

VIA ELECTRONIC MAIL to: rule-comments@sec.gov

February 10, 2026

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

Re: Consolidated Audit Trail Funding Proposal (File No. 4-698)

Dear Ms. Countryman:

The American Securities Association¹ (ASA) submits these comments in response to the proposed new funding plan for the Consolidated Audit Trail (“CAT”) submitted by the self-regulatory organizations (“SROs”) in 2025 (the “Proposal”). ASA has been deeply involved in issues regarding the CAT since its inception, including the CAT’s funding model, its unprecedented invasion of the privacy rights of American investors, and the legality of the CAT itself. None of these foundational concerns have been resolved in the Commission’s recent actions or in the most recent order and related Proposal.

In our October 31, 2025 letter on this file (the “October 31 ASA Letter²”), ASA explained how the CAT has imposed billions of dollars in costs on broker-dealers and their customers, violated the constitutional right to privacy for millions of Americans, and provided no meaningful benefits that could not have been achieved through less intrusive means. We incorporate that letter by reference here and request that it be made part of the comment file for this submission.

I. Background.

Since the Commission first established the CAT under Rule 613 in 2012, the CAT has evolved into an extraordinarily expensive, centralized surveillance system that collects and stores vast amounts of trading data about American investors. In 2023, ASA and Citadel challenged the Commission’s CAT funding plan in court. In July 2025, the U.S. Court of Appeals for the Eleventh Circuit ruled in our favor, holding that the Commission acted arbitrarily and capriciously in adopting the 2023 funding plan and that it relied on incomplete and incompatible

¹ ASA is a trade association that represents the retail and institutional capital markets interests of regional financial services firms who provide Main Street businesses with access to capital and advise hardworking Americans how to create and preserve wealth. ASA’s mission is to promote trust and confidence among investors, facilitate capital formation, and support efficient and competitively balanced capital markets. This mission advances financial independence, stimulates job creation, and increases prosperity. ASA has a geographically diverse membership base that spans the Heartland, Southwest, Southeast, Atlantic, and Pacific Northwest regions of the United States.

² ASA Letter to the Securities and Exchange Commission regarding Re: Consolidated Audit Trail Funding Proposal (Release No. 34-103960; File No. 4-698) available here: <https://www.sec.gov/comments/4-698/4698-672447-2037474.pdf>.



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economic analysis to justify that plan³.

Despite that ruling, the Proposal essentially seeks to reinstate the unlawful 2023 funding framework, again placing the overwhelming burden of CAT costs on broker-dealers and, ultimately, their customers. As we explained in our October Letter, neither Rule 613 nor the CAT NMS Plan authorizes the Commission or the SROs to treat broker-dealers as an off-budget funding source for an SEC surveillance project whose legality and necessity remain unresolved.

II. The SEC Must First Determine Whether the CAT Is Legal.

The CAT continues to raise fundamental questions of administrative and constitutional law. The Eleventh Circuit's decision exposed only a fraction of the deeper legal flaws embedded in the CAT's structure, including the Commission's insistence on collecting and storing personally identifiable information ("PII") of every American who trades a single share of stock. That collection and storage of PII in a large, centralized database accessible to government employees and contractors is a stark intrusion on Americans' Fourth Amendment rights and creates an enormous cybersecurity target.

Before approving any new funding arrangement, the Commission should determine whether a system resembling the current CAT is lawful at all—both in terms of statutory authority and constitutional constraints. If the Commission nonetheless concludes that the CAT can be operated lawfully, it must ensure that any funding mechanism complies with the Appropriations Clause and does not simply shift the entire cost of this system onto broker-dealers and their customers.

III. The SEC Should Perform a Full Financial Audit of CAT Costs.

As ASA explained previously, the Commission should conduct a complete and transparent financial audit of the CAT. That audit should include, at a minimum:

- All CAT-related expenditures, including contractor and vendor costs, consulting and legal fees, and compensation to CAT LLC and SRO personnel.
- How broker-dealer financial responsibilities were determined, including the allocation of costs across different types of firms and business models.
- A detailed accounting of any reserves, surplus collections, and other balances accumulated under prior funding arrangements.

