

February 8, 2021

Via: rule-comments@sec.gov

Ms. Vanessa Countryman
Secretary
U.S. 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 – Raymond James & Associates, Inc. Comment Letter in Support of the Comment Letter of the Securities Industry and Financial Markets Association

Dear Ms. Countryman:

Introduction

Raymond James & Associates, Inc. (“RJA” or the “Firm”), a principal subsidiary of Raymond James Financial¹, appreciates the opportunity to comment on the proposal by the Consolidated Audit Trail (“CAT”) Plan Participants (“Participants”) to amend the CAT NMS Plan in order to include limitation of liability provisions in the CAT Reporter and CAT Reporting Agent Agreements. RJF strongly agrees with the issues and concerns raised by SIFMA in their comments to the Securities and Exchange Commission (the “SEC” or “Commission”) dated January 27, 2021 concerning the limitation of liability provisions proposed by the Participants. The Firm is particularly concerned with the proposed provisions in that they are inefficient as a matter of policy, inconsistent with principles of sound risk management and fail to account for the costs and risks to Industry Members and their clients.

SIFMA details in its comment letter the ways in which limiting the liability of CAT LLC and the Plan Participants for a data loss or breach is inconsistent with principles of risk management and fundamentally unfair as a matter of policy. First, the incentive to adopt sound risk management programs and controls is rooted in the need to effectively identify, manage or mitigate risk of regulatory exposure, financial loss and reputational damage. Here, the proposal seeks to eliminate a

¹ Raymond James Financial, Inc. (“RJF,” the “firm” or the “Company”) is a leading diversified financial services company providing private client group, capital markets, asset management, banking and other services to individuals, corporations and municipalities. The firm, together with its subsidiaries, is engaged in various financial services activities, including providing investment management services to retail and institutional clients, the underwriting, distribution, trading and brokerage of equity and debt securities, and the sale of mutual funds and other investment products. The firm also provides corporate and retail banking services, and trust services. We operate predominately in the United States (“U.S.”) and, to a lesser extent, in Canada, the United Kingdom (“U.K.”), and other parts of Europe.

key incentive for CAT LLC and Participants to adopt robust data security controls by nearly eliminating the risk of financial loss. The effect of the proposal is to shift the risk and liability of loss arising from a data breach to Industry Members and customers with little to no recourse to obligate CAT LLC and the Plan Participants to adopt the necessary controls, or remediate control deficiencies exposed by a data breach. Moreover, the CAT System collects and stores the data submitted by Industry Members. This being the case, CAT LLC and the Participants should be responsible for implementing reasonable controls and bear the loss for failing to do so as a matter of sound public policy. The SEC should not allow CAT LLC and Participants to shift the preponderance of the liability to Industry Member and clients, who are not responsible for the data once submitted to the CAT System or for developing appropriate data security controls over the same.

Second, Plan Participants' emphasize, "[L]imitations of liability are ubiquitous within the securities industry and have long governed the economic relationship between self-regulatory organizations and the entities that they regulate."² The proposal cites instances in which self-regulatory organizations ("SRO") codified limitation of liability in existing SRO rules. However, SIFMA cites in their letter instances in which SRO's did not limit liability in their rules, notably in instances of willful or negligent conduct of SRO principals and agents. The Firm supports SIFMA's statement that "[A]t the very least, liability limitations should not extend to willful misconduct, gross negligence, bad faith or criminal acts of CAT LLC, the SROs or their representatives or employees."³

Finally, the Plan Participants included with their proposal a report from Charles River Associates' (the "CRA Report) supporting arguments that the limitation of liability is the best and most efficient way to address costs and risks of a data breach of the CAT. As SIFMA notes in Section I.D. of their letter, the report considers costs to CAT LLC and Plan Participants, but fails to account for the costs incurred by Industry Members for assuming liability of data loss or breach, or those incurred by clients impacted by a breach of the CAT System. Moreover, the CRA Report fails to consider broadly the types of data security risks that CAT faces, further misstating the potential risks and by proxy, the potential costs to industry members.

The Firm appreciates the opportunity to comment and strongly supports the points raised by SIFMA in their letter to the Commission concerning the Plan Participants proposal. Should you have any questions, you may contact me at [REDACTED] or by email, [REDACTED]

Sincerely,



Thomas R. Tremaine
Executive Vice President, Chief Operations Officer
Raymond James & Associates, Inc.

² Joint Industry Plan; Notice of Filing of Amendment to the National Market System Plan Governing the Consolidated Audit Trail, 86 Fed. Reg. 591, 593 (proposed December 30, 2020).

³ See SIFMA Letter to Ms. Vanessa Countryman, Secretary, U.S. Securities and Exchange Commission, January 27, 2021, Page 7-8.