognizant of and sensitive to the ultimate impact of CAT costs on industry members. From FINRA's perspective, the current outcome with respect to elevated CAT costs is not due to a misalignment of FINRA's incentives, either with its members' or investors' interests, but rather due to rigid NMS Plan technological requirements and with that, process challenges in implementing new, lower cost requirements.

⁴⁶ Paul S. Atkins, Chairman, SEC, *Prepared Remarks Before SEC Speaks* (May 19, 2025), <https://www.sec.gov/newsroom/speeches-statements/atkins-prepared-remarks-sec-speaks-051925>. See also Paul S. Atkins, Chairman, SEC, *Statement on the Spring 2025 Regulatory Agenda* (Sept. 4, 2025), <https://www.sec.gov/newsroom/speeches-statements/atkins-2025-regulatory-agenda-090425>; and SEC, *Evaluating the Continued Effectiveness of the Consolidated Audit Trail*, <https://www.reginfo.gov/public/do/eAgenda-ViewRule?pubId=202504&RIN=3235-AN54>.

⁴⁷ See Robert Cook, *CAT Should Be Modified to Cease Collecting Personal Information on Retail Investors* (Jan. 17, 2025), <https://www.finra.org/media-center/blog/cat-should-be-modified-to-cease-collecting-personal-information-on-retail-investors>.

exemptive order, which paves the way for four sensible cost-savings measures—all of which FINRA supports.⁴⁸ FINRA also supports the now-pending proposed amendment to the Customer and Account Information System, or “CAIS,” which would achieve additional cost savings by, among other things, eliminating name, address, and year of birth from the CAT—the collection of which is not justified in light of available alternatives and raises security considerations and potential risks.⁴⁹

Given these ongoing efforts to achieve additional cost savings and the review of the scope of CAT,⁵⁰ FINRA is concerned that rushing to adopt—*permanently*—the same Executed Share Model vacated by the Eleventh Circuit is counterproductive. All stakeholders need to understand the full implications of the potentially significant changes to CAT now underway. FINRA has long opposed the Executed Share Model⁵¹ because it fails to address the issues it creates for the allocation of costs among SROs and the industry (including that allocations to FINRA are in essence allocations to industry members), a flaw acknowledged in the Eleventh Circuit’s decision vacating the 2023 Funding Order, and one that further changes to the CAT may complicate.

Accordingly, adopting any funding model at this time that does not explicitly limit its effectiveness to a reasonable, specified timeframe is premature: it front-runs the outcome of the comprehensive CAT review initiated by Chairman Atkins and prevents full evaluation of cost allocation in line with the Eleventh Circuit’s decision. Instead, a permanent funding model should be determined in concert with that

⁴⁸ See Securities Exchange Act Release No. 104144 (Sept. 30, 2025), 90 Fed. Reg. 47853 (Oct. 2, 2025).

⁴⁹ See Robert Cook, *Eliminating All PII from CAT* (March 19, 2025), <https://www.finra.org/media-center/blog/eliminating-all-pii-from-cat>.

⁵⁰ See Paul S. Atkins, Chairman, SEC, *Consolidated Audit Trail: A New Day for the CAT* (September 30, 2025), https://www.sec.gov/newsroom/speeches-statements/atkins-093025-consolidated-audit-trail-new-day-cat?utm_medium=email&utm_source=govdelivery and SEC, *Evaluating the Continued Effectiveness of the Consolidated Audit Trail*, <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202504&RIN=3235-AN54>.

⁵¹ See Letter from Marcia Asquith, Executive Vice President, FINRA, to Vanessa Countryman, Secretary, SEC, dated April 11, 2023, at 2. See also Letter from Marcia Asquith, Executive Vice President, FINRA, to Vanessa Countryman, Secretary, SEC, dated May 12, 2021; Letter from Marcia Asquith, Executive Vice President, FINRA, to Vanessa Countryman, Secretary, SEC, dated June 22, 2022 (“June 2022 Comment Letter”); and Letter from Marcia Asquith, Executive Vice President, FINRA, to Vanessa Countryman, Secretary, SEC, dated May 25, 2023.

comprehensive review of CAT, including CAT's scope, costs, and governance. Once the results of this review are determined, all parties will be better positioned to design a funding mechanism that is equitable, sustainable and transparent.⁵² As an interim measure, FINRA recommends the temporary funding solution described above. However, if this approach is not implemented (and with respect to any future CAT funding model), FINRA's unique status as a national securities association funded by members who represent a wide range of business models requires consideration in the Commission's evaluation of the impact of the allocation of CAT costs.

