



## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-97750; File No. 4-698]

### **Joint Industry Plan; Order Instituting Proceedings to Determine Whether to Approve or Disapprove an Amendment to the National Market System Plan Governing the Consolidated Audit Trail**

June 16, 2023.

#### I. Introduction

On March 13, 2023, the Consolidated Audit Trail, LLC (“CAT LLC”), on behalf of the Participants<sup>1</sup> to the National Market System Plan Governing the Consolidated Audit Trail (“CAT NMS Plan” or “Plan”),<sup>2</sup> filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 11A of the Exchange Act<sup>3</sup> and Rule 608 of Regulation National Market System (“Regulation NMS”) thereunder,<sup>4</sup> a proposed amendment to the CAT NMS Plan (“Proposed Amendment”) to implement a revised funding model (“Executed Share Model”) for the consolidated audit trail (“CAT”) and to establish a fee schedule for Participant CAT fees in

---

<sup>1</sup> The Participants are: BOX Exchange LLC, Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe Exchange, Inc., The Financial Industry Regulatory Authority, Inc. (“FINRA”), Investors Exchange LLC, Long-Term Stock Exchange, Inc., MEMX LLC, Miami International Securities Exchange, LLC, MIAX Emerald, LLC, MIAX PEARL, LLC, Nasdaq BX, Inc., Nasdaq GEMX, LLC, Nasdaq ISE, LLC, Nasdaq MRX, LLC, Nasdaq PHLX LLC, The Nasdaq Stock Market LLC, New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc. (collectively, the “Participants,” “self-regulatory organizations,” or “SROs”).

<sup>2</sup> The CAT NMS Plan is a national market system plan approved by the Commission pursuant to Section 11A of the Securities Exchange Act of 1934 (“Exchange Act”) and the rules and regulations thereunder. See Securities Exchange Act Release No. 78318 (Nov. 15, 2016), 81 FR 84696 (Nov. 23, 2016) (“CAT NMS Plan Approval Order”). The CAT NMS Plan is Exhibit A to the CAT NMS Plan Approval Order. See CAT NMS Plan Approval Order, 81 FR at 84943–85034. The CAT NMS Plan functions as the limited liability company agreement of the jointly owned limited liability company formed under Delaware state law through which the Participants conduct the activities of the CAT (“Company”). Each Participant is a member of the Company and jointly owns the Company on an equal basis. The Participants submitted to the Commission a proposed amendment to the CAT NMS Plan on August 29, 2019, which they designated as effective on filing. On August 29, 2019, the Participants replaced the CAT NMS Plan in its entirety with the limited liability company agreement of a new limited liability company, CAT LLC, which became the Company. See Securities Exchange Act Release No. 87149 (Sept. 27, 2019), 84 FR 52905 (Oct. 3, 2019). The latest version of the CAT NMS Plan is available at <https://catnmsplan.com/about-cat/cat-nms-plan>.

<sup>3</sup> 15 U.S.C 78k-1.

<sup>4</sup> 17 CFR 242.608.

accordance with the Executed Share Model (“Proposed Participant Fee Schedule”).<sup>5</sup> The Proposed Amendment was published for comment in the Federal Register on March 21, 2023.<sup>6</sup>

This order institutes proceedings, under Rule 608(b)(2)(i) of Regulation NMS,<sup>7</sup> to determine whether to disapprove the Proposed Amendment or to approve the Proposed Amendment with any changes or subject to any conditions the Commission deems necessary or appropriate.<sup>8</sup>

## II. Background

On July 11, 2012, the Commission adopted Rule 613 of Regulation NMS, which required the SROs to submit a national market system (“NMS”) plan to create, implement and maintain a consolidated audit trail that would capture customer and order event information for orders in NMS securities.<sup>9</sup> On November 15, 2016, the Commission approved the CAT NMS Plan.<sup>10</sup> Under the CAT NMS Plan, the Operating Committee of the Company, of which each Participant is a member, has the discretion (subject to the funding principles set forth in the Plan) to establish funding for the Company to operate the CAT, including establishing fees to be paid by the Participants and Industry Members.<sup>11</sup>

---

<sup>5</sup> See Letter from Brandon Becker, Chair, CAT NMS Plan Operating Committee, to Vanessa Countryman, Secretary, Commission (Mar. 13, 2023) (“Transmittal Letter”).

<sup>6</sup> See Securities Exchange Act Release No. 97151 (Mar. 15, 2023), 88 FR 17086 (Mar. 21, 2023) (“Notice”). Comments received in response to the Notice can be found on the Commission’s website at <https://www.sec.gov/comments/4-698/4-698-a.htm>.

<sup>7</sup> 17 CFR 242.608(b)(2)(i).

<sup>8</sup> On June 15, 2023, the Participants submitted a letter consenting to a 30-day extension (until July 20, 2023) of the date by which the Commission shall, by order, approve or disapprove the Proposed Amendment, or institute proceedings to determine whether the Proposed Amendment should be disapproved. See Letter from Brandon Becker, Chair, CAT NMS Plan Operating Committee, to Vanessa Countryman, Secretary, Commission (Jun. 15, 2023). Nevertheless, the Commission believes it is appropriate for the reasons stated herein to institute proceedings under Rule 608(b)(2)(i) of Regulation NMS and Rules 700 and 701 of the Commission’s Rules of Practice.

<sup>9</sup> 17 CFR 242.613.

<sup>10</sup> See CAT NMS Plan, supra note 2.

<sup>11</sup> The CAT NMS Plan defines “Industry Member” as “a member of a national securities exchange or a member of a national securities association.” See CAT NMS Plan, supra note 2, at Section 1.1. See also id. at Section 11.1(b).

Under the CAT NMS Plan, CAT fees are to be implemented in accordance with various funding principles, including an “allocation of the Company’s related costs among Participants and Industry Members that is consistent with the Exchange Act taking into account . . . distinctions in the securities trading operations of Participants and Industry Members and their relative impact upon the Company resources and operations” and the “avoid[ance of] any disincentives such as placing an inappropriate burden on competition and reduction in market quality.”<sup>12</sup> The Plan specifies that, in establishing the funding of the Company, the Operating Committee shall establish “a tiered fee structure in which the fees charged to: (1) CAT Reporters<sup>13</sup> that are Execution Venues,<sup>14</sup> including ATSS,<sup>15</sup> are based upon the level of market share; (2) Industry Members’ non-ATS activities are based upon message traffic; and (3) the CAT Reporters with the most CAT-related activity (measured by market share and/or message traffic, as applicable) are generally comparable (where, for these comparability purposes, the tiered fee structure takes into consideration affiliations between or among CAT Reporters, whether Execution Venues and/or Industry Members).”<sup>16</sup>

On May 15, 2020, the Commission adopted amendments to the CAT NMS Plan designed to increase the Participants’ financial accountability for the timely completion of the CAT (“Financial Accountability Amendments”).<sup>17</sup> The Financial Accountability Amendments added Section 11.6 to the CAT NMS Plan to govern the recovery from Industry Members of any fees, costs, and expenses (including legal and consulting fees, costs and expenses) incurred by or for the Company in connection with the development, implementation and operation of the CAT

---

<sup>12</sup> Id. at Section 11.2(b) and (e).

<sup>13</sup> The CAT NMS Plan defines “CAT Reporter” as “each national securities exchange, national securities association and Industry Member that is required to record and report information to the Central Repository pursuant to SEC Rule 613(c).” Id. at Section 1.1.

<sup>14</sup> The CAT NMS Plan defines “Execution Venue” as “a Participant or an alternative trading system (‘ATS’) (as defined in Rule 300 of Regulation ATS) that operates pursuant to Rule 301 of Regulation ATS (excluding any such ATS that does not execute orders).” Id.

<sup>15</sup> Id.

<sup>16</sup> CAT NMS Plan, supra note 2, at Section 11.2(c). See id. at Article XI for additional detail.

<sup>17</sup> See Securities Exchange Act Release No. 88890, 85 FR 31322 (May 22, 2020).

from June 22, 2020 until such time that the Participants have completed Full Implementation of CAT NMS Plan Requirements<sup>18</sup> (“Post-Amendment Expenses”). Section 11.6 establishes target deadlines for four Financial Accountability Milestones (Periods 1, 2, 3 and 4)<sup>19</sup> and reduces the amount of fee recovery available to the Participants if these deadlines are missed.<sup>20</sup>

### III. Summary of Proposal<sup>21</sup>

CAT LLC proposes to replace the funding model set forth in Article XI of the CAT NMS Plan (“Original Funding Model”) with the Executed Share Model. The Original Funding Model involved a bifurcated approach, where costs associated with building and operating the CAT would be borne by (1) Industry Members (other than alternative trading systems (“ATs”) that execute transactions in Eligible Securities (“Execution Venue ATs”)) through fixed tiered fees based on message traffic for Eligible Securities, and (2) Participants and Industry Members that are Execution Venue ATs for Eligible Securities through fixed tiered fees based on market share.<sup>22</sup> In contrast, the Executed Share Model would charge fees based on the executed equivalent share volume of transactions in Eligible Securities rather than based on market share and message traffic.<sup>23</sup> In addition, instead of charging fees to Industry Members, under the

---

<sup>18</sup> “Full Implementation of CAT NMS Plan Requirements” means “the point at which the Participants have satisfied all of their obligations to build and implement the CAT, such that all CAT system functionality required by Rule 613 and the CAT NMS Plan has been developed, successfully tested, and fully implemented at the initial Error Rates specified by Section 6.5(d)(i) or less, including functionality that efficiently permits the Participants and the Commission to access all CAT Data required to be stored in the Central Repository pursuant to Section 6.5(a), including Customer Account Information, Customer-ID, Customer Identifying Information, and Allocation Reports, and to analyze the full lifecycle of an order across the national market system, from order origination through order execution or order cancellation, including any related allocation information provided in an Allocation Report. This Financial Accountability Milestone shall be considered complete as of the date identified in a Quarterly Progress Report meeting the requirements of Section 6.6(c).” CAT NMS Plan, supra note 2, at Section 1.1.

<sup>19</sup> Id. at Section 11.6(a)(i).

<sup>20</sup> Id. at Section 11.6(a)(ii) and (iii).

<sup>21</sup> This section summarizes the proposed changes to the CAT NMS Plan. For a full discussion of the Proposed Amendment, including the Participants’ justifications for the Proposed Amendment, such as comparability to existing fees, alternatives considered, fee pass-throughs, treatment of FINRA, cost transparency (including the Historical CAT Costs prior to 2022) and satisfaction of the Exchange Act and CAT NMS Plan requirements, see Notice, supra note 6.

<sup>22</sup> See CAT NMS Plan, supra note 2, at Section 11.3(a) and (b).

<sup>23</sup> See Notice, supra note 6, 88 FR at 17086.

Executed Share Model, fees would be charged to each Industry Member that is a CAT Executing Broker<sup>24</sup> for the buyer in a transaction in Eligible Securities (“CAT Executing Broker for the Buyer” or “CEBB”) and each Industry Member that is the CAT Executing Broker for the seller in a transaction in Eligible Securities (“CAT Executing Broker for the Seller” or “CEBS”).<sup>25</sup>

Under the Executed Share Model, CAT LLC proposes to establish two categories of CAT fees. The first category of CAT fees would be fees (“CAT Fees”) payable by Participants and Industry Members that are CAT Executing Brokers for the Buyer and for the Seller with regard to CAT costs not previously paid by the Participants (“Prospective CAT Costs”).<sup>26</sup> The second category of CAT fees would be fees (“Historical CAT Assessments”) to be payable by Industry Members that are CAT Executing Brokers for the Buyer and for the Seller with regard to CAT costs previously paid by the Participants (“Past CAT Costs”).<sup>27</sup> Each Historical CAT Assessment will recover an amount of “Historical CAT Costs”, which will be Past CAT Costs minus Past CAT Costs reasonably excluded from Historical CAT Costs by the Operating Committee.<sup>28</sup>

For each category of fees, each CEBB and each CEBS will be required to pay a CAT fee for each such transaction in Eligible Securities in the prior month based on CAT Data.<sup>29</sup> The CEBB’s CAT fee or CEBS’s CAT fee (as applicable) for each transaction in Eligible Securities will be calculated by multiplying the number of executed equivalent shares in the transaction by one-third and by the reasonably determined Fee Rate,<sup>30</sup> as described below.<sup>31</sup> Participants would

---

<sup>24</sup> See infra Section III.A.1. for the definition of CAT Executing Broker.

<sup>25</sup> See Notice, supra note 6, 88 FR at 17087.

<sup>26</sup> Id. at 17086; see also proposed Section 11.3(a). The defined term “CAT Fees” applies specifically to CAT fees related to Prospective CAT Costs. Id.

<sup>27</sup> See Notice, supra note 6, 88 FR at 17086; see also proposed Section 11.3(b).

<sup>28</sup> See Notice, supra note 6, 88 FR at 17096; see also proposed Section 11.3(b)(i)(C).

<sup>29</sup> See Notice, supra note 6, 88 FR at 17093; see also proposed Section 11.3(a)(iii), proposed Section 11.3(b)(iii).

<sup>30</sup> See Notice, supra note 6, 88 FR at 17124 for the definition and description of the calculation of the Fee Rate.

<sup>31</sup> Id. at 17095; see also proposed Section 11.3(a)(iii), proposed Section 11.3(b)(iii).

incur CAT Fees only for Prospective CAT Costs and the Participant CAT Fee will be calculated by multiplying the number of executed equivalent shares in the transaction by one-third and by the reasonably determined Fee Rate.<sup>32</sup> The Participants' one-third share of Historical CAT Costs and such other additional Past CAT Costs as reasonably determined by the Operating Committee will be paid by the cancellation of loans made to the Company on a pro rata basis based on the outstanding loan amounts due under the loans.<sup>33</sup>

As Plan Processor, FINRA CAT would be responsible for calculating the CAT fees and submitting invoices to the CAT Executing Brokers based on this CAT Data.<sup>34</sup> All data used to calculate the fees under the Executed Share Model would be CAT Data, and, therefore, it would be available through the CAT for calculating CAT fees.<sup>35</sup>

Once the Proposed Amendment has been approved by the Commission, the Participants would separately file proposed rule changes pursuant to Section 19(b) of the Exchange Act<sup>36</sup> to establish the amounts of the proposed CAT Fees and Historical CAT Assessments to be charged to Industry Members, subject to the satisfaction of applicable Financial Accountability Milestones as set forth in Section 11.6 of the CAT NMS Plan and the implementation of the billing and collection system for the CAT fees.<sup>37</sup> In each proposed rule change, if the Participants seek to recover amounts under the Financial Accountability Milestones, they would need to discuss their completion of the applicable milestone.<sup>38</sup>

#### A. Description of Amendments

##### 1. Definition of CAT Executing Broker

---

<sup>32</sup> See Notice, supra note 6, 88 FR at 17094; see also proposed Section 11.3(a)(ii).