The results of that audit should be compiled into a public report that identifies any waste, mismanagement, or abuse, and should be completed before the Commission approves any new funding plan.

³ Am. Sec. Ass'n, v. SEC, 147 F.4th 1264 (11th Cir. 2025) (ASA).





IV. The SEC Should Determine How Legacy CAT Costs Should Be Reimbursed.

The Eleventh Circuit's decision vacating the 2023 funding plan raises an obvious question: what happens to the substantial sums that broker-dealers have already been forced to pay under an unlawful model? As noted in our October Letter, it took roughly \$500 million to build the CAT and approximately \$200 million per year to operate it—numbers far exceeding the Commission's initial estimates. Many of these funds were extracted from broker-dealers outside the normal appropriations process and used to build and operate a system whose legality remains unresolved.

The Commission should identify and adopt a mechanism to reimburse broker-dealers (and, by extension, American investors) for amounts contributed under unlawful or defective funding arrangements. Possible mechanisms include direct reimbursement funds, fee offsets over time, or a congressional appropriation to restore funds that should never have been taken outside the appropriations process.

V. The Proposal Is Fundamentally Flawed for the Following Reasons.

Building on each of the foregoing concerns, ASA believes the Proposal is fundamentally flawed and cannot be approved in its current form. In particular, the Proposal:

1. **Fails to address the Commission's authority and the legality of the CAT itself.** The Proposal does not meaningfully grapple with whether the Commission has statutory authority to operate a multi-billion-dollar surveillance system like the CAT, nor does it address the constitutional issues raised by the collection and storage of massive volumes of investor data. The Commission has an affirmative duty to examine its own statutory authority and legal assumptions when approving an NMS Plan amendment of this scope; it has not done so here.
2. **Does not remedy the Commission's prior deficient economic analysis.** The Eleventh Circuit held that the Commission's prior economic analysis was incomplete and incompatible with the funding plan it adopted. Yet the Proposal proceeds without the updated, detailed economic analysis necessary to determine whether the current allocation of costs is reasonable and equitable. Among other things:
 - CAT LLC has not publicly provided key metrics needed for a proper analysis, including the number of daily executed transactions, quotation messages, CAT records, unique market participants with records in the system, and usage-related costs.⁴
 - The Commission has not explained why its past cost estimates were so inaccurate or identified the core cost drivers that caused this project to diverge so

⁴ See Letter from Citadel Securities (Jan. 30, 2026) at 2–3 (identifying key metrics the Commission must obtain from CAT LLC).





dramatically from prior projections.

- There is no robust, forward-looking cost-trajectory analysis that accounts for expected changes in market structure, including new exchanges, overnight trading, and rules that will increase message traffic.⁵
- The Commission has not evaluated how CAT fees were actually allocated under the vacated 2023 framework, including the distribution of fees across equities and options, retail and institutional activity, and different business models such as market making; and
- The Proposal fails to account for CAT costs in the broader context of existing regulatory burdens, including ongoing CAT reporting expenses and the continued operation of systems like Electronic Blue Sheets.⁶

3. **Does not meaningfully prohibit SRO pass-throughs of CAT costs.** While the Proposal purports to limit certain pass-throughs, it leaves in place Plan language that permits SROs to bundle or otherwise incorporate CAT costs into their various other fees or assessments. The Eleventh Circuit made clear that the Commission cannot pretend that SROs will bear a portion of CAT costs while ignoring their ability to pass those costs on to broker-dealers and their customers⁷. If SRO pass-throughs up to 100% of their allocations are permitted in substance, the Commission must confront that reality, explain its policy shift, and incorporate the full economic impact into its analysis. The Proposal does not do so.⁸

4. **Circumvents Commission Rule 608 by relying on immediately-effective SRO fee filings.** The Proposal contemplates that CAT costs will be imposed on broker-dealers via immediately effective SRO fee filings under Rule 19b-4, even though Commission rules require that fees associated with NMS Plans like the CAT be approved under Rule 608 before they become effective. This effectively shields core elements of the CAT funding model from both Commission approval and judicial review, contrary to the Commission's own rulemaking and the concerns highlighted by the Eleventh Circuit.⁹

5. **Relies on unverified claims that the Financial Accountability Milestones have been satisfied.** The Proposal assumes that the Financial Accountability Milestones ("FAMs") have been met and that historical CAT costs are properly recoverable from broker-dealers.¹⁰ But the Commission has not independently verified FAM compliance,

⁵ See, e.g., CAT Cost Savings Amendment, Exchange Act Release No. 34-104504 (Dec. 23, 2025); Tick Sizes and Access Fees rule, 89 Fed. Reg. 81,620 (Oct. 8, 2024); and recent approvals of new exchanges and options markets.