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. In fact, the court acknowledged that there are differences among the SROs that may validly affect the allocation of costs among SROs and the industry, stating: "FINRA may be unique because [] it is the only nonprofit [SRO] of the twenty-four currently-registered exchanges."⁵³

In connection with a permanent funding model, it would be critical that the Commission consider the differences among the Participants and the resulting impact of these differences on the true allocation of costs among the Participants and industry members to adequately address the issues raised by the Eleventh Circuit. For example, FINRA is the sole national securities association among the Participants; the sole not-for-profit Participant; the sole Participant with a majority of members who do not engage in activity that generates CAT reports; and the sole Participant that does not operate a market. These features of FINRA's organization and structure significantly affect the workability, ultimate economic impact and fairness of cost allocation among Participants and the industry. If there is ultimately to be a

⁵² While the vacated Executed Share Model arguably provides for the sharing of costs between industry members and Participants, the Eleventh Circuit's opinion faulted the 2023 Funding Order for not adequately considering the economic reality of costs being passed from Participants to industry members through separate fees. Although the court did not discuss in the same way the economic reality of costs being passed from industry members to their customers through separate fees, FINRA understands that such pass-throughs of regulatory fees are not uncommon. Therefore, once a better sense of the costs of a newly refined CAT is available, regulators and industry members alike will be better informed and positioned to develop a funding model that is consistent with the Exchange Act (including one that is transparent and conducive to industry member pass-throughs).

⁵³ See *Am. Sec. Ass'n*, 147 F.4th at 1279.

reasonable basis for a permanent allocation of fees among Participants and industry members, the Commission will need to expressly identify and evaluate these factors and other salient features of SRO structures, funding, and membership profiles. In particular, confronting the fundamental realities of FINRA's funding structure and the inevitable impact on FINRA members of any cost allocation to FINRA must be a key element in analyzing the true economic impact of any CAT funding proposal.

As part of its comprehensive review, in addition to working to reduce costs and arrive at a permanent funding model, FINRA also requests that the Commission review CAT's flawed governance structure and how it can better support appropriate allocation of costs among CAT's varied stakeholders. FINRA has repeatedly questioned the voting structure that governs the CAT NMS Plan, which allows large voting blocks for affiliated exchanges to impose costs on other SROs.⁵⁴ At present, four blocks of affiliated exchanges together represent 21 out of 27 votes, resulting in voting dynamics that are susceptible to outcomes that favor some Participants at the expense of the broader securities industry. For example, FINRA, which has just one vote representing itself and its member firms, was allocated an estimated 38% of total Participant CAT costs from January to August of this year, with no acknowledgment of the impact of this allocation on the industry.

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The Funding Proposal before the Commission fails to address the fundamental issues identified by the Eleventh Circuit when it vacated the 2023 Funding Order. Rather than engaging with the court's core concern about the economic impact of CAT

⁵⁴ The Commission observed similar inequities resulting from the voting structure of the equity market data NMS plans and accordingly ordered that the new consolidated equity market data plan include a voting structure allocating voting power by exchange group and market share. *See* Order Directing the Exchanges and the Financial Industry Regulatory Authority To Submit a New National Market System Plan Regarding Consolidated Equity Market Data, Securities Exchange Release No. 88827 (May 6, 2020), 85 Fed. Reg. 28702, 28713 (May 13, 2020) ("The Commission...believe[s] that there is a need to re-balance voting power in Plan governance to address the disproportionate influence of affiliated exchange groups.... The current governance structure provides voting power based on each exchange license and thereby concentrates voting power in a small number of exchange group stakeholders, which also have inherent conflicts of interest with respect to the operation of the Plans. The Commission believes that this has perpetuated disincentives for the Equity Data Plans to make improvements to the SIP data products." (footnotes omitted)).

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costs on broker-dealers, the proposal attempts to sidestep this issue through an unworkable and unlawful pass-through prohibition, all while failing to account for the effect of allocating undue CAT costs to FINRA.

FINRA remains committed to working collaboratively with the Commission and other stakeholders to develop a sensible and serviceable CAT that fulfills its regulatory purpose while distributing costs fairly across the industry. FINRA appreciates the Commission's consideration of its concerns and stands ready to engage constructively in developing an appropriate funding solution that addresses the legitimate needs of all stakeholders.

Sincerely,

WILSON SONSINI GOODRICH &
ROSATI
Professional Corporation

/s/ Steffen N. Johnson

Steffen N. Johnson