<sup>33</sup> See proposed Section 11.3(b)(ii).

<sup>34</sup> See Notice, supra note 6, 88 FR at 17088.

<sup>35</sup> Id.

<sup>36</sup> 15 U.S.C. 78s(b).

<sup>37</sup> See Notice, supra note 6, 88 FR at 17086, 17122.

<sup>38</sup> Proposed Section 11.3(b)(iii)(B)(III) would prohibit any Participant from filing proposed rule changes pursuant to Section 19(b) of the Exchange Act regarding any Historical CAT Assessment until any applicable Financial Accountability Milestone in Section 11.6 of the CAT NMS Plan has been satisfied.

The Executed Share Model would define “CAT Executing Broker” in Section 1.1 of the CAT NMS Plan as:

(a) with respect to a transaction in an Eligible Security that is executed on an exchange, the Industry Member identified as the Industry Member responsible for the order on the buy-side of the transaction and the Industry Member responsible for the sell-side of the transaction in the equity order trade event and option trade event in the CAT Data submitted to the CAT by the relevant exchange pursuant to the Participant Technical Specifications; and (b) with respect to a transaction in an Eligible Security that is executed otherwise than on an exchange and required to be reported to an equity trade reporting facility of a registered national securities association, the Industry Member identified as the executing broker and the Industry Member identified as the contra-side executing broker in the TRF/ORF/ADF transaction data event in the CAT Data submitted to the CAT by FINRA pursuant to the Participant Technical Specifications; provided, however, in those circumstances where there is a non-Industry Member identified as the contra-side executing broker in the TRF/ORF/ADF transaction data event or no contra-side executing broker is identified in the TRF/ORF/ADF transaction data event, then the Industry Member identified as the executing broker in the TRF/ORF/ADF transaction data event would be treated as CAT Executing Broker for the Buyer and for the Seller.

Under the Participant Technical Specifications, for transactions occurring on a Participant exchange, there is a field for the exchange to report the market participant identifier (“MPID”) of “the member firm that is responsible for the order on this side of the trade.”<sup>39</sup> The Industry

---

<sup>39</sup> See Section 4.7 (Order Trade Event) and Section 5.2.5.1 (Simple Option Trade Event: Side Details) of the CAT Reporting Technical Specifications for Plan Participants, Version 4.1.0-r17 (Feb. 21, 2023), <https://www.catnmsplan.com/sites/default/files/2023-02/02.21.2023-CAT-Reporting-Technical-Specifications-for-Participants-4.1.0-r17.pdf>.

Members identified in these fields for the transaction reports would be the CAT Executing Brokers for transactions executed on an exchange.

FINRA is required to report to the CAT transactions in Eligible Securities reported to a FINRA trade reporting facility (i.e., the FINRA Trade Reporting Facilities (“TRF”), Over-the-Counter Reporting Facility (“ORF”) and Alternative Display Facility (“ADF”)).<sup>40</sup> Under the Participant Technical Specifications, for such transactions reported to a FINRA trade reporting facility, FINRA is required to report the MPID of the executing party as well as the MPID of the contra-side executing party. The Industry Members identified in these two fields for the transaction reports would be the CAT Executing Brokers for over-the-counter transactions.

CAT LLC states that a CAT Executing Broker in over-the-counter transactions identified on the TRF/ORF/ADF Transaction Data Event is determined based on the tape or media report, that is, a trade report that is submitted to a FINRA trade reporting facility and reported to and publicly disseminated by the appropriate exclusive Securities Information Processor. A CAT Executing Broker for over-the-counter transactions is not determined based on a non-tape report (e.g., a regulatory report or a clearing report), which are not publicly disseminated.<sup>41</sup>

Therefore, with respect to transactions on an exchange and over-the-counter transactions, CAT LLC would use transaction reports reported to the CAT by FINRA or the exchanges to identify the transaction, as well as the CAT Executing Broker for each transaction, for purposes of calculating the CAT fees. Accordingly, all data used to calculate the fees under the Executed Share Model would be CAT Data, and, therefore, it would be available through the CAT for

---

<sup>40</sup> See Section 6.1 of the CAT Reporting Technical Specifications for Plan Participants (Feb. 21, 2023).

<sup>41</sup> There is an exception to this statement for away-from-market trades. These are non-media trades reported to the TRF with an “SRO Required Modifier Code” of “R”.

calculating CAT fees. FINRA CAT would be responsible for calculating the CAT fees<sup>42</sup> and submitting invoices to the CAT Executing Brokers<sup>43</sup> based on this CAT Data.

a. Treatment of ATSS

The definition of a “CAT Executing Broker” as proposed above would determine the CAT Executing Brokers for transactions executed on an ATS. Specifically, if an ATS is identified as the executing party and/or the contra-side executing party in the TRF/ORF/ADF Transaction Data Event, then the ATS would be a CAT Executing Broker for purposes of the Executed Share Model. If the ATS is identified as the executing party for the buyer in such transaction reports, then the ATS would be the CAT Executing Broker for the Buyer. If the ATS is identified as the executing party for the seller in such transaction reports, then the ATS would be the CAT Executing Broker for the Seller. An ATS also could be identified as both the CAT Executing Broker for the Buyer and the CAT Executing Broker for the Seller. ATSS would determine the executing party and the contra-side executing party reported to FINRA’s equity trading facilities in accordance with the transaction reporting requirements for FINRA’s equity trading facilities.

b. Non-Industry Members on Transaction Reports

The Executed Share Model also would address how transactions that involve a non-Industry Member would be treated (e.g., for internalized trades or trades with a non-FINRA member). The FINRA trade reporting requirements state that “[w]hen reporting a trade with a broker-dealer that is not a FINRA member, the non-member should not be identified on the trade

---

<sup>42</sup> According to CAT LLC, because CAT fees would be charged based on the Equity Order Trade Events, Options Trade Events and the ADF/ORF/TRF Transaction Data Events in the Participant Technical Specifications and none of these transaction reports provide for fractional quantities, CAT fees would be calculated without reference to fractional shares or fractional share components of executed orders. To the extent that FINRA’s equity transaction reporting facilities or the exchanges report transactions in fractional shares in the future, then the calculation of CAT fees would reflect fractional shares as well.

<sup>43</sup> CAT LLC states that each CAT Executing Broker could determine, but would not be required, to pass their CAT fees through to their clients, who, in turn, could pass their CAT fees to their clients, until the fee is imposed on the ultimate participant in the transaction.

report as the contra party to the trade.”<sup>44</sup> Accordingly, when the transaction in these cases is reported to CAT via the TRF/ORF/ADF Transaction Data Event, the field for the reportingExecutingMpid would be populated with the MPID of the executing broker and the field for the contraExecutingMpid would be blank or null. As noted above, the reportingExecutingMpid is a required field (include key = ‘R’) that must be entered on all CAT reports, but the contraExecutingMpid field is conditional; it does not need to be populated, specifically to account for cases like those at issue here (e.g., transactions with a non-FINRA member). Therefore, in those scenarios where the contraExecutingMpid is blank, the FINRA member identified in the reportingExecutingMpid field would be treated as the CAT Executing Broker for both the buy-side and the sell-side of the transaction, that is, as the CEBS and CEBB.

In addition, under the FINRA trade reporting requirements, there is a limited exception to the general rule about not reporting a non-member as the contra party to the trade. Specifically, pursuant to FINRA Trade Reporting FAQ 202.1, “[t]here is a limited exception where a Canadian non-member firm uses the FINRA/NASDAQ TRF or ORF for purposes of comparing trades pursuant to a valid Non-Member Addendum to the NASDAQ Services Agreement. In that instance, however, the Canadian non-member must appear on the trade report as the contra party to the trade and not as the reporting party. For any trade report on which a Canadian non-member appears as a party to the trade, the FINRA member must appear as the reporting party.” In this case involving the Canadian non-member firm exception, the executing broker identified in the reportingExecutingMpid field would be billed for both sides of the transaction.

CAT LLC proposes to include language in the definition of “CAT Executing Broker” to address these scenarios. Specifically, CAT LLC proposes to state the following in the definition of “CAT Executing Broker: “in those circumstances where there is a non-Industry Member identified as the contra-side executing broker in the TRF/ORF/ADF transaction data event or no

---

<sup>44</sup> FINRA Trade Reporting FAQ 202.1.

contra-side executing broker is identified in the TRF/ORF/ADF transaction data event, then the Industry Member identified as the executing broker in the TRF/ORF/ADF transaction data event would be treated as CAT Executing Broker for the Buyer and for the Seller.”

c. Cancellations and Corrections

The Executed Share Model also would provide for cancellations and corrections. CAT LLC expects to determine CAT fees based on the transaction reports for a month as of a particular day. To the extent that changes are made to the transaction reports on or before the day the CAT fees are determined for the given month, the changes will be reflected in the monthly bill. To the extent that changes are made to the transaction reports after the day the CAT fees are determined for that month, subsequent bills will reflect any changes via debits or credits, as applicable. As CAT LLC is required by Section 11.1(d) of the CAT NMS Plan to adopt policies, procedures, and practices regarding the billing and collection of fees, CAT LLC will establish specific policies and procedures regarding the treatment of such adjustments as those related to cancellations and corrections. Furthermore, CAT LLC will inform Industry Members and other market participants of these policies and procedures via FAQs, CAT Alerts and/or other appropriate methods.

2. CAT Budget

Section 11.1(a) of the CAT NMS Plan describes the requirement for the Operating Committee to approve an operating budget for CAT LLC on an annual basis. It requires the budget to “include the projected costs of the Company, including the costs of developing and operating the CAT for the upcoming year, and the sources of all revenues to cover such costs, as well as the funding of any reserve that the Operating Committee reasonably deems appropriate for prudent operation of the Company.” CAT LLC proposes to provide additional detail regarding the CAT LLC operating budget by adding proposed subparagraphs (i) and (ii) to Section 11.1(a) of the CAT NMS Plan.

a. Budgeted CAT Costs

CAT LLC proposes to add subparagraph (i) to Section 11.1(a) of the CAT NMS Plan to list the types of CAT costs to be included in the budget. Specifically, proposed Section 11.1(a)(i) of the CAT NMS Plan would state that “[w]ithout limiting the foregoing, the reasonably budgeted CAT costs shall include technology (including cloud hosting services, operating fees, CAIS operating fees, change request fees and capitalized developed technology costs), legal, consulting, insurance, professional and administration, and public relations costs, a reserve, and such other categories as reasonably determined by the Operating Committee to be included in the budget.”

CAT LLC proposes to require the inclusion of five subcategories of technology costs in the budget: (1) cloud hosting services, (2) operating fees, (3) Customer and Account Information System (“CAIS”) operating fees, (4) change request fees, and (5) capitalized developed technology costs.<sup>45</sup> CAT LLC states that it will consider the need to provide additional cost disclosure going forward.<sup>46</sup>

CAT LLC proposes to amend Section 11.1(a) of the CAT NMS Plan to require CAT LLC to determine costs for the operating budget for the CAT in a reasonable manner. Specifically, the first sentence of Section 11.1(a) of the CAT NMS Plan would be revised to read: “On an annual basis the Operating Committee shall approve a reasonable operating budget for the Company.” Similarly, CAT LLC proposes to include the term “reasonably” in proposed paragraph (a)(i) of Section 11.1 of the CAT NMS Plan. Specifically, that section would read: “Without limiting the foregoing, the reasonably budgeted CAT costs shall include technology

---

<sup>45</sup> CAT LLC states that breaking out technology costs in this manner is consistent with how such costs are broken out in the CAT budgets available on the CAT website. The CAT LLC budgets are available on the CAT website at <https://www.catnmsplan.com/cat-financial-and-operating-budget>. CAT LLC states that it currently does not propose to require the disclosure of additional subcategories of cost information, such as a further breakdown of the category of cloud hosting services into production costs, including linker costs and storage costs. Additionally, CAT LLC notes that the CAT NMS Plan requires that detailed cost information be made available to the Commission upon request, and detailed information on CAT costs and operations is regularly made available to the Commission staff and the Advisory Committee on a confidential basis. See Notice, *supra* note 6, 88 FR at 17090.

<sup>46</sup> Id.

(including cloud hosting services, operating fees, CAIS operating fees, change request fees, and capitalized developed technology costs), legal, consulting, insurance, professional and administration, and public relations costs, a reserve and such other cost categories as reasonably determined by the Operating Committee to be included in the budget.”

Finally, CAT LLC proposes to amend Section 11.1(b) of the CAT NMS Plan. Currently, Section 11.1(b) of the CAT NMS Plan states that:

Subject to Section 11.2, the Operating Committee shall have discretion to establish funding for the Company, including: (i) establishing fees that the Participants shall pay; and (ii) establishing fees for Industry Members that shall be implemented by Participants. The Participants shall file with the SEC under Section 19(b) of the Exchange Act any such fees on Industry Members that the Operating Committee approves, and such fees shall be labeled as “Consolidated Audit Trail Funding Fees.”

CAT LLC proposes to amend Section 11.1(b) to include a reference to Section 11.1 as well as Section 11.2 in the “subject to” clause at the beginning of the provision.

b. Reserve

Section 11.1(a) of the CAT NMS Plan states that the budget shall include “the funding of any reserve that the Operating Committee reasonably deems appropriate for prudent operation of the Company.” In addition, proposed Section 11.1(a)(i) of the CAT NMS Plan would state that the budgeted CAT costs shall include a reserve. Section 11.1(c) of the CAT NMS Plan states that “[a]ny surplus of the Company’s revenues over its expenses shall be treated as an operational reserve to offset future fees.”