⁶ See Citadel Securities Jan. 30, 2026 Letter at 3–4 (discussing CAT reporting costs and Electronic Blue Sheets obligations).

⁷ See Am. Sec. Ass'n v. SEC, 147 F.4th at 1274–77 (discussing SRO pass-throughs and the need either to prohibit them or fully account for them).

⁸ See Citadel Securities Jan. 30, 2026 Letter at 4–5 (explaining how the CAT NMS Plan still allows pass-throughs via existing fees and why that contravenes the Eleventh Circuit's ruling).

⁹ See Citadel Securities Jan. 30, 2026 Letter at 5–6 (discussing the 2020 amendments to Rule 608 and their application to CAT fees); see also 85 Fed. Reg. 65,470 (Oct. 15, 2020).

¹⁰ See Citadel Securities Jan. 30, 2026 Letter at 6–7 (explaining that the Commission has not independently confirmed FAM compliance and describing reliance on SRO self-certifications and exemptive relief).





instead relying on SRO self-certifications and exemptive relief issued years after certain milestones passed. Exemptive orders issued long after a milestone deadline cannot retroactively cure noncompliance so as to justify the allocation of hundreds of millions of dollars in historical costs to broker-dealers and their customers.

6. **Permits the over-collection and misuse of CAT reserve funds.** The Proposal allows the establishment and maintenance of a substantial reserve, but does not establish adequate Commission oversight to prevent over-collection or to ensure that reserves are used solely to offset future fees consistent with the CAT NMS Plan. Experience under the prior framework shows that reserves can rapidly exceed stated limits and be used to fund CAT operations in the absence of a Commission-approved funding model, effectively allowing the SROs to continue operating as though a vacated order remains in place and depriving broker-dealers of the offsets they are due.¹¹
7. **Postpones the necessary, comprehensive review of the CAT.** The Commission has committed to a comprehensive review of the CAT, including its necessity, design, data-collection approach, and costs. Approving the Proposal now would reverse the proper order of operations by locking in a new funding structure before that review is completed. The Commission's limited resources should be devoted first to that comprehensive review and to considering alternatives—including funding the CAT, if it is to continue at all, through the appropriations process rather than through perpetual assessments on broker-dealers and their clients.¹²

In ASA's view, these defects are not technicalities that can be patched at the margin. They go to the heart of whether the Commission may lawfully and prudently impose another CAT funding regime on the market at this time.

VI. Conclusion.

ASA appreciates the Commission's willingness to revisit the CAT and its funding model, and we strongly support a comprehensive, top-to-bottom review of this project. However, until the Commission has (i) resolved the fundamental legal and privacy issues surrounding the CAT, (ii) completed an accurate and transparent economic analysis, (iii) audited and publicly reported on CAT costs and reserves, and (iv) ensured that broker-dealers and their customers are not saddled with unlawful or unreasonable burdens, ASA believes the Proposal cannot be approved.

For these reasons, ASA respectfully urges the Commission to reject or defer action on the 2025 CAT Funding Proposal and instead focus its efforts on the broader legal, economic, and policy questions that must be answered before any durable funding solution can be considered.

¹¹ See Citadel Securities Jan. 30, 2026 Letter at 7–8; see also Petition for Rulemaking to Amend CAT NMS Plan to Direct Proper Use of CAT LLC Reserve (Jan. 15, 2026), File No. 4-878.

¹² See Citadel Securities Jan. 30, 2026 Letter at 8–9; see also Remarks of Chairman Atkins on the CAT (Sept. 30, 2025 and May 19, 2025).



Sincerely,

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