



January 8, 2021

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

**Re: *File No. 4-698; Joint Industry Plan; Notice of Filing of Amendment to the National Market System Plan Governing the Consolidated Audit Trail by the Plan Participants***

Dear Ms. Countryman:

On behalf of its member firms and the customers they represent, The Securities Industry and Financial Markets Association (“SIFMA”)<sup>1</sup> respectfully requests that the U.S. Securities and Exchange Commission (“Commission”) extend the comment period for the above-referenced proposal (“Proposal”) from the current 21-day period to a 35-day period from the date of publication in the Federal Register to provide the industry and the public with a more appropriate time period in which to evaluate and comment on the Proposal.<sup>2</sup> The Proposal seeks to force all Industry Members that are obligated to report to the Consolidated Audit Trail (“CAT”) pursuant to Commission and self-regulatory organization (“SRO”) rules to effectively assume all of the liability associated with a breach of the CAT System, which has been developed and will be operated by the SROs.<sup>3</sup> The Proposal would accomplish this by amending the CAT NMS Plan to require Industry Members and their reporting agents to each sign a mandatory agreement as a condition of reporting to the CAT that strictly limits the liability of the SROs in the event of a CAT data breach. Although the 21-day comment period on the Proposal is the typical length of the comment period for SRO proposed rule changes, it is not an adequate amount of time to allow market participants and investors to evaluate and prepare a comment letter on an initiative of the Proposal’s complexity and magnitude.

While we recognize the issues raised in the Proposal have been discussed previously in prior forums, this is the first opportunity for market participants and investors to publicly

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<sup>1</sup> 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 members, 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>.

<sup>2</sup> See Release No. 34-90826 (December 30, 2020), 86 FR 591 (January 6, 2021).

<sup>3</sup> Capitalized terms used in this letter have the same meaning as they do in the NMS plan governing the CAT (the “CAT NMS Plan”).

comment on the SROs' decision to limit their liability in the event of a CAT data breach.<sup>4</sup> As the repository for virtually all of investors' equity and options trading activity in the United States, the CAT System is an especially attractive target for nation states and other bad actors that have become increasingly sophisticated as the recent SolarWinds hack demonstrates.<sup>5</sup> These concerns are intensifying as the SROs are in the process of finalizing the scope of the customer identifying information to be reported to and maintained by the CAT through the CAT Customer and Account Information System specification. The protection of the data in the CAT System is of paramount importance not only to Industry Members, but also the Commission itself. Indeed, the Commission issued a proposal in August 2020 designed to enhance the security of data within the CAT System ("CAT Data Security Proposal") that is still pending with the Commission.<sup>6</sup> Given the purpose and design of that still-pending CAT Data Security Proposal, it would be very beneficial for market participants and investors to have more time than 21 days to consider the implications of the adoption (or lack of adoption) of that proposal on the SROs' decision in the Proposal to limit their liability in connection with a breach of the CAT System.

We further note that the SROs have had a significant amount of time to prepare the Proposal, as demonstrated by the lengthy Charles River Associates economic analysis that they attached to the Proposal.<sup>7</sup> Based on SIFMA member firms' experience, engaging a third-party economic analysis firm and having them prepare and draft a report similar to the Charles River document is a significant undertaking. As receiving thoughtful comments from distinct viewpoints of impacted parties is beneficial to the Commission as it exercises its decision-making powers, it may be useful for the Commission to receive an independent economic report from the financial industry participants. If SIFMA and its member firms decide to address the SROs' report with one of our own, more time than the current 21-day comment period is necessary to accomplish such a task. Even with the comment period of 35 days that we are requesting, we anticipate that accomplishing such a task will be challenging given the limited time.

Finally, we note the Commission may have determined to offer a 21-day comment period so that the Commission could make a decision on the Proposal within the 90-day period

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<sup>4</sup> SIFMA previously raised several policy concerns related to the SROs' prior effort to limit their liability in connection with the CAT System. See (<https://www.sec.gov/litigation/apdocuments/3-19766-event-2020-04-22-declaration-of-lorin-reisner-in-support-of-sifma-application.pdf>). These policy concerns, however, appear to have been completely dismissed by the SROs in the Proposal without any additional outreach to SIFMA or Industry Members since the SROs' prior effort.

<sup>5</sup> See (<https://www.reuters.com/article/us-global-cyber-microsoft/solarwinds-hackers-accessed-microsoft-source-code-the-company-says-idINKBN2951M9>).

<sup>6</sup> See Release No. 34-89632 (August 21, 2020), 85 FR 65990 (October 16, 2020). As the CAT Data Security Proposal is designed to enhance the security and protection of data within the CAT, SIFMA is very supportive of that proposal and has encouraged the Commission to swiftly adopt it subject to the Commission's consideration of certain minor enhancements described in our comment letter (<https://www.sec.gov/comments/s7-10-20/s71020-8067495-225974.pdf>).

<sup>7</sup> The timing of the Proposal's submission around the holidays and close to a CAT milestone date also may pose challenges for interested commenters.

specified in newly-amended Rule 608(b)(2) of Regulation NMS.<sup>8</sup> The Commission included in the recent amendments to Rule 608 timeframes in which it needs to act on NMS plan amendments comparable to the timeframes in which it needs to act on SRO rule filings.<sup>9</sup> We note, however, that the Commission in these recent amendments also gave itself the ability to extend the initial 90-day period for an additional 210 days (for up to 300 days total).<sup>10</sup> Given the Commission's ability to extend the time to act on the Proposal, we think it is entirely appropriate to give the public more time than 21 days to prepare comments on the Proposal.

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For the foregoing reasons, SIFMA respectfully requests that the Commission extend the comment period on the Proposal so that SIFMA member firms and the public have 35 days in which to comment on the Proposal. We further request that the Commission announce such an extension as soon as possible to allow firms and the public to make appropriate plans during the comment period, which may include the engagement of an outside economic consulting firm and the preparation of an appropriate report.

Thank you for your consideration.

Respectfully yours,



Kenneth E. Bentsen, Jr.  
President and CEO

cc: The Honorable Elad L. Roisman, Acting Chairman  
The Honorable Hester M. Peirce, Commissioner  
The Honorable Allison Herren Lee, Commissioner  
The Honorable Caroline A. Crenshaw, Commissioner

Christian Sabella, Acting Director, Division of Trading and Markets  
David Shillman, Associate Director, Division of Trading and Markets  
David Hsu, Assistant Director, Division of Trading and Markets  
Erika Berg, Special Counsel, Division of Trading and Markets

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<sup>8</sup> 17 CFR 242.608(b)(2)(i).

<sup>9</sup> See Release No. 34-89618 (August 19, 2020), 85 FR 65470 (October 15, 2020).

<sup>10</sup> 17 CFR 242.608(b)(2)(ii).