CAT LLC proposes to add paragraph (ii) to Section 11.1(a) of the CAT NMS Plan to set forth the parameters for the size of the reserve. Proposed Section 11.1(a)(ii) of the CAT NMS Plan would state that “[f]or the reserve referenced in paragraph (a)(i) of this Section, the budget will include an amount reasonably necessary to allow the Company to maintain a reserve of not

more than 25% of the annual budget.” In addition, proposed Section 11.1(a)(ii) of the CAT NMS Plan would state that “[f]or the avoidance of doubt, the calculation of the amount of the reserve would exclude the amount of the reserve from the budget.”

CAT LLC proposes to provide additional information as to how budget surpluses would be treated for purposes of the reserve. Specifically, proposed subparagraph (ii) of Section 11.1(a) of the CAT NMS Plan would state that “[t]o the extent collected CAT fees exceed CAT costs, including the reserve of 25% of the annual budget, such surplus will be used to offset future fees.” In addition, CAT LLC further proposes to state in proposed Section 11.1(a)(ii) of the CAT NMS Plan that “[f]or the avoidance of doubt, the Company will only include an amount for the reserve in the annual budget if the Company does not have a sufficient reserve (which shall be up to but not more than 25% of the annual budget).”

### 3. CAT Fees Related to Prospective CAT Costs

CAT LLC proposes to revise the introductory statement in proposed Section 11.3(a) of the CAT NMS Plan to state that the Operating Committee will establish the CAT Fees to be payable by Participants and Industry Members with regard to Prospective CAT Costs.

#### a. Fee Rate for CAT Fees

CAT LLC proposes to describe the timing and method for calculating the Fee Rate for the CAT Fees related to Prospective CAT Costs in proposed Section 11.3(a)(i) of the CAT NMS Plan, and to provide additional detail regarding the Fee Rate in that provision. Proposed Section 11.3(a)(i) of the CAT NMS Plan would state that CAT Fees related to Prospective CAT Costs would be calculated twice a year, once at the beginning of the year and once during the year.

Proposed Section 11.3(a)(i)(A)(I) of the CAT NMS Plan would provide that at the beginning of each year, the Operating Committee will calculate the Fee Rate by dividing the reasonably budgeted CAT costs for the year by the reasonably projected total executed equivalent share volume of all transactions in Eligible Securities for the year. Once the Operating Committee has approved such Fee Rate, the Participants shall be required to file with

the Commission pursuant to Section 19(b) of the Exchange Act CAT Fees to be charged to Industry Members calculated using such Fee Rate. Participants and Industry Members will be required to pay CAT Fees calculated using this Fee Rate once such CAT Fees are in effect with regard to Industry Members in accordance with Section 19(b) of the Exchange Act.

Proposed Section 11.3(a)(i)(A)(II) of the CAT NMS provides that during each year, the Operating Committee will calculate a new Fee Rate by dividing the reasonably budgeted CAT costs for the remainder of the year by the reasonably projected total executed equivalent share volume of all transactions in Eligible Securities for the remainder of the year. Once the Operating Committee has approved the new Fee Rate, the Participants shall be required to file with the Commission pursuant to Section 19(b) of the Exchange Act CAT Fees to be charged to Industry Members calculated using the new Fee Rate. Participants and Industry Members will be required to pay CAT Fees calculated using this new Fee Rate once such CAT Fees are in effect with regard to Industry Members in accordance with Section 19(b) of the Exchange Act.

CAT LLC also proposes to add Section 11.3(a)(i)(A)(III) to the CAT NMS Plan to state that CAT Fees related to Prospective CAT Costs do not sunset automatically; such CAT Fees would remain in place until new CAT Fees are in place with a new Fee Rate. The Executed Share Model is designed to collect CAT fees continuously to provide uninterrupted revenue to pay CAT bills.<sup>47</sup>

b. Executed Equivalent Shares

CAT LLC proposes to describe in proposed Section 11.3(a)(i)(B) of the CAT NMS Plan how executed equivalent shares would be counted for purposes of calculating CAT Fees. The Executed Share Model uses the concept of executed equivalent shares as the transactions subject

---

<sup>47</sup> CAT LLC proposes to add proposed Section 11.3(a)(i)(A)(IV) to the CAT NMS Plan. This provision would state that “[f]or the avoidance of doubt, the first CAT Fee may commence at the beginning of the year or during the year. If it were to commence during the year, the CAT Fee would be calculated as described in paragraph (II) of this Section.”

to a CAT Fee involve NMS Stocks, Listed Options and OTC Equity Securities, each of which have different trading characteristics.

*NMS Stocks.* Under the Executed Share Model, each executed share for a transaction in NMS Stocks would be counted as one executed equivalent share.

*Listed Options.* Recognizing that Listed Options trade in contracts rather than shares, each executed contract for a transaction in Listed Options will be counted using the contract multiplier applicable to the specific Listed Option in the relevant transaction. Typically, a Listed Option contract represents 100 shares; however, it may also represent another designated number of shares.

*OTC Equity Securities.* Similarly, in recognition of the different trading characteristics of OTC Equity Securities as compared to NMS Stocks, the Executed Share Model would discount the share volume of OTC Equity Securities when calculating CAT Fees. To address this potential concern, the Executed Share Model would count each executed share for a transaction in OTC Equity Securities as 0.01 executed equivalent shares.

c. Budgeted CAT Costs

The calculation of the Fee Rate for CAT Fees related to Prospective CAT Costs requires the determination of the budgeted CAT costs for the year or other relevant period. Proposed Section 11.3(a)(i)(C) of the CAT NMS Plan would state that the budgeted CAT costs for the year shall be comprised of all reasonable fees, costs and expenses reasonably budgeted to be incurred by or for the Company in connection with the development, implementation and operation of the CAT as set forth in the annual operating budget approved by the Operating Committee pursuant to Section 11.1(a) of the CAT NMS Plan, or as adjusted during the year by the Operating Committee.

In addition, proposed Section 11.3(a)(i)(C) of the CAT NMS Plan would provide that the budgeted CAT costs for the year shall be comprised of all reasonable fees, costs and expenses reasonably budgeted to be incurred by or for the Company in connection with the development,

implementation and operation of the CAT as set forth in the annual operating budget approved by the Operating Committee pursuant to Section 11.1(a) of the CAT NMS Plan, or as adjusted during the year by the Operating Committee.

d. Projected Total Executed Equivalent Share Volume

The calculation of the Fee Rate for CAT Fees also requires the determination of the projected total executed equivalent share volume of transactions in Eligible Securities for each relevant period. Pursuant to proposed Section 11.3(a)(i)(D) of the CAT NMS Plan, each year, the Operating Committee would reasonably determine this projection based on the total executed equivalent share volume of transactions in Eligible Securities from the prior twelve months. As set forth in proposed Section 11.3(a)(iii)(B), Participants will be required to provide a description of the calculation of the projection in their fee filings pursuant to Section 19(b) of the Exchange Act. Furthermore, CAT LLC intends to calculate the CAT Fees based on a reasonable determination of the projected total executed equivalent share volume of transactions in Eligible Securities.

e. Participant CAT Fees for Prospective CAT Costs

CAT LLC proposes to add paragraph (A) to proposed Section 11.3(a)(ii) of the CAT NMS Plan to describe the CAT Fee obligation of the Participants. Each Participant that is a national securities exchange will be required to pay the CAT Fee for each transaction in Eligible Securities executed on the exchange in the prior month based on CAT Data. Each Participant that is a national securities association will be required to pay the CAT Fee for each transaction in Eligible Securities executed otherwise than on an exchange in the prior month based on CAT Data. The CAT Fee for each transaction in Eligible Securities will be calculated by multiplying the number of executed equivalent shares in the transaction by one-third and by the Fee Rate determined pursuant to paragraph (a)(i) of Section 11.3.

CAT LLC also proposes to include proposed paragraph (B) of proposed Section 11.3(a)(ii) of the CAT NMS Plan to clarify that Participants would only be required to pay CAT

Fees when Industry Members are required to pay CAT Fees. Under the Executed Share Model, CAT Fees are designed to cover 100% of CAT costs by allocating costs between and among Participants and Industry Members. However, the CAT Fees charged to Participants are implemented via a different process than CAT Fees charged to Industry Members. CAT Fees charged to Participants are implemented via an approval of the CAT Fees by the Operating Committee in accordance with the requirements of the CAT NMS Plan. In contrast, CAT Fees charged to Industry Members may only become effective in accordance with the requirements of Section 19(b) of the Exchange Act.

f. Industry Member CAT Fees for Prospective CAT Costs

CAT LLC proposes to describe the CAT Fees related to Prospective CAT Costs that would be charged to Industry Members in proposed Section 11.3(a)(iii)(A) of the CAT NMS Plan. Each Industry Member that is the CEBB in a transaction in Eligible Securities and each Industry Member that is the CEBS in a transaction in Eligible Securities) will be required to pay a CAT Fee for each such transaction in Eligible Securities in the prior month based on CAT Data. The CEBB's CAT Fee or CEBS's CAT Fee (as applicable) for each transaction in Eligible Securities will be calculated by multiplying the number of executed equivalent shares in the transaction by one-third and by the Fee Rate reasonably determined pursuant to paragraph (a)(i) of this Section 11.3.

Proposed paragraph (B) of proposed Section 11.3(a)(iii) of the CAT NMS Plan would require the fee filings to be made pursuant to Section 19(b) of the Exchange Act and Rule 19b-4 thereunder<sup>48</sup> for Industry Member CAT Fees to include with regard to the CAT Fee: (A) the Fee Rate; (B) the budget for the upcoming year (or remainder of the year, as applicable), including a brief description of each line item in the budget, including (1) technology line items of cloud

---

<sup>48</sup> CAT LLC expects the fee filings required to be made by the Participants pursuant to Section 19(b) of the Exchange Act with regard to CAT Fees to be filed pursuant to Section 19(b)(3)(A) of the Exchange Act and Rule 19b-(f)(2) thereunder. In accordance with Section 19(b)(3)(A) of the Exchange Act and Rule 19b-4(f)(2) thereunder, such fee filings would be effective upon filing.

hosting services, operating fees, CAIS operating fees, change request fees and capitalized developed technology costs, (2) legal, (3) consulting, (4) insurance, (5) professional and administration, and (6) public relations costs, a reserve and/or such other categories as reasonably determined by the Operating Committee to be included in the budget and the reason for changes in each such line item from the prior CAT Fee filing;<sup>49</sup> (C) a discussion of how the budget is reconciled to the collected fees; and (D) the projected total executed equivalent share volume of all transactions in Eligible Securities for the year (or remainder of the year, as applicable), and a description of the calculation of the projection. This detail would describe how the Fee Rate is calculated and explain how the budget used in the calculation is reconciled to the collected fees.<sup>50</sup>

In addition, in proposed Section 11.3(a)(iii)(B), CAT LLC proposes to state that the budgeted CAT costs described in the fee filings must provide sufficient detail to demonstrate that the CAT budget used in calculating the CAT Fees is reasonable and appropriate.

The collection of CAT Fees from Industry Members is subject to Section 11.6 of the CAT NMS Plan regarding the Financial Accountability Milestones. Accordingly, CAT LLC proposes to state in proposed paragraph (C) to proposed Section 11.3(a)(iii) that Participants will not make fee filings pursuant to Section 19(b) of the Exchange Act regarding CAT Fees until the Financial Accountability Milestone related to Period 4 described in Section 11.6 of the CAT NMS Plan has been satisfied.

g. CAT Fee Details

CAT LLC proposes to add proposed Section 11.3(a)(iv)(A) to the CAT NMS Plan to state that details regarding the calculation of a Participant or CAT Executing Broker's CAT Fees

---

<sup>49</sup> CAT LLC intends to include any other categories as reasonably determined by the Operation Committee. Accordingly, this provision refers to "such other categories as reasonably determined by the Operating Committee to be included in the budget."

<sup>50</sup> As a practical matter, the fee filing would provide the exact fee per executed equivalent share to be paid for the CAT Fees, by multiplying the Fee Rate by one-third and describing the relevant number of decimal places for the fee.

will be provided upon request to such Participant or CAT Executing Broker. At a minimum, such details would include each Participant or CAT Executing Broker's executed equivalent share volume and corresponding fee by (1) Listed Options, NMS Stocks and OTC Equity Securities, (2) by transactions executed on each exchange and transactions executed otherwise than on an exchange, and (3) by buy-side transactions and sell-side transactions."

In addition, CAT LLC proposes to make certain aggregate statistics regarding the CAT Fees publicly available, which would include, at a minimum, the aggregate executed equivalent share volume and corresponding aggregate fee by (1) Listed Options, NMS Stocks and OTC Equity Securities, (2) by transactions executed on each exchange and transactions executed otherwise than on an exchange, and (3) by buy-side transactions and sell-side transactions.<sup>51</sup>

#### 4. Historical CAT Assessment

CAT LLC proposes to revise Section 11.3(b) of the CAT NMS Plan to provide that the Operating Committee will establish one or more Historical CAT Assessments to be payable by Industry Members with regard to Past CAT Costs.<sup>52</sup>

##### a. Historical Fee Rate for Historical CAT Assessments

Proposed paragraph (A) of proposed Section 11.3(b)(i) of the CAT NMS Plan would state that the Operating Committee will calculate the Historical Fee Rate for each Historical CAT Assessment by dividing the Historical CAT Costs for each Historical CAT Assessment by the reasonably projected total executed equivalent share volume of all transactions in Eligible Securities for the Historical Recovery Period for each Historical CAT Assessment. Once the Operating Committee has approved such Historical Fee Rate, the Participants shall be required to file with the Commission pursuant to Section 19(b) of the Exchange Act such Historical CAT Assessment to be charged Industry Members calculated using such Historical Fee Rate. Industry

---

<sup>51</sup> See proposed Section 11.3(a)(iv)(B) of the CAT NMS Plan.

<sup>52</sup> There may be one or more Historical CAT Assessments, depending upon the timing of any approval of the amendment to the CAT NMS Plan and the completion of the Financial Accountability Milestones. For a discussion of the Financial Accountability Milestones, see Section 11.6 of the CAT NMS Plan.

Members will be required to pay such Historical CAT Assessment calculated using such Historical Fee Rate once such Historical CAT Assessment is in effect in accordance with Section 19(b) of the Exchange Act.

b. Executed Equivalent Shares

Proposed Section 11.3(b)(i)(B) of the CAT NMS Plan would state that the Historical CAT Assessment would be calculated based on the same executed equivalent share calculation as CAT Fees related to Prospective CAT Costs.

c. Historical CAT Costs

Proposed Section 11.3(b)(i)(C) of the CAT NMS Plan would describe the Historical CAT Costs for calculating Historical CAT Assessments and would state that “[t]he Operating Committee will reasonably determine the Historical CAT Costs sought to be recovered by each Historical CAT Assessment, where the Historical CAT Costs will be Past CAT Costs minus Past CAT Costs reasonably excluded from Historical CAT Costs by the Operating Committee.”

