

A decorative graphic on the left side of the page consists of overlapping geometric shapes in shades of green and blue.

# Making the Case for Congressional Oversight over Consolidated Audit Trail Funding

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One of the many problems with the Consolidated Audit Trail (“CAT”), a centralized database which captures all U.S. listed options and equities trading activity, is that neither the Securities & Exchange Commission (the “SEC”) nor the self-regulatory organizations (i.e., the exchanges and FINRA, the “SROs”) tasked with developing and operating CAT have any meaningful incentive to manage the costs of its development or ongoing operation. These concerns are not theoretical. Almost since its inception the CAT project has been plagued by poor decision-making. Initially there was a \$75 million impairment loss on third-party developed technology, and since that time there has been a continuous pattern of dramatically spiraling costs. Based on data available as of November 2023, the estimated [2023 CAT operating costs](#) will be \$189 million, nearly quadrupling the SEC’s high-end operating cost estimate of \$55 million from the [2016 CAT approval order](#).

These costs, along with the historical costs of developing the CAT system, will be paid for based on a recently approved funding model which permits the SROs to pass-on 100% of CAT costs, both ongoing and historical, to market participants. Put another way, CAT effectively results in an additional tax on all purchase and sales of equities and listed options securities, a tax that market participants and investors will ultimately bear. Congressional action needs to be taken to rein in the spiraling costs, improve governance, and establish budget transparency. The FIA Principal Traders Group (“FIA PTG”) presents this essay to make the case for Congressional oversight over CAT funding.

**The SEC has directed the development of the CAT in a manner that lacks direct congressional oversight.**

In 2012, the SEC adopted Rule 613 of Regulation NMS directing the SROs to file an NMS Plan to develop and maintain a consolidated audit trail. While the SROs were given a fair amount of flexibility in the system’s design, the SEC set performance and functionality requirements and continues to interpret the CAT Plan outside of formal rulemaking.

The formal rulemaking process provides interested parties with notice of proposed changes and the ability to comment, and importantly is subject to the requirements of the Administrative Procedure Act (“APA”), including cost-benefit analysis. Until changes are subject to this level of scrutiny, FIA PTG recommends placing a moratorium on all CAT-related changes and new interpretations.

Additionally, if CAT were an SEC system, there would be a clear incentive for the SEC to control costs and simplify funding as CAT would be one element of the SEC's Congressionally-approved operating budget. As it stands, there are no charge-backs to the SEC for their use of CAT and the SROs have the ability to pass-through all CAT costs to their members. Simply put, the cost of CAT has no impact on the SEC or the SROs' budgets. This model creates no incentive for the SROs to control costs that will ultimately be borne by the investor.

**Making CAT an SEC system would enable Congress to increase transparency and insight into CAT costs.**

CAT's high operating costs call into question the level of operational and technical inefficiencies that may be embedded in its design, daily processing and management of regulator queries. Unfortunately, currently available public data is not sufficiently detailed to yield meaningful insights into CAT spending questions.

Congressional oversight into the CAT operating budget is essential to understand:

- How much of CAT costs are driven by SEC and SRO usage versus simply processing incoming data?
- What steps have been taken to reduce operational costs?
- Are costs and regulatory benefits aligned for any planned changes to CAT functionality?

If CAT were an SEC system, Congress could demand an itemized budget that would shed light on these and other forward-looking CAT cost questions to constrain CAT costs. At this point, there is no governance mechanism for market participants to question or audit CAT's technical or financial decisions.

**Putting CAT under congressional supervision would increase fiscal discipline.**

Unlike the SEC, CAT does not have a capped budget that it must operate within. According to the SROs in their [March 2023 proposed funding model filing](#): "An analysis of budgeted CAT costs and actual CAT costs for 2020, 2021 and the first nine months of 2022 demonstrates that actual CAT costs were approximately 20% higher than budgeted amounts over this period on a cumulative average basis." The SEC and firms in the private sector do not have the luxury of treating budgets as mere guidance; CAT should operate by the same rules. This is especially important because the approved funding model will use the CAT budget to determine fees for market participants.

If CAT were an SEC system, the costs of CAT would be included in the SEC congressional budget request which is subject to Congressional approval. The SEC would need to carefully consider the elements of CAT costs in order to set and stay within a capped budget. This in turn would provide certainty to market participants who will ultimately be passed those costs from the SROs.

Additionally, as an SEC system, CAT would be subject to oversight from the General Accounting Office (GAO) and SEC Inspector General. Not only would this allow CAT funding to undergo internal and external audits, it would also promote cost estimate methodologies consistent with other large-scale government systems.

**Congress should act now.**

Based on [data available](#) as of November 2023, CAT costs more than \$15 million every month. Congress should act now to bring CAT under the SEC. If CAT were an SEC system, we could move away from a CAT with spiraling costs and no transparency towards a CAT funded with a capped budget and appropriate oversight.

**About FIA PTG**

FIA PTG is an association of firms, many of whom are broker-dealers, who trade their own capital on exchanges in futures, options and equities markets worldwide. FIA PTG members engage in manual, automated and hybrid methods of trading, and they are active in a wide variety of asset classes, including equities, fixed income, foreign exchange and commodities. FIA PTG member firms serve as a critical source of liquidity, allowing those who use the markets, including individual investors, to manage their risks and invest effectively. The presence of competitive professional traders contributing to price discovery and the provision of liquidity is a hallmark of well-functioning markets. FIA PTG advocates for open access to markets, transparency and data-driven policy.

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