

FINANCIAL INFORMATION FORUM

December 15, 2023

By electronic mail

Financial Industry Regulatory Authority, Inc.
1735 K Street, NW
Washington, DC 20006
Attn: Robert Cook, Chief Executive Officer

Re: FINRA Fee Filing for the Consolidated Audit Trail

Dear Mr. Cook,

Financial Information Forum (“FIF”) members understand from discussions with representatives of the Securities and Exchange Commission (the “Commission”) that the Financial Industry Regulatory Authority, Inc. (“FINRA”) is considering including in its initial fee filing for the Consolidated Audit Trail (“CAT”) reimbursement for the FINRA Participant portion of the CAT fees for off-exchange executions (in this letter, we refer to this as the “FINRA Participant CAT Fee”). FIF members request that FINRA publish any proposal seeking reimbursement for the FINRA Participant CAT Fee through a FINRA Regulatory Notice and prior to submission of such a proposal in a rule filing with the Commission. FIF is submitting this request on behalf of FIF members that are broker-dealers and technology vendors that provide services to broker-dealers.

The reasons for this request by FIF members are as follows:

- It is standard practice for FINRA to publish a Regulatory Notice for any material rule change prior to submitting the rule change to the Commission.
- This rule filing will involve a significant amount of fees payable in perpetuity.
- FINRA has discretion on how to allocate this reimbursement obligation. Regardless of the allocation method chosen by FINRA, the allocation method will be more favorable for some FINRA members and less favorable for other FINRA members. Accordingly, FINRA members should have the opportunity to provide input on how this reimbursement obligation will be allocated.
- FINRA has never solicited input on how this reimbursement obligation should be allocated.
- As demonstrated by the work currently being undertaken by the CAT Plan Participants, FINRA CAT, the Commission and industry members to implement collection of the industry member

portion of the CAT fees, the process for FINRA to obtain reimbursement for the FINRA Participant CAT Fee will be complex.

- Based on FINRA’s organizational structure and processes, FINRA will obtain reimbursement of all CAT fees from industry members in due course. There is no pressing need for FINRA to accelerate this process.
- There are a number of issues that FINRA will need to address to obtain reimbursement for the FINRA Participant CAT Fee (see discussion below).
- FINRA charges a Regulatory Transaction Fee (“RTF”) to industry members to reimburse FINRA for the Section 31 fees that FINRA pays to the Commission. FINRA does not currently provide industry members with the data that industry members require for proper reconciliation of RTF fees. This has been a major problem for the industry for many years. On November 2 FIF submitted a presentation to FINRA requesting that FINRA take steps to address this issue. FINRA and FIF representatives have a call scheduled for December 18 to discuss the data that industry members require for proper reconciliation of RTF fees. Given that FINRA does not currently provide the data that industry members require for proper reconciliation of RTF fees, FIF members are understandably concerned that FINRA is not currently in a position to provide the data that industry members will require for proper reconciliation of FINRA’s pass-through of the FINRA Participant CAT Fee.
- While the CAT Plan Participants, prior to submission of fee filings with the Commission, are working with the Commission, FINRA CAT and industry members to ensure that industry members have the appropriate data for reconciliation of the industry member portion of the CAT fees, FIF members are not aware of FINRA taking any similar actions with respect to reimbursement for the FINRA Participant CAT Fee.
- Industry members will need time to develop and update systems for processing and reconciliation of the pass-through of the FINRA Participant CAT Fee and, where applicable, to further pass this fee onto upstream broker-dealers and customers.
- It would be most efficient to first implement billing for the industry member portion of the CAT fee and then to implement pass-through billing by FINRA.

Issues that FINRA will need to address

The following are some of the issues that FINRA will need to address in obtaining reimbursement of the FINRA Participant CAT Fee:

- On what basis will FINRA bill these fees to broker-dealers? Will it be based on the MPIDs present on the TRF and ORF reports (consistent with the CAT billing logic) or will it be based on a different logic?
- How will these fees be collected? Will fees be collected from executing brokers, similar to the planned process for collection of the industry member portion of the CAT fees? Will fees be collected from clearing brokers, similar to the process for collection of the RTF?
- How will broker-dealers obtain the necessary data to reconcile such fees trade-for-trade, so that they can be reconciled, allocated and rebilled precisely?

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FIF members request the opportunity to discuss this issue with FINRA representatives. Please contact me at howard.meyerson@fif.com after you and your colleagues have had the opportunity to review the request set forth in this letter.

Very truly yours,

/s/ Howard Meyerson

Howard Meyerson
Managing Director, Financial Information Forum

Cc: Lily Bailey, Securities and Exchange Commission
Hugh Beck, Securities and Exchange Commission
Brandon Becker, CAT Operating Committee
Erika Berg, Securities and Exchange Commission
Shelly Bohlin, FINRA CAT
Mark Donohue, Securities and Exchange Commission
David Hsu, Securities and Exchange Commission
Andrew Sherman, Securities and Exchange Commission
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