CAT LLC proposes to further clarify the amount to be collected by the Historical CAT Assessments by adding a clarifying statement in proposed Section 11.3(b)(i)(C) that “[e]ach Historical CAT Assessment will seek to recover from CAT Executing Brokers two-thirds of Historical CAT Costs incurred during the period covered by the Historical CAT Assessment.” Each CEBS and CEBB pays one-third, and, therefore, two-thirds of the Historical CAT Costs would be collected from CAT Executing Brokers.

CAT LLC also proposes to add the term “reasonably” to the following sentence in Section 11.1(c) of the CAT NMS Plan before the word “incurred”: “In determining fees on Participants and Industry Members the Operating Committee shall take into account fees, costs and expenses (including legal and consulting fees) *reasonably* incurred by the Participants on behalf of the Company prior to the Effective Date in connection with the creation and implementation of the CAT.”

d. Historical Recovery Period

Proposed Section 11.3(b)(i)(D)(I) of the CAT NMS Plan would describe the Historical Recovery Period used in calculating the Historical Fee Rate. This proposed provision would state that “[t]he length of the Historical Recovery Period used in calculating each Historical Fee Rate will be reasonably established by the Operating Committee based upon the amount of the Historical CAT Costs to be recovered by the Historical CAT Assessment.” This proposed provision, however, would state that “no Historical Recovery Period used in calculating the Historical Fee Rate shall be less than 24 months or more than five years.”

Proposed Section 11.3(b)(i)(D)(II) of the CAT NMS Plan would describe the length of the time that the Historical CAT Assessment would be in effect, which may be greater than or less than the Historical Recovery Period, depending on the amount of the Historical CAT Assessments collected based on the actual volume during the time that the Historical Assessment is in effect. Any Historical CAT Assessment would remain in effect until the relevant Historical CAT Costs are collected, whether that time is shorter or longer than the Historical Recovery Period used in calculating the Historical Fee Rate.

e. Projected Total Executed Equivalent Share Volume

The Historical Fee Rate for a Historical CAT Assessment would be calculated by using the projected total executed equivalent share volume of all transactions in Eligible Securities for the Historical Recovery Period for such Historical CAT Assessment. As set forth in proposed Section 11.3(b)(i)(E) of the CAT NMS Plan, “[t]he Operating Committee shall reasonably determine the projected total executed equivalent share volume of all transactions in Eligible Securities for each Historical Recovery Period based on the executed equivalent share volume of all transactions in Eligible Securities for the prior twelve months.” In addition, CAT LLC proposes to allow the Operating Committee to base its projection on the prior twelve months, but to use its discretion to analyze the likely volume for the upcoming year. As set forth in proposed Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan, Participants will be required to provide a

description of the calculation of the projection in their fee filings pursuant to Section 19(b) of the Exchange Act for Historical CAT Assessments.

f. Past CAT Costs and Participants

Proposed Section 11.3(b)(ii) of the CAT NMS Plan would clarify that the Participants would not be required to pay the Historical CAT Assessment as the Participants previously have paid all Past CAT Costs. In addition, proposed Section 11.3(b)(ii) of the CAT NMS Plan would state that “[i]n lieu of a Historical CAT Assessment, the Participants’ one-third share of Historical CAT Costs and such other additional Past CAT Costs as reasonably determined by the Operating Committee will be paid by the cancellation of loans made to the Company on a pro rata basis based on the outstanding loan amounts due under the loans.” Furthermore, proposed Section 11.3(b)(ii) of the CAT NMS Plan would emphasize that “[t]he Historical CAT Assessment is designed to recover two-thirds of the Historical CAT Costs.”

g. Historical CAT Assessment for Industry Members

CAT LLC proposes to describe the Historical CAT Assessment charged to Industry Members in proposed Section 11.3(b)(iii)(A) of the CAT NMS Plan. Each month in which a Historical CAT Assessment is in effect, each CEBB and each CEBS shall pay a fee for each transaction in Eligible Securities executed by the CEBB or CEBS from the prior month as set forth in CAT Data, where the Historical CAT Assessment for each transaction will be calculated by multiplying the number of executed equivalent shares in the transaction by one-third and by the Historical Fee Rate reasonably determined pursuant to paragraph (b)(i) of this Section 11.3.

CAT LLC proposes to provide additional details regarding the fee filings to be filed by the Participants regarding each Historical CAT Assessment pursuant to Section 19(b) of the Exchange Act in proposed Section 11.3(b)(iii)(B) of the CAT NMS Plan.<sup>53</sup> Specifically, CAT

---

<sup>53</sup> CAT LLC expects the fee filings required to be made by the Participants pursuant to Section 19(b) of the Exchange Act with regard to Historical CAT Assessments to be filed pursuant to Section 19(b)(3)(A) of the Exchange Act. In accordance with Section 19(b)(3)(A) of the Exchange Act, fee filings made pursuant to Section 19(b)(3)(A) of the Exchange Act would be effective upon filing.

LLC proposes to state that each Participant will be required to file a fee filing pursuant to Section 19(b) of the Exchange Act to describe each Historical CAT Assessment.<sup>54</sup>

CAT LLC also proposes to provide additional detail about the information that Participants would be required to include in their fee filings to be made pursuant to Section 19(b) of the Exchange and Rule 19b-4(f)(2) for Historical CAT Assessments in proposed paragraph (b)(iii)(B)(II) of proposed Section 11.3 of the CAT NMS Plan. Specifically, such filings would be required to include: (A) the Historical Fee Rate; (B) a brief description of the amount and type of Historical CAT Costs, including (1) the technology line items of cloud hosting services, operating fees, CAIS operating fees, change request fees and capitalized developed technology costs, (2) legal, (3) consulting, (4) insurance, (5) professional and administration, and (6) public relations costs; (C) the Historical Recovery Period and the reasons for its length; and (D) the projected total executed equivalent share volume of all transactions in Eligible Securities for the Historical Recovery Period, and a description of the calculation of the projection.<sup>55</sup>

In addition, CAT LLC proposes to clarify in proposed Section 11.3(b)(iii)(B)(II) that the Historical CAT Costs described in the fee filings must provide sufficient detail to demonstrate that such costs are reasonable and appropriate.

The collection of Historical CAT Assessments from Industry Members is subject to Section 11.6 of the CAT NMS Plan regarding the Financial Accountability Milestones. Accordingly, CAT LLC proposes to clarify in proposed Section 11.3(b)(iii)(B)(III) that Participants will not make CAT fee filings pursuant to Section 19(b) of the Exchange Act regarding a Historical CAT Assessment until any applicable Financial Accountability Milestone has been satisfied.

---

<sup>54</sup> See proposed Section 11.3(b)(iii)(B)(I).

<sup>55</sup> As a practical matter, the fee filing would provide the exact fee per executed equivalent share to be paid for the Historical CAT Assessment, by multiplying the Historical Fee Rate by one-third and describing the relevant number of decimal places for the fee.

h. Historical CAT Assessment Details

CAT LLC proposes to add proposed Section 11.3(b)(iv)(A) to the CAT NMS Plan to state that details regarding the calculation of a CAT Executing Broker's Historical CAT Assessments will be provided upon request to such CAT Executing Broker. At a minimum, such details would include each CAT Executing Broker's executed equivalent share volume and corresponding fee by (1) Listed Options, NMS Stocks and OTC Equity Securities, (2) by transactions executed on each exchange and transactions executed otherwise than on an exchange, and (3) by buy-side transactions and sell-side transactions.

In addition, CAT LLC proposes to make certain aggregate statistics regarding Historical CAT Assessments publicly available, which would include, at a minimum, the aggregate executed equivalent share volume and corresponding aggregate fee by (1) Listed Options, NMS Stocks and OTC Equity Securities, (2) by transactions executed on each exchange and transactions executed otherwise than on an exchange, and (3) by buy-side transactions and sell-side transactions.<sup>56</sup>

5. Additional Changes from Original Funding Model

CAT LLC proposes certain revisions to Article XI of the CAT NMS Plan to implement the Executed Share Model. CAT LLC proposes to make the following changes to the CAT NMS Plan in addition to the proposed changes to the CAT NMS Plan discussed above.

a. Elimination of Definition of "Execution Venue"

Section 1.1 of the CAT NMS Plan defines the term "Execution Venue" to mean "a Participant or an alternative trading system ('ATS') (as defined in Rule 300 of Regulation ATS) that operates pursuant to Rule 301 of Regulation ATS (excluding any such ATS that does not execute orders)." Currently, the term "Execution Venue" is used in Sections 11.2 and 11.3 of the CAT NMS Plan to describe how CAT costs would be allocated among CAT Reporters under the

---

<sup>56</sup> See proposed Section 11.3(b)(iv)(B) of the CAT NMS Plan.

Original Funding Model. The Original Funding Model would have imposed fees based on market share to CAT Reporters that are Execution Venues, including ATSS, and fees based on message traffic for Industry Members' non-ATS activities. In contrast, the Executed Share Model would impose fees based on the executed equivalent shares of transactions in Eligible Securities for three categories of CAT Reporters: Participants, CEBBs and CEBSs.

Accordingly, as the concept for an "Execution Venue" would not be relevant for the Executed Share Model, CAT LLC proposes to delete this term and its definition from Section 1.1 of the CAT NMS Plan.

b. Use of Executed Equivalent Share Volume under Executed Share Model

The Original Funding Model set forth in the CAT NMS Plan requires Participants and Execution Venue ATSS to pay CAT fees based on market share and Industry Members (other than Execution Venue ATSS) to pay CAT fees based on message traffic. The CAT NMS Plan also describes how the market share-based fee would be calculated for Participants and other Execution Venue ATSS and how the message traffic-based fee would be calculated for Industry Members (other than Execution Venue ATSS). CAT LLC proposes to amend the CAT NMS Plan to require Participants, CEBBs and CEBSs to pay CAT fees based on the number of executed equivalent shares in a transaction in Eligible Securities, rather than based on market share and message traffic. Accordingly, the Operating Committee proposes to amend Section 11.2(b) and (c) and Section 11.3(a) and (b) of the CAT NMS Plan to reflect the proposed use of the number of executed equivalent shares in transactions in Eligible Securities in calculating CAT fees.

Section 11.2(b) of the CAT NMS Plan states that "[i]n establishing the funding of the Company, the Operating Committee shall seek . . . (b) to establish an allocation of the Company's related costs among Participants and Industry Members that is consistent with the Exchange Act, taking into account the timeline for implementation of the CAT and distinctions in the securities trading operations of Participants and Industry Members and their relative

impact upon Company resources and operations.” CAT LLC proposes to delete the requirement to take into account “distinctions in the securities trading operations of Participants and Industry Members and their relative impact upon Company resources and operations.” CAT LLC represents that this requirement related to using message traffic and market share in the calculation of CAT fees, as message traffic and market share were metrics related to the impact of a CAT Reporter on the Company’s resources and operations. CAT LLC represents that with the proposed move to the use of the executed equivalent shares metric instead of message traffic and market share, the requirement is no longer relevant.

Section 11.2(c) of the CAT NMS Plan states that “[i]n establishing the funding of the Company, the Operating Committee shall seek . . . (c) to establish a tiered fee structure in which the fees charged to: (i) CAT Reporters that are Execution Venues, including ATSS, are based upon the level of market share; (ii) Industry Members’ non-ATS activities are based upon message traffic.” CAT LLC proposes to delete subparagraphs (i) and (ii) and replace these subparagraphs with the requirement that the fee structure in which the fees charged to “Participants and Industry Members are based upon the executed equivalent share volume of transactions in Eligible Securities.”

In addition, CAT LLC proposes to amend the CAT funding principles to clarify that CAT Fees and the Historical CAT Assessments are intended to be cost-based fees – that is, the fees are designed to recover the cost of the creation, implementation and operation of the CAT. CAT LLC proposes to amend the funding principle set forth in Section 11.2(c) by making a specific reference to the costs of the CAT.

CAT LLC proposes to delete Section 11.3(a) of the CAT NMS Plan, which provides additional detail regarding the market share-based fees to be paid by Participants and Execution Venue ATSS under the Original Funding Model, and replace it with a description of the CAT Fees related to Prospective CAT Costs, as described above.

CAT LLC proposes to delete Section 11.3(b) of the CAT NMS Plan, which provides additional detail regarding the message traffic-based CAT fees to be paid by Industry Members (other than Execution Venue ATSSs) under the Original Funding Model, and replace it with a description of the Historical CAT Assessments, as described above.

c. Elimination of Tiered Fees

CAT LLC proposes to eliminate the use of tiered fees that were included in the Original Funding Model. Instead, under the Executed Share Model, each Participant, CEBB or CEBS would pay a fee based solely on its transactions in Eligible Securities. The Operating Committee therefore proposes to amend Sections 11.1(d), 11.2(c), 11.3(a) and 11.3(b) of the CAT NMS Plan to eliminate tiered fees and related concepts.

Section 11.1(d) of the CAT NMS Plan states that “[c]onsistent with this Article XI, the Operating Committee shall adopt policies, procedures, and practices regarding the budget and budgeting process, assignment of tiers, resolution of disputes, billing and collection of fees, and other related matters.” With the elimination of tiered fees, the reference to the “assignment of tiers” would no longer be relevant for the Executed Share Model. Therefore, CAT LLC proposes to delete the reference to “assignment of tiers” from Section 11.1(d). Similarly, CAT LLC also proposes to delete the following sentences from Section 11.1(d) because the Executed Share Model would not use tiered fees:

For the avoidance of doubt, as part of its regular review of fees for the CAT, the Operating Committee shall have the right to change the tier assigned to any particular Person in accordance with fee schedules previously filed with the Commission that are reasonable, equitable and not unfairly discriminatory and subject to public notice and comment, pursuant to this Article XI. Any such changes will be effective upon reasonable notice to such Person.

CAT LLC also proposes to delete the references to “tiered” fees from Section 11.2(c) of the CAT NMS Plan and paragraph (iii) of Section 11.2(c) of the CAT NMS Plan, which relates to the establishment of a tiered fee structure.

