

# FIA PTG

## PRINCIPAL TRADERS GROUP

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February 8, 2021

Vanessa Countryman  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549-0609

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:

The FIA Principal Traders Group (“FIA PTG”)<sup>1</sup> appreciates the opportunity to comment on the December 30, 2020, Notice of Filing of Amendment to the National Market System Plan Governing the Consolidated Audit Trail (the “Proposal”).<sup>2</sup> The Proposal seeks to require Industry Members, including broker dealers like many of our members, to sign an agreement as a condition of reporting to the Consolidated Audit Trail (“CAT”) that would effectively absolve CAT LLC and the self-regulatory organizations (“SROs) of virtually all liability in the event of a breach or misuse of CAT data and shift that liability to Industry Members. Not only do we find it unsupportable, either by logic or commonly accepted practice to attempt to attach the liability of a system to a group of persons regulatorily required to report to it, but who have absolutely no control or authority over how it manages and secures the data it collects, but this issue was raised and purportedly resolved in 2019-2020 when the CAT Reporter Agreement (the “Agreement”) was negotiated. For these reasons FIA PTG urges the U.S. Securities and Exchange Commission (the “Commission”) to reject the Proposal.

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<sup>1</sup> 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 and has previously made recommendations about a variety of equity market structure issues, including Regulation NMS.

<sup>2</sup> <https://www.sec.gov/rules/sro/nms/2020/34-90826.pdf>.

On December 17, 2019, FIA PTG submitted a letter (the “FIA PTG Letter”)<sup>3</sup> to the Commission raising concerns about the liability provisions of the Agreement. At that time, we specifically raised concerns around the language in the Agreement which effectively waived future claims of liability against the CAT Processor. After months of negotiation with the industry, led by the Securities Industry and Financial Markets Association (“SIFMA”), in May 2020 the Agreement was modified to remove the language which limited SRO liability for a breach of the CAT database.

FIA PTG members have invested substantial time and financial resources in the development of the trading systems and strategies they use. They would likely face tremendous monetary losses and potentially lose their ability to act as liquidity providers should sensitive information from the reporting of their trades be compromised. Obviously, this risk grows dramatically with each additional copy of the data available on various SRO systems and networks. While the potential damage to the businesses of FIA PTG members should their data fall into the wrong hands could be significant, and threaten their businesses; the impact of such a breach would be far reaching and would likely reduce market liquidity and the overall resilience of the marketplace. Accordingly, our members should not be required to waive their rights around potential recovery of these damages simply to comply with a trade reporting requirement.

Finally, FIA PTG supports the comments previously filed by SIFMA,<sup>4</sup> the industry leader on this topic. We appreciate the Commission’s consideration of SIFMA’s comments as well as our own, and strongly encourage the Commission to reject the Proposal. If you have any questions, please contact Joanna Mallers ([jmallers@fia.org](mailto:jmallers@fia.org)).

Respectfully,

FIA Principal Traders Group



Joanna Mallers  
Secretary

cc: Allison H. Lee, Acting Chair  
Hester M. Peirce, Commissioner  
Elad L. Roisman, Commissioner  
Caroline A. Crenshaw, Commissioner

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<sup>3</sup> Letter from Joanna Mallers, Secretary, FIA PTG, to Jay Clayton, Chairman, SEC, dated December 17, 2019 (the “FIA PTG Letter”).

<sup>4</sup> [Letter from Ellen Greene, Managing Director, SIFMA, to Vanessa Countryman, SEC, dated January 27, 2021](#) and [Letter from Kenneth E. Bentsen, Jr., President and CEO, SIFMA, to Jay Clayton, Chairman, SEC, dated November 11, 2019.](#)