As discussed above, the Operating Committee proposes to replace the language in Sections 11.3(a) and (b) of the CAT NMS Plan with language implementing the Executed Share Model. These proposed changes would remove the references to tiers in Sections 11.3(a)(i) and (ii) and 11.3(b) of the CAT NMS Plan, along with the other proposed changes.

d. No Fixed Fees

As discussed above, CAT LLC proposes to replace the language in Sections 11.3(a) and (b) of the CAT NMS Plan with language implementing the Executed Share Model. These proposed changes also would remove the references to “fixed fees” in Sections 11.3(a), 11.3(a)(i), 11.3(a)(ii) and 11.3(b) and replaced them with references to “fees.” Under the Executed Share Model, the CAT fees to be paid by Participants, CEBBs and CEBs will vary in accordance with their executed equivalent share volume of transactions in Eligible Securities, although the Fee Rate will be fixed for a relevant period.

6. Plan Amendment Process for Fee Rate Changes

Under the Executed Share Model, once any Fee Rate has been established by a majority vote of the Operating Committee in accordance with the Executed Share Model set forth in the CAT NMS Plan,<sup>57</sup> each Participant would be required to pay the applicable CAT Fee calculated in accordance with the requirements set forth in the CAT NMS Plan (subject to the requirement for the Industry Member CAT Fee to be in effect). CAT LLC does not plan to submit an amendment to the CAT NMS Plan each time that the Fee Rate for the CAT Fee is established or adjusted because of the length of time and burden required to amend the CAT NMS Plan for each adjustment to the Fee Rate.

---

<sup>57</sup> Participants would be required to pay the CAT Fee once the CAT Fee is in effect with regard to Industry Members in accordance with Section 19(b) of the Exchange Act.

## B. CAT Fee Schedule for Participants

To implement the Participant CAT fees, CAT LLC proposes to add a fee schedule, entitled “Consolidated Audit Trail Funding Fees,” to Appendix B of the CAT NMS Plan. Proposed paragraph (a) of the fee schedule would describe the CAT Fees to be paid by the Participants under the Executed Share Model. Specifically, paragraph (a) of the Participant fee schedule would state that “[e]ach Participant shall pay the CAT Fee set forth in Section 11.3(a) of the CAT NMS Plan to Consolidated Audit Trail, LLC in the manner prescribed by Consolidated Audit Trail, LLC on a monthly basis based on the Participant’s transactions in Eligible Securities in the prior month.”

## IV. Summary of Comments

### A. Allocation of Fee among Participants and Industry Members

Under the Executed Share Model, CAT fees would be allocated one-third to the applicable Participant, one-third to the CEBS and one-third to the CEBS of a transaction. Two commenters opposed the proposed allocation.<sup>58</sup> One commenter stated that, while the Proposed Amendment justified the fairness of the Executed Share Model because it would operate like other fees, like FINRA’s TAF, Section 31 fees, and the options regulatory fee,<sup>59</sup> the Proposed Amendment did not support why those fee frameworks should be used as a model in this context.<sup>60</sup> For example, the commenter stated that the TAF is designed to recover the costs of FINRA’s regulatory activities, while the CAT fees are intended to align with the costs to build,

---

<sup>58</sup> See Letters to Vanessa Countryman, Secretary, Commission, from Marcia E. Asquith, Corporate Secretary, EVP, Board and External Relations, FINRA, dated May 25, 2023 (“FINRA May 2023 Letter”); April 11, 2023 (“FINRA April 2023 Letter”); and June 22, 2022 (“FINRA June 2022 Letter”) (the FINRA June 2022 Letter was submitted in response to the prior funding proposal and was attached and incorporated by reference in the FINRA April 2023 Letter); Letters to Vanessa Countryman, Secretary, Commission, from Ellen Greene, Managing Director, Equities & Options Market Structure, and Joseph Corcoran, Managing Director, Associate General Counsel, SIFMA, dated June 5, 2023 (“SIFMA June 2023 Letter”); May 2, 2023 (“SIFMA May 2023 Letter”); January 12, 2023 (“SIFMA January 2023 Letter”); December 14, 2022 (“SIFMA December 2022 Letter”); October 7, 2022 (“SIFMA October 2022 Letter”); and June 22, 2022 (“SIFMA June 2022 Letter”) (the SIFMA June 2022 Letter, SIFMA October 2022 Letter, SIFMA December 2022 Letter and SIFMA January 2023 Letter were submitted in response to the prior funding proposal and incorporated by reference in the SIFMA May 2023 Letter).

<sup>59</sup> See Notice, *supra* note 6, 88 FR at 17122.

<sup>60</sup> See FINRA June 2022 Letter at 4.

operate and administer the CAT.<sup>61</sup> Further, the commenter stated that the Proposed Amendment has insufficiently explained the connection between the TAF and CAT fees, merely stating that they are similar fees because they are transaction-based fees to provide funding for regulatory costs.<sup>62</sup> The commenter stated that “CAT LLC’s observations superficially focus on the fact that these fees also use transaction-based metrics (and may be assessed on members) and neglects other factors relevant to the analysis including, for example, that these fees are used in combination with other funding mechanisms and metrics to support an overall funding framework.”<sup>63</sup>

Another commenter disagreed with the Participants’ statement that the Executed Share Model’s similarity to other transaction-based fees approved by the Commission is adequate justification for consistency with the Exchange Act.<sup>64</sup> The commenter stated that similarity to other transaction-based fees is not an adequate basis to show that the Executed Share Model is consistent with relevant standards; each proposed fee must be individually supported.<sup>65</sup>

Commenters also questioned the Participants’ justifications for the one-third allocation methodology. One commenter argued that the Proposed Amendment did not justify why the proposed allocation by thirds to the Participant, buy-side and sell-side is equitable in the context of the CAT NMS Plan.<sup>66</sup> The commenter also argued that the Proposed Amendment did not consider alternatives suggested by commenters on a prior proposed funding model,<sup>67</sup> such as a model similar to Section 31 fees and a CAT funding model based on the “Cost Recovery

---

<sup>61</sup> See FINRA April 2023 Letter at 8.

<sup>62</sup> Id. The commenter also stated that “it is unclear how assessing on FINRA the largest allocation of the SRO portion of CAT expenses ‘provides funding for regulatory costs’ in any reasonable and equitable sense comparable to the TAF...” Id.

<sup>63</sup> FINRA May 2023 Letter at 3.

<sup>64</sup> See SIFMA June 2022 Letter at 4.

<sup>65</sup> Id.

<sup>66</sup> See FINRA June 2022 Letter at 3.

<sup>67</sup> See Securities Exchange Act Release Nos. 94984 (May 25, 2022), 87 FR 33226 (June 1, 2022); 96394 (Nov. 28, 2022), 87 FR 74183 (Dec. 2, 2022); and Letter from Michael Simon, Chair Emeritus, CAT NMS Plan Operating Committee, to Vanessa Countryman, Secretary, Commission (Feb. 15, 2023).

Principle” and the “Benefits Received Principle.”<sup>68</sup> The commenter urged that the Commission require those alternatives to be analyzed.<sup>69</sup>

One commenter stated that the Participants have not met their burden to demonstrate the proposed allocation is consistent with the Exchange Act fee standards and not arbitrary.<sup>70</sup> The commenter stated that because FINRA is funded by Industry Members, Industry Members would pay over 80% of CAT costs since they must pay not only their own share but FINRA’s as well; therefore, the Commission should disapprove the proposal.<sup>71</sup> The commenter also argued that the Proposed Amendment fails to explain how allocating 80% of total CAT costs to the industry in perpetuity without a mechanism to limit the budget<sup>72</sup> is consistent with the Exchange Act and guidance on SRO filings related to fees when the industry has no role in the governance, oversight or design of CAT and does not benefit from the CAT.<sup>73</sup> The commenter quoted a Commission release stating that the Participants are potentially conflicted in allocating CAT fees to themselves and the Industry Members.<sup>74</sup>

Additionally, this commenter stated that the Participants do not account for “the time and expense Industry Members have devoted to developing and maintaining internal systems to be able to report the [sic] CAT, as well as the time and expense Industry Members have devoted to assisting the Operating Committee with its job of developing reporting specifications that allow

---

<sup>68</sup> See FINRA April 2023 Letter at 5.

<sup>69</sup> Id.

<sup>70</sup> See SIFMA May 2023 Letter at 6; SIFMA June 2023 Letter at 1–2. The commenter also stated that the Proposed Amendment provides unsupported conclusory statements that it meets the requirements of the Exchange Act. See SIFMA June 2023 Letter at 2; see also id. at n 11.

<sup>71</sup> See SIFMA May 2023 Letter at 2. See also SIFMA June 2022 Letter at 1–2 (stating that the proposed cost allocation methodology is inconsistent with Exchange Act fee standards because most costs would be imposed on Industry Members).

<sup>72</sup> The commenter noted that the CAT annual budget increased over 30% in the last year. See SIFMA June 2023 Letter at 4.

<sup>73</sup> SIFMA June 2023 Letter at 3, 4. The commenter also stated that approving such a proposal would “directly threaten[] efficiency, competition, and capital formation in U.S. securities markets.” Id.

<sup>74</sup> Id. at 4. See also Securities Exchange Act Release No. 89618 (Aug. 19, 2020), 85 FR 65470, 65482 (Oct. 15, 2020).

the CAT to achieve its regulatory purpose.”<sup>75</sup> The commenter stated that the Participants have not taken Industry Members’ time and expenses into account when deciding to allocate two-thirds of the CAT costs to Industry Members and that “this omission is a flaw with the Participants’ decision to allocate two-thirds of the CAT costs to Industry Members and its inclusion would demonstrate that the Participants’ Executed Share Model does not provide for the equitable allocation of reasonable fees.”<sup>76</sup>

The commenter also objected to statements made in the Proposed Amendment that the complexity of Industry Member business models contributes substantially to the costs of the CAT.<sup>77</sup> The commenter stated that the proposed allocation of two-thirds of CAT costs to Industry Members is unfair, unreasonable and arbitrary because the Participants are equally responsible for the complexity of trading activity in the markets.<sup>78</sup> The commenter contested the Participants’ argument that the allocation satisfies Exchange Act fee standards because Industry Members and the complexity of their business models drive the costs of the CAT, by stating that the examples provided of complexities were developed to address order types, activities and fee structures (such as the maker-taker fee structure) established by the Participant exchanges.<sup>79</sup> The commenter argued that the Participants are just as responsible for such cost-driving complex trading activity in the equity and options markets as Industry Members due to the “large number of equity and options exchanges established by the exchange families with fundamentally different execution models and order types.”<sup>80</sup> The commenter argued that the Participant exchanges have not analyzed how their own business decisions have resulted in the complexity

---

<sup>75</sup> SIFMA June 2022 Letter at 4. See also SIFMA January 2023 Letter at 4.

<sup>76</sup> SIFMA June 2022 Letter at 4–5. See also SIFMA January 2023 Letter at 5.

<sup>77</sup> See Notice, supra note 6, 88 FR at 17104.

<sup>78</sup> See SIFMA May 2023 Letter at 3. See also SIFMA January 2023 Letter at 2, 3–4.

<sup>79</sup> See SIFMA May 2023 Letter at 6–7. See also SIFMA January 2023 Letter at 3; Notice, supra note 6, 88 FR at 17104.

<sup>80</sup> SIFMA January 2023 Letter at 3.

of Industry Member order routing practices and CAT costs.<sup>81</sup> The commenter also dismissed other justifications made in the Proposed Amendment for the proposed allocation; specifically, that there are more Industry Members than Participants and that Industry Members receive more in revenue than the Participants,<sup>82</sup> stating that these assertions are not relevant in demonstrating that the proposed allocation is fair and reasonable.<sup>83</sup> The commenter argued that the Participants are justifying the allocation based on the ability to pay rather than cost generation, which the commenter believes is inconsistent “with the Participant Exchanges’ proposed approach... of allocating CAT costs based on approximate responsibility for generating them...” and “with the historical CAT decision to allocate costs to the parties responsible for generating them.”<sup>84</sup> The commenter suggested an alternative allocation that would equally split CAT costs between Participant exchanges and Industry Members, while FINRA would be subject only to a nominal regulatory user fee to access CAT Data.<sup>85</sup>

Commenters also argued against statements in the Proposed Amendment that CAT costs would be passed on to investors.<sup>86</sup> One commenter stated, “[s]uch an assertion is inaccurate because it is almost certain that there will be scenarios faced by Industry Members in which they will not be able to figure out who was responsible for generating certain Historical CAT Costs.”<sup>87</sup> The commenter warned that such assertions would minimize the Participants’

---

<sup>81</sup> See SIFMA May 2023 Letter at 7.

<sup>82</sup> *Id.* See also Notice, *supra* note 6, 88 FR at 17104.

<sup>83</sup> See SIFMA May 2023 Letter at 7. See also SIFMA January 2023 Letter at 4.

<sup>84</sup> See SIFMA May 2023 Letter at 7. The commenter cited to the funding principles in Section 11.2 of the CAT NMS Plan.

<sup>85</sup> See SIFMA January 2023 Letter at 4. See also SIFMA May 2023 Letter at 8; SIFMA June 2022 Letter at 5; SIFMA October 2022 Letter at 4. This commenter also suggested another alternative allocation in which costs would be allocated to those Participants and Industry Members most directly responsible for the costs. Under this alternative, Industry Members would be responsible for the cost associated with initial ingestion of the data into the CAT system. The commenter explained that Participants would be responsible for the costs associated with the stages after the data is initially ingested into the CAT system because the regulators directly control and benefit from these stages of the CAT system after ingestion. See SIFMA June 2022 Letter at 5–6.

<sup>86</sup> See SIFMA May 2023 Letter at 8; FINRA April 2023 Letter at 6–7.

<sup>87</sup> See SIFMA May 2023 Letter at 8.

obligation to allocate fees consistent with Exchange Act fee standards and could result in the inequitable allocation of CAT fees to Industry Members under the assumption that such fees would be passed down to investors.<sup>88</sup> Another commenter objected to statements in the Proposed Amendment that Industry Members can pass through to their customers their CAT cost allocation and additional costs resulting from an increase in FINRA fees.<sup>89</sup> The commenter stated that “[s]ummarily stating that investors can be made to bear the costs resulting from the Funding Model without a detailed description of and transparency into how these fees would be determined or passed on to customers is inadequate, and does not provide interested parties sufficient information to consider the costs and benefits related to the Fee Proposal.”<sup>90</sup>

In response to the comment noting that the Participants had not analyzed a suggested Section 31-style approach to a funding model,<sup>91</sup> CAT LLC stated that the CAT fee approach is similar to the Section 31 fee approach in how an exchange would be obligated to pay a transaction fee based on transactions occurring on that exchange, and that FINRA would be obligated to pay a transaction fee based on transactions in the over-the-counter market.<sup>92</sup> CAT LLC argued that the approaches are also similar because, in both, an exchange would be able to determine to pass the fee onto its members, as would FINRA.<sup>93</sup> CAT LLC stated that if the Section 31 approach would comply with the Exchange Act, then the proposed CAT fee approach should also comply with the Exchange Act and CEBBs and CEBSs could determine whether to pass such fees onto their clients.<sup>94</sup>

---

<sup>88</sup> Id.

<sup>89</sup> See FINRA April 2023 Letter at 6–7.

<sup>90</sup> Id. at 7.

<sup>91</sup> Id. at 5.

<sup>92</sup> See Letter to Vanessa Countryman, Secretary, Commission, from Brandon Becker, Chair, CAT NMS Plan Operating Committee, dated May 18, 2023 (“CAT LLC Response Letter”), at 9.

<sup>93</sup> Id.

<sup>94</sup> Id.

In response, the commenter stated that the CAT LLC Response Letter misrepresented the commenter’s letter by incorrectly stating that the commenter’s letter recommended an approach similar to Section 31 fees.<sup>95</sup> The commenter clarified that it was noting that the Commission had received comments suggesting a model like the Section 31 fees, that the Participants had not “meaningfully analyzed” the suggested alternatives in the Proposed Amendment, and that the Commission should require the Participants to analyze the alternatives.<sup>96</sup>

In response to the comments on whether Participants’ models are equally to blame for the complexity of the markets,<sup>97</sup> CAT LLC stated that its analysis of the complexity of the industry’s business models is based on the effects of those models on the costs of the CAT, which it stated are more profound than those of Participants, not on complexity of the market in general.<sup>98</sup> CAT LLC explained that the complexity of the Industry Members’ business models results in significant data processing and storage costs, which Participants do not contribute to as they do not originate market activity or orders.<sup>99</sup> CAT LLC also stated that the Participants would pay the same amount as the CEBB and CEBS in each transaction.<sup>100</sup>

CAT LLC also disagreed with one commenter’s dismissal of CAT LLC’s consideration of the Industry Members’ relative ability to pay,<sup>101</sup> stating that the Exchange Act specifically requires that the fees be fair and reasonable, which necessitates consideration of the relative ability to pay.<sup>102</sup> Additionally, CAT LLC objected to the commenter’s statement that the proposed allocation is “inconsistent with the historical CAT decision to allocate costs to the parties responsible for generating them.”<sup>103</sup> CAT LLC stated that, while the CAT NMS Plan

---

<sup>95</sup> See FINRA May 2023 Letter at 3, n.8.

<sup>96</sup> Id.

<sup>97</sup> See SIFMA May 2023 Letter at 3. See also SIFMA January 2023 Letter at 2, 3–4.

<sup>98</sup> See CAT LLC Response Letter at 6.

<sup>99</sup> Id. at 7.

<sup>100</sup> Id. at 6.

<sup>101</sup> See SIFMA May 2023 Letter at 7. See also SIFMA January 2023 Letter at 4.

<sup>102</sup> CAT LLC Response Letter at 7.

<sup>103</sup> Id.; SIFMA May 2023 Letter at 7.

does not require CAT costs to be allocated to the parties responsible for generating such costs, the proposed allocation addresses cost burden on the CAT by (i) taking into account the impact of Industry Member activity on CAT costs, and (ii) using trading activity, which CAT LLC believes is a “reasonable proxy for cost burden on the CAT,”<sup>104</sup> as the metric for cost allocation.<sup>105</sup>

Additionally, CAT LLC responded to the commenter’s suggested alternative proposal that would equally allocate CAT costs to Participant exchanges and Industry Members, stating that the commenter did not explain why the alternative would satisfy the Exchange Act standards, and noting that CAT LLC had previously considered such an allocation but believed that it would not result in a fair and equitable allocation due to the greater number of Industry Members than Participants, the greater financial resources of Industry Members, and the failure of the suggested allocation to take into account how the complexity of Industry Member business models contributes substantially to CAT costs.<sup>106</sup>

In response, the commenter stated that the CAT LLC Response Letter did not meaningfully address the concerns it raised about the allocation of CAT costs between Participants and Industry Members.<sup>107</sup>

B. Executed Equivalent Shares

a. Executed Equivalent Share Volume

One commenter stated that the Participants failed to justify why the Executed Share Model would appropriately treat high-volume trades in low-priced stocks, arguing that Section 31 fees are charged only on the sell-side of a transaction and are based on the notional value of a trade.<sup>108</sup>

---

<sup>104</sup> CAT LLC Response Letter at 7.

<sup>105</sup> Id.

<sup>106</sup> Id.

<sup>107</sup> See SIFMA June 2023 Letter at 2.

<sup>108</sup> See SIFMA October 2022 Letter at 7.

Another commenter argued that the Proposed Amendment does not explain why the use of executed share volume as the basis of the cost allocation methodology, instead of message traffic, is equitable.<sup>109</sup> The commenter explained that in prior models, message traffic was the key proxy for cost generation used to align CAT fees with CAT costs, but the Executed Share Model would base its cost allocation methodology entirely on executed share volume.<sup>110</sup> The commenter stated that the Participants' argument that executed share volume is related to cost generation is not enough to demonstrate that its use is reasonable and equitable.<sup>111</sup> This commenter further stated that the Executed Share Model is inconsistent with the "cost alignment" funding principle in Section 11.2(b) of the CAT NMS Plan, which requires the Participants to seek to establish an allocation of costs that takes into account distinctions in the securities trading operations of Participants and Industry Members and their relative impact upon Company resources and operations.<sup>112</sup> The commenter stated that "the Proposal fails to establish a sufficient nexus between executed share volume and the technology burdens that generate CAT costs and fails to relate each reporter group's allocation to the burden that each reporter group imposes on CAT."<sup>113</sup>

CAT LLC responded to the commenter's statement that the proposed allocation is inconsistent with the cost alignment principles of the CAT NMS Plan by noting that the Proposed Amendment incorporates the concept of cost burden in at least two ways.<sup>114</sup> Specifically, CAT LLC stated that it does so because "the allocation of CAT costs contemplates the effect of Industry Member activity on the cost of the CAT... and because trading activity provides a reasonable proxy for cost burden on the CAT, trading activity is an appropriate metric

---

<sup>109</sup> See FINRA June 2022 Letter at 3.

<sup>110</sup> Id.

<sup>111</sup> Id. at 4.

<sup>112</sup> Id. See also FINRA April 2023 Letter at 7–9.

<sup>113</sup> FINRA June 2022 Letter at 4.

<sup>114</sup> CAT LLC Response Letter at 7.

for allocating CAT costs among CAT Reporters.”<sup>115</sup> CAT LLC added that because there are other examples of trading activity-based fees, the Executed Share Model would not be novel or unique.<sup>116</sup>

With respect to the deletion in Section 11.2(b) of the requirement that, when establishing the funding of the CAT, the Operating Committee must take into account “distinctions in the securities trading operations of Participants and Industry Members and their relative impact upon Company resources and operations,” the same commenter argued that the Participants have proposed to delete the language in Section 11.2(b) because the proposed Executed Share Model is inconsistent with the language.<sup>117</sup> This commenter stated that the Proposed Amendment “seeks to amend the core funding principles to align with an unjustified allocation methodology.”<sup>118</sup> The commenter stated that any changes to the funding principles “must be well-reasoned and transparent and must continue to support the achievement of a fair and equitable outcome.”<sup>119</sup>

Additionally, the commenter objected to the statement in the Proposed Amendment that “trading activity provides a reasonable proxy for cost burden on the CAT, and therefore is an appropriate metric for allocating CAT costs among CAT Reporters.”<sup>120</sup> The commenter stated that this statement is inconsistent with information that demonstrates that volume from FINRA trading facilities (“TRF”) contributes “a very small percentage of annual CAT compute and storage costs.”<sup>121</sup> The commenter stated, “...despite the minimal data compute and storage costs for transactions reported to the TRF, FINRA would be assessed an estimated 34% of the total

---

<sup>115</sup> Id.

<sup>116</sup> Id.

<sup>117</sup> See FINRA June 2022 Letter at 4; see also FINRA April 2023 Letter at 7.

<sup>118</sup> FINRA June 2022 Letter at 4. The commenter states that the Executed Share Model instead places the greatest emphasis on the funding principle relating to the “ease of billing and other administrative functions,” favoring that principle over cost alignment. Id. at 5.

<sup>119</sup> Id.; FINRA April 2023 Letter at 8–9.

<sup>120</sup> Notice, supra note 6, 88 FR at 17103.

<sup>121</sup> FINRA May 2023 Letter at 2.

CAT costs to be borne amongst the 25 Participants, and more than all options exchanges combined.”<sup>122</sup> The commenter stated that as a result, it cannot support the Participants’ assertion that trading activity is a reasonable proxy for cost burden.<sup>123</sup> The commenter stated that the Proposed Amendment “fails to provide for reasonable fees that are equitably allocated and not unfairly discriminatory, does not reflect a reasonable approach to allocating costs amongst the Participants, nor does it transparently or accurately present information regarding the true sources of cost burdens on the CAT.”<sup>124</sup>

b. FINRA Allocation

Two commenters objected to the proposed allocation of Participant CAT fees to FINRA.<sup>125</sup> Both commenters objected to the allocation to FINRA of 34% of the total CAT costs<sup>126</sup> to be borne by the Participants.<sup>127</sup> One commenter argued that this amount was a “disproportionate share of CAT costs,”<sup>128</sup> especially as FINRA does not operate a market,<sup>129</sup> and that the Proposed Amendment would place an undue burden on FINRA.<sup>130</sup> The commenter stated that FINRA’s share was “more than double that of the next highest Participant and \$4 million more than all option exchanges combined.”<sup>131</sup> The commenter also stated that FINRA’s allocation would largely be based on transaction volume reported to the TRF; however, the

---

<sup>122</sup> Id.

<sup>123</sup> See id. See also FINRA April 2023 Letter at 8.

<sup>124</sup> FINRA May 2023 Letter at 4.

<sup>125</sup> See FINRA May 2023 Letter; FINRA April 2023 Letter; FINRA June 2022 Letter; SIFMA May 2023 Letter; SIFMA June 2022 Letter; SIFMA October 2022 Letter. One of the commenters supported the points raised in the FINRA April 2023 Letter that argued that the Proposed Amendment would result in the inequitable allocation of fees and should be disapproved. See SIFMA May 2023 Letter at 2.

<sup>126</sup> One commenter stated that this estimate is based on 2021 data and urged the Commission to require the Participants to amend the Proposed Amendment to include the 2022 data and fee allocation estimates, stating that the CAT budget has grown significantly from 2021. See FINRA April 2023 Letter at 3, 4–5. In its response to comments, CAT LLC provided the Historical CAT Costs for 2022. See Notice, supra note 6, 88 FR at 17111; CAT LLC Response Letter at 13.

<sup>127</sup> See FINRA May 2023 Letter at 2; FINRA April 2023 Letter at 3; SIFMA May 2023 Letter at 2.

<sup>128</sup> FINRA April 2023 Letter at 3.

<sup>129</sup> Id.

<sup>130</sup> FINRA June 2022 Letter at 6.

<sup>131</sup> FINRA April 2023 Letter at 4; see also FINRA June 2022 Letter at 5.

commenter stated that TRF transactions generate fewer costs for the CAT,<sup>132</sup> as opposed to options activity, but that only 25% of total Participant CAT fees would be assessed for options activity, while the remaining 75% would be assessed for equities activity.<sup>133</sup> The commenter stated that “... FINRA would be assessed an estimated 34% of the total CAT costs to be borne amongst the 25 Participants, and more than all options exchanges combined.”<sup>134</sup>

The commenter argued that, unlike the exchange Participants, transactions are not executed on a FINRA marketplace and FINRA does not receive commercial revenue for those transactions.<sup>135</sup> The commenter explained that “while the NMS stock allocation to FINRA under the Funding Model is based on transactions that are reported to FINRA [TRFs], these transactions are not executed on a FINRA marketplace and FINRA does not retain commercial revenues from those transactions”<sup>136</sup> unlike the exchanges that operate each FINRA TRF, which retain the market data and trade reporting revenue of the TRF.<sup>137</sup> The commenter stated that, unlike FINRA, these exchanges would thus have a revenue stream related to the transactions that would be assessed a CAT fee, and that also, unlike FINRA, exchanges generate revenue from listings and proprietary data feeds in NMS securities.<sup>138</sup> The commenter also stated that FINRA members can report over-the-counter transactions in listed stocks to the FINRA Alternative Display Facility, although most transactions are reported to a TRF.<sup>139</sup>

The commenter further stated that FINRA cannot necessarily recoup its costs through regulatory services agreements (“RSAs”) that it has entered into with certain exchanges<sup>140</sup>

---

<sup>132</sup> See FINRA April 2023 Letter at 8, n.23.

<sup>133</sup> Id.; FINRA May 2023 Letter at 2.

<sup>134</sup> FINRA May 2023 Letter at 2.

<sup>135</sup> See FINRA April 2023 Letter at 3.

<sup>136</sup> Id.

<sup>137</sup> Id.

<sup>138</sup> Id. at 4.

<sup>139</sup> Id. at 3, n.8.

<sup>140</sup> This statement was made in response to a statement in the Proposed Amendment that FINRA, like the exchange Participants, has revenue sources other than membership fees, giving as an example the RSAs. See Notice, supra note 6, 88 FR at 17107.

because the exchanges must first agree to be charged CAT costs under the RSAs; therefore, RSAs would not be a reliable source of CAT funding for FINRA.<sup>141</sup> Additionally, the commenter questioned CAT LLC’s statement that the Proposed Amendment “reflects a reasonable effort to allocate costs based on the extent to which different CAT Reporters participate in and benefit from the equities and options markets.”<sup>142</sup> Specifically, the commenter asked how CAT LLC’s statement explains the size of FINRA’s allocation<sup>143</sup> and noted that this statement “conflates the costs to create and operate the CAT with the usage of CAT data.”<sup>144</sup>

Two commenters expressed concern about alleged arbitrary treatment of FINRA by the other Participants of the CAT NMS Plan.<sup>145</sup> One commenter believes that FINRA’s “outsized allocation”<sup>146</sup> was because of its limited voting power, only having one out of 25 votes on the Operating Committee as it does not control, nor is under common control with, any other Participant.<sup>147</sup> Another commenter stated that the current CAT NMS Plan voting structure results in the unfair and inequitable treatment of FINRA.<sup>148</sup> Both commenters believe that the exchange Participants treat FINRA arbitrarily to benefit themselves, treating FINRA as a market center in the CAT NMS Plan while not as a market center under the National Market System Plan Regarding Consolidated Equity Market Data (“CT Plan”),<sup>149</sup> which governs the public

---

<sup>141</sup> See FINRA April 2023 Letter at 4.

<sup>142</sup> Id. at 7.

<sup>143</sup> Id.

<sup>144</sup> Id.; see also FINRA June 2022 Letter at 6.

<sup>145</sup> See FINRA April 2023 Letter at 6, n.16; SIFMA October 2022 Letter at 3. See also SIFMA May 2023 Letter at 6, n.11.

<sup>146</sup> FINRA April 2023 Letter at 7; FINRA June 2022 Letter at 6.

<sup>147</sup> FINRA April 2023 Letter at 4, 8. See also FINRA June 2022 Letter at 8.

<sup>148</sup> See SIFMA January 2023 Letter at 3, n.7.

<sup>149</sup> See Joint Industry Plan; Order Approving, as Modified, a National Market System Plan Regarding Consolidated Equity Market Data; Securities Exchange Act Release No. 92586 (Aug. 6, 2021), 86 FR 44142 (Aug. 11, 2021) (File No. 4-757) (“Order Approving the CT Plan”). The Order Approving the CT Plan was vacated by the DC Circuit on July 5, 2022. See *The NASDAQ Stock Market LLC et al. v. SEC*, Case No. 21-1167, D.C. Cir. (July 5, 2022). See also Securities Exchange Act Release No. 88827; File No. 4-757 (May 6, 2020), 85 FR 28702 (May 13, 2020) (Order Directing the Exchanges and the Financial Industry Regulatory Authority to Submit a New National Market System Plan Regarding Consolidated Equity Market Data).

dissemination of real-time consolidated market data for national market system stocks.<sup>150</sup> One commenter argued that the Participants do not treat FINRA as a market center under the CT Plan in order to limit FINRA’s voting power and therefore its ability to decide how to allocate market data revenue.<sup>151</sup> The commenter stated that this example demonstrates the “... inherent conflicts of interest that for-profit exchanges have in operating as SROs...”<sup>152</sup> The commenter suggested that the Commission issue an order soliciting comment on whether the Operating Committee should be reorganized consistent with the CT Plan.<sup>153</sup> This commenter further stated, “[w]e believe such a governance structure for the CAT would help facilitate a fairer structure for the views of the SROs and industry to be heard and incorporated into any further CAT funding proposal by reducing the ability of the largest exchange groups to dictate the terms of any CAT funding proposal over the objections of other SRO Participants and the industry.”<sup>154</sup>

Both commenters also believe the allocation to FINRA would increase the allocation to Industry Members.<sup>155</sup> One commenter stated that FINRA, which relies on regulatory fees from its members for funding, must increase its member fees in order to fund CAT costs that it cannot recover from contractual arrangements with TRF business members.<sup>156</sup> The commenter stated that the Proposed Amendment does not adequately analyze the allocation’s impact, including

---

<sup>150</sup> See FINRA April 2023 Letter at 6; SIFMA October 2022 Letter at 3. See also SIFMA May 2023 Letter at 6, n.11. One commenter argued that the Participants treat FINRA in ways that are financially beneficial to them without considering FINRA’s role in the marketplace “... as the not-for-profit self-regulator for the entire brokerage industry...” SIFMA October 2022 Letter at 3. See also SIFMA January 2023 Letter at 4; SIFMA October 2022 Letter at 4; SIFMA May 2023 Letter at 8 (recommending that FINRA be treated differently from the Participant exchanges due to its unique role).

<sup>151</sup> See SIFMA October 2022 Letter at 3–4. See also SIFMA May 2023 Letter at 6, n.11.

<sup>152</sup> SIFMA October 2022 Letter at 3. See also SIFMA June 2023 Letter at 4 (quoting a Commission release stating that the Participants are potentially conflicted in allocating CAT fees to themselves and the Industry Members); *supra* note 74.

<sup>153</sup> SIFMA October 2022 Letter at 2.

<sup>154</sup> *Id.* The commenter also argued that the Industry Members are not voting members of the Operating Committee and have no way to direct the cost control efforts of the Participants or change their course if the cost control efforts prove to be unsuccessful. See SIFMA June 2022 Letter at 8.

<sup>155</sup> See FINRA April 2023 Letter at 5–7; SIFMA June 2022 Letter at 4. See also SIFMA October 2022 Letter at 2, 3.

<sup>156</sup> See FINRA April 2023 Letter at 5–6; see also FINRA June 2022 Letter at 7.

whether the allocation would increase Industry Members' allocation of total costs beyond two-thirds.<sup>157</sup> The commenter dismissed as inadequate the Participants' argument that Industry Members can pass through their costs, stating that the Proposed Amendment lacks a detailed description of and transparency into how the fees may be passed on to customers.<sup>158</sup> Another commenter argued that the Participants "do not address the fact that the Executed Share Model for Prospective CAT Costs allocates two-thirds of CAT costs to Industry Members for exchange transactions and more for off-exchange transactions"<sup>159</sup> because they cannot demonstrate that the proposed allocation results in an equitable allocation of reasonable fees.<sup>160</sup> The commenter stated that Industry Members, who would be subject to two-thirds of Prospective CAT Costs under the Executed Share Model, already pay FINRA's operating costs through regulatory fines and fees; therefore, Industry Members would additionally be indirectly assessed FINRA's one-third CAT fee for off-exchange transactions.<sup>161</sup> The commenter suggested an alternative allocation<sup>162</sup> that would subject FINRA only to a nominal regulatory user fee to access CAT Data.<sup>163</sup>

One commenter requested that if the Commission were to approve the Proposed Amendment, that it acknowledge "FINRA's need and ability to cover CAT costs that are not recovered through contractual arrangements through member fee increases, so as not to

---

<sup>157</sup> See FINRA April 2023 Letter at 6.

<sup>158</sup> Id. at 6–7.

<sup>159</sup> SIFMA June 2022 Letter at 4. See also SIFMA October 2022 Letter at 3 ("... we believe the proposal is flawed because it fails to appropriately consider that Industry Members pay the full costs of operating FINRA.").

<sup>160</sup> See SIFMA June 2022 Letter at 4.

<sup>161</sup> Id. The commenter also stated that the proposed allocation would result in two-thirds of CAT costs for exchange transactions being imposed on Industry Members, and that this amount would be higher for off-exchange transactions as FINRA would be assessed one-third as the venue fee and Industry Members would be indirectly assessed FINRA's portion of CAT costs as they pay the entire costs of operating FINRA. Id. See also SIFMA October 2022 Letter at 2.

<sup>162</sup> See supra notes 84–85 and accompanying text.

<sup>163</sup> See SIFMA January 2023 Letter at 4. See also SIFMA May 2023 Letter at 8; SIFMA June 2022 Letter at 5; SIFMA October 2022 Letter at 4.

jeopardize FINRA’s ability to carry out its critical regulatory mission.”<sup>164</sup> The commenter stated that FINRA would file a rule change to increase its member fees with the filing of any proposed rule change to effectuate the Funding Model.<sup>165</sup>

CAT LLC disagreed with one commenter’s proposal to charge FINRA only a nominal regulatory fee.<sup>166</sup> CAT LLC stated that the proposed transaction-based CAT fee is purposely agnostic as to the location of where a trade occurs, and an intent of this design is to avoid influencing whether or where any trading activity would take place. Moreover, CAT LLC stated that FINRA is no different from the exchanges in terms of its regulatory obligations regarding the CAT.<sup>167</sup>

### C. CAT Executing Broker

Two commenters objected to the proposed definition of “CAT Executing Broker.”<sup>168</sup> One commenter argued that the term “CAT Executing Broker” “does not appear to be universally defined or accepted by Option Industry Members or Participants” and that such lack of acceptance “present[s] a challenge when firms try to assess the impact the ‘Funding Proposal’ will have on their respective businesses.”<sup>169</sup> Accordingly, the commenter advocated that the Executed Share Model follow the “structure already in place for [collecting] Regulatory Fees,” such as charging Clearing Brokers.<sup>170</sup>

---

<sup>164</sup> FINRA April 2023 Letter at 7.

<sup>165</sup> Id.

<sup>166</sup> See CAT LLC Response Letter at 8.

<sup>167</sup> Id.

<sup>168</sup> See SIFMA May 2023 Letter; Letter from Timothy Miller, Chief Operating Officer, DASH Financial Technologies, LLC to Vanessa Countryman, Secretary, Commission (April 11, 2023) (“DASH April 2023 Letter”), at 1–2. The DASH April 2023 Letter also incorporated by reference a separate letter submitted by the commenter on the prior funding proposal (stating that the concerns expressed in the prior letter concerning the operating and competitive burdens of the proposed funding model are unchanged). See Letter from Timothy Miller, Chief Operating Officer, DASH Financial Technologies LLC, to Vanessa Countryman, Secretary, Commission (Jan. 3, 2023) (“DASH January 2023 Letter”).

<sup>169</sup> DASH April 2023 Letter at 1.

<sup>170</sup> Id. at 2.

Another commenter argued that the proposed definition of executing broker would result in the inequitable allocation of fees.<sup>171</sup> While the commenter supported the change from having clearing firms be assessed Industry Member CAT fees to executing brokers having this obligation,<sup>172</sup> because clearing firms would have been unfairly burdened with CAT costs and could have been placed in situations in which they would have been unable to identify the client responsible for the costs,<sup>173</sup> the commenter expressed concerns with how the Participants determined which entities would be considered executing brokers.<sup>174</sup> In comment letters on the prior proposal, which was amended to require executing brokers instead of clearing firms to be assessed CAT fees, the commenter requested additional detail on how an executing broker would be defined.<sup>175</sup> The commenter subsequently stated that the definition in the current Proposed Amendment suffers from the same problems as the prior proposal in which CAT fees were allocated to clearing firms and would result in the inequitable allocation of CAT fees among Industry Members.<sup>176</sup>

The commenter explained that CAT operates on a cost-recovery basis, with costs resulting from the number of messages that Participants and Industry Members report to the CAT, the processing and linking of such messages, and the costs of providing tools to regulators to analyze CAT data.<sup>177</sup> The commenter stated that the use of message traffic as the basis of fees, in the Original Funding Model, would have ensured that all CAT Reporters would

---

<sup>171</sup> See SIFMA May 2023 Letter at 3.

<sup>172</sup> Id. See also SIFMA January 2023 Letter at 7–8.

<sup>173</sup> See SIFMA May 2023 Letter at 3–4. See also SIFMA October 2022 Letter at 5. The commenter also argued against the assessment of CAT fees on clearing firms because clearing firms would be required to collect fees and thus would have to develop new systems and processes under the Executed Share Model, and because a clearing firm for a buyer or seller would not always be a party to a trade as it could be the clearer of a trade on behalf of an executing broker. See SIFMA June 2022 Letter at 9; SIFMA October 2022 Letter at 7.

<sup>174</sup> See SIFMA May 2023 Letter at 4.

<sup>175</sup> See SIFMA January 2023 Letter at 2, 8; SIFMA December 2022 Letter at 3. See also SIFMA May 2023 Letter at 4.

<sup>176</sup> See SIFMA May 2023 Letter at 4. See also SIFMA June 2022 Letter at 9–10; SIFMA October 2022 Letter at 5.

<sup>177</sup> See SIFMA May 2023 Letter at 4.

contribute to CAT's funding.<sup>178</sup> However, the commenter stated that, since the Proposed Amendment would not impose fees on all CAT Reporters, instead imposing fees on executing brokers, it would result in an inequitable allocation of fees as the executing brokers would be the last broker among many other brokers handling an order.<sup>179</sup> The commenter stated that any analysis of such a funding model must evaluate whether (i) the executing brokers would pass-through or absorb the CAT fees and any negative impacts on competition, noting that the Proposed Amendment would require executing brokers to incur expenses that other Industry Members would not incur since they would be required to collect the Industry Member portion of CAT fees on behalf of the Participants,<sup>180</sup> and (ii) Industry Members that executed trades for introducing brokers and acting as order consolidators and ATSS would be responsible for CAT fees for transactions they did not originate and would have to either pay the fee for their clients or develop software and processes to collect the fees from their clients as they often are not capable of passing through fees to the clients that sent them the orders.<sup>181</sup> The commenter stated that the Proposed Amendment would subject executing brokers to unfair burdens and require them to "shoulder CAT costs in scenarios in which they could not determine which client firm was responsible for creating the CAT costs by initiating the transaction."<sup>182</sup>

The commenter argued instead in favor of an allocation in which the Industry Member that originated an order would be treated as an "executing broker" and therefore be responsible for Industry Member CAT fees.<sup>183</sup> Under this alternative, "the Industry Member who originates a new principal order or the Industry Member who initially receives and routes a customer order for execution on an agency basis would be directly assessed CAT Fees."<sup>184</sup> The commenter

---

<sup>178</sup> Id.

<sup>179</sup> Id. at 4–5.

<sup>180</sup> Id. at 5.

<sup>181</sup> Id.

<sup>182</sup> Id.

<sup>183</sup> See SIFMA May 2023 Letter at 5

<sup>184</sup> Id. at 6.

stated that this would be the most reasonable way to allocate CAT costs among Industry Members<sup>185</sup> and that it would be “relatively easy to accommodate this approach.”<sup>186</sup>

One commenter expressed concerns about the imposition of CAT fees on CAT Executing Brokers.<sup>187</sup> The commenter argued that charging CAT Executing Brokers “inordinately burdens Broker Dealers, especially small to medium-sized firms.”<sup>188</sup> This commenter recommended using instead the existing structure for regulatory fees, including “the efficiencies afforded by the current structure, and the resulting alleviation of risk.”<sup>189</sup> In this regard, the commenter stated that “Clearing Firms are best suited to process the collection of fees as it can occur at trade settlement and the cost is ultimately borne by the end beneficiary of each transaction.”<sup>190</sup> The commenter also stated that small and medium-sized executing brokers could expect a significant negative impact on their net capital as a result of the proposal, stating, “...the firms will be forced to recoup these costs by passing them on to their clients, either in the form of higher commission rates or as a separate transactional fee. Using [Clearing Member Trade Agreement] commission invoicing and/or SEC 31(b) fees in a broker-to-broker relationship as a proxy, these invoices are generally paid well after the 60-day milestone to qualify the receivable as ‘good capital.’”<sup>191</sup>

In response to the comment about the definition of CAT Executing Broker and the billing and collection process being better suited for clearing firms, CAT LLC stated that the proposed assessment of CAT fees on CAT Executing Brokers only addresses the party obligated to pay the CAT fee.<sup>192</sup> CAT LLC stated that a CAT Executing Broker can decide to enter into an

---

<sup>185</sup> Id. at 5.

<sup>186</sup> Id. at 6.

<sup>187</sup> See DASH April 2023 Letter.

<sup>188</sup> Id. at 1; see also DASH January 2023 Letter at 1.

<sup>189</sup> DASH January 2023 Letter at 3; see also DASH April 2023 Letter at 1–2.

<sup>190</sup> DASH April 2023 Letter at 1; see also DASH January 2023 Letter at 1.

<sup>191</sup> DASH January 2023 Letter at 2.

<sup>192</sup> See CAT LLC Response Letter at 12.

arrangement with its clearing broker for the clearing broker to collect and pass-through the CAT fees like it does in other contexts.<sup>193</sup> With respect to alternatives to the proposed definition of the CAT Executing Broker, CAT LLC stated that the “originating broker” suggestion was from a commenter who had previously recommended charging executing brokers in comment letters on the prior proposed funding model.<sup>194</sup> CAT LLC stated that the commenter’s objection to charging executing brokers in the Executed Share Model was an attempt to further delay the approval of a funding model and the resultant payment of CAT fees by its members, rather than expressing a concern about the merits of charging executing brokers.<sup>195</sup>

In response, the commenter stated that the CAT Operating Committee mischaracterized the commenter’s position on the assessment of CAT fees to executing brokers by stating in the CAT LLC Response Letter that the commenter changed its position on this proposed change to delay adoption of a CAT funding model.<sup>196</sup> The commenter represented that it stated in comment letters it submitted on the prior funding model that initially proposed the use of executing brokers that (1) the Participants did not define who would be an executing broker in a transaction, (2) a clear definition is necessary for Industry Members to understand when they would be assessed costs under the Executed Share Model, and (3) its understanding was that the concept of executing broker generally refers to the Industry Member that initiates an order.<sup>197</sup> The commenter stated that the Participants only provided a definition of executing broker in the Proposed Amendment.<sup>198</sup> The commenter stated that it provided concerns about the proposed definition in its May 2023 comment letter which the commenter argued were mischaracterized by the CAT Operating Committee in the CAT LLC Response Letter.<sup>199</sup> The commenter stated

---

<sup>193</sup> Id.

<sup>194</sup> Id. at 2.

<sup>195</sup> Id. at 3.

<sup>196</sup> See SIFMA June 2023 Letter at 5.

<sup>197</sup> Id.

<sup>198</sup> Id.

<sup>199</sup> Id. at 5–6.

that the CAT Operating Committee mischaracterized the commenter's position to rush the Commission to a decision on the Proposed Amendment.<sup>200</sup>

In response to the comment that imposing fees on executing brokers would result in an inequitable allocation of fees and the suggestion that the use of message traffic as the basis of fees would have ensured that all CAT Reporters would contribute to CAT's funding, CAT LLC disagreed and stated that because the message traffic is separate from whether or not a transaction occurs, fees based on message traffic may not correlate with common revenue or fee models.<sup>201</sup> CAT LLC stated that, as a result, CAT fees based on message traffic could impose an outsized adverse financial impact on certain Industry Members, raising this same issue of an inequitable allocation of fees.<sup>202</sup> Further, in response to the commenter's criticism that in charging executing brokers, the fee would be charged to a subset of Industry Members and, as a result, that subset of Industry Members would incur expenses that other Industry Members would not incur, CAT LLC stated that it continues to believe that charging CAT Executing Brokers would satisfy the requirements of the Exchange Act.<sup>203</sup> CAT LLC stated that in the past, the Commission has approved fees that are charged to some, but not all, broker-dealers.<sup>204</sup> CAT LLC noted that, for example, FINRA's trading activity fee is assessed to a subset of FINRA members – that is, it is assessed on the sell side of member transactions.<sup>205</sup> CAT LLC also stated that the options exchanges charge options regulatory fees per executed contract side, and, for both options and equities, Section 31-related fees are charged to the sell-side in a transaction.<sup>206</sup> CAT LLC recognized that, under the proposal to charge CAT Executing Brokers, the CAT Executing Broker, but not other Industry Members involved in a given order lifecycle, would be

---

<sup>200</sup> Id. at 6.

<sup>201</sup> See CAT LLC Response Letter at 4.

<sup>202</sup> Id.

<sup>203</sup> Id. at 3.

<sup>204</sup> Id.

<sup>205</sup> Id.

<sup>206</sup> See CAT LLC Response Letter at 3.

required to pay the CAT fees, and that Industry Members that sought to recoup such fees would have to develop processes to collect such fees from their clients.<sup>207</sup> CAT LLC stated that this regulatory requirement would have a similar effect as other types of regulatory fees, such as the FINRA trading activity fee, the options regulatory fee and Section 31-related sales value pass-through fees because, “[i]n each such case, a subset of broker-dealers is required to pay a transaction-based regulatory fee, and those broker-dealers seeking to recover such fees from other broker-dealers or non-broker-dealers have established processes with regard to the pass-through of such fees.”<sup>208</sup>

CAT LLC further stated that it disagrees with charging an originating broker instead of an executing broker because there are already several existing examples of transaction-based fees being assessed to executing brokers as opposed to the originating broker, and it disagrees with the assertion that charging originating brokers would be easier.<sup>209</sup> CAT LLC stated that charging the originating Industry Member would be difficult to implement and would increase the costs of implementing CAT fees, whereas charging CAT Executing Brokers is simple, straightforward and in line with existing fee and business models because for any given trade (buy or sell), there is only one CAT Executing Broker to which shares can be allocated.<sup>210</sup> As such, CAT LLC stated that “charging the CAT Executing Broker is simple and straightforward, and leverages a one-to-one relationship between billable events (trades) and billable parties.”<sup>211</sup> CAT LLC argued that, for a single trade event, there may be many originating brokers, and each trade must be broken down on a pro-rata basis to “account[] for one or more layers of aggregation, disaggregation, and representation of the underlying orders.”<sup>212</sup> Therefore, CAT LLC stated that

---

<sup>207</sup> Id. at 4.

<sup>208</sup> Id.

<sup>209</sup> Id. at 5.

<sup>210</sup> Id.

<sup>211</sup> Id.

<sup>212</sup> See CAT LLC Response Letter at 5.

the commenter’s “suggestion of a model that begins the funding analysis with new order events (e.g., MENO or MONO events) and then looks for any execution or fulfillment that is directly associated with that event does not reduce or mitigate the complexity associated with aggregation.”<sup>213</sup> Further, CAT LLC argued that the commenter’s recommendation would not work with the design of the CAT system, stating that “[w]hile CAT is indeed designed to capture and unwind complex aggregation scenarios, the data and linkages are structured to facilitate regulatory use, and not a billing mechanism that assesses fees on a distinct set of executed trades; it is not simply a matter of using existing CAT linkages.”<sup>214</sup> Finally, CAT LLC stated that charging originating brokers would implicate issues related to lifecycle linkage rates, and issues related to corrections, cancellations and allocations, but charging CAT Executing Brokers would avoid such complications.<sup>215</sup>

D. Prospective CAT Fees

a. Budgeted CAT Costs

One commenter argued that the budget line item categories are too high level.<sup>216</sup> The commenter urged the inclusion of much greater detail and specificity on the budget spending choices, especially in technology,<sup>217</sup> to allow Industry Members and the public to understand and evaluate CAT spending decisions.<sup>218</sup>

The commenter also stated that an independent cost review mechanism is necessary to ensure future CAT fees are fair and reasonable and to safeguard against unchecked spending.<sup>219</sup>

---

<sup>213</sup> Id.

<sup>214</sup> Id.

<sup>215</sup> Id.

<sup>216</sup> See SIFMA January 2023 Letter at 6.

<sup>217</sup> The commenter stated that CAT spending on technology should be broken into further refined cost breakdowns of the following categories: cloud hosting services, operating fees, CAIS operating fees and change request fees. Id.

<sup>218</sup> Id.

<sup>219</sup> See SIFMA May 2023 Letter at 3, 8–10. See also SIFMA October 2022 Letter at 5–6; SIFMA January 2023 Letter at 2, 5–6; SIFMA June 2023 Letter at 2, n.10, 4.

The commenter urged the inclusion of a mechanism to allow the public to review the annual CAT budget before it is finalized, since, as proposed, the public would only have the opportunity to review the CAT budget when the Participants submit proposed rule changes, pursuant to Section 19(b) of the Exchange Act,<sup>220</sup> to implement CAT fees on Industry Members.<sup>221</sup> The commenter also stated that it is unlikely that the Commission would decide that a proposed CAT fee does not meet Exchange Act fee standards and require the Participants to modify the CAT budget because it would be a lengthy, time-consuming process and due to “the regulatory value of CAT data and the CAT system to the Commission.”<sup>222</sup> The commenter stated that the Commission is “directly conflicted in its role as the user and beneficiary of the CAT system for regulatory functions and its role as the reviewer of the CAT budget and fee filings, a conflict that is only heightened due to a lack of a Commission funding obligation for CAT.”<sup>223</sup> As a result, the commenter urged the adoption of an independent cost review mechanism to ensure that CAT spending will be appropriate and consistent with the Exchange Act.<sup>224</sup> The commenter also requested that “the Participants’ proposed budget include as a separate line-item projected usage costs and system change costs related to the Commission’s use and design of the CAT system.”<sup>225</sup>

In response, CAT LLC stated that such an independent cost review is not necessary, because such a review process would go beyond what is required by either Rule 613 or the CAT NMS Plan, and would be superfluous since any CAT fees must, prior to being implemented, undergo the review process detailed in Rule 608 and Section 19(b) of the Exchange Act.<sup>226</sup> CAT

---

<sup>220</sup> 15 U.S.C. 78s(b).

<sup>221</sup> See SIFMA May 2023 Letter at 8–9. See also SIFMA June 2022 Letter at 8–9; SIFMA October 2022 Letter at 6; SIFMA January 2023 Letter at 5, 6.

<sup>222</sup> SIFMA May 2023 Letter at 9.

<sup>223</sup> Id. at 9–10.

<sup>224</sup> Id. at 10.

<sup>225</sup> Id. See also SIFMA January 2023 Letter at 6.

<sup>226</sup> CAT LLC Response Letter at 10.

LLC also noted that the Commission is entitled to request additional budget or cost information it views as necessary to better evaluate those fees.<sup>227</sup> CAT LLC also stated that it already provides significant cost transparency through the public disclosure of its quarterly budget information and its financials, and that it is already actively engaged in cost discipline efforts, including through a designated cost-management working group.<sup>228</sup> CAT LLC further explained that Participants are subject to regulatory requirements to implement CAT and oversee their members and cannot have their compliance subject to a third party without such restrictions.<sup>229</sup> CAT LLC added that the Commission itself could have its ability to oversee the securities markets undermined if CAT is subject to review by a third party without regulatory restrictions.<sup>230</sup>

In response, the commenter stated that the CAT LLC Response Letter did not meaningfully address its concerns about the lack of a cost control mechanism.<sup>231</sup>

In response to the suggested inclusion of the Commission's line item costs associated with its usage and design of the CAT in the budget,<sup>232</sup> CAT LLC responded that, because all costs related to CAT are a result of the Commission's adoption of Rule 613 and the total costs are reflected in the budget, it would be impractical to break out Commission-specific costs and would not be useful as a practical matter.<sup>233</sup>

b. Reserve

One commenter argued that the proposed reserve of not more than 25% of the CAT budget is excessive.<sup>234</sup> The commenter noted that the support provided for the proposed change

---

<sup>227</sup> Id.

<sup>228</sup> Id.

<sup>229</sup> Id.

<sup>230</sup> Id.

<sup>231</sup> See SIFMA June 2023 Letter at 2.

<sup>232</sup> See SIFMA May 2023 Letter at 10.

<sup>233</sup> CAT LLC Response Letter at 11.

<sup>234</sup> See SIFMA January 2023 Letter at 6, n.15.

was the Participants' difficulty in forecasting CAT costs, which the commenter stated demonstrates a need for an independent cost review mechanism.<sup>235</sup>

E. Historical CAT Assessment

One commenter disagreed with the proposed method of calculating the Historical CAT Assessment using current transaction activity “due to difficulty of using current volumes and trading activity by individual Industry Members as a mechanism for assessing costs in the past where the trading volumes and individual Industry Member trading activity likely were different.”<sup>236</sup> The commenter also argued that the proposed assessment of Past CAT Costs on current Industry Members based on their current trading activity is not fair or reasonable because new Industry Members would be assessed a share of Past CAT Costs even if they were not in operation when those costs were incurred, and that such costs would be attributable to Industry Members that are no longer in business.<sup>237</sup> The commenter added that the Proposed Amendment has not explained how allocating “approximately \$350 million in historical costs... to a small group of executing broker firms based on current market volumes” is consistent with the Exchange Act or how it would impact liquidity and competition.<sup>238</sup> The commenter stated that since the proposed allocation would be based on current market share and unrelated to the firms or activity that contributed to historical costs, there would be little ability for executing brokers to pass on such costs.<sup>239</sup> The commenter also stated that the assessment of “retroactive liability for monies spent that private parties had no control over” for public purposes would violate the Fifth Amendment Takings Clause.<sup>240</sup>

---

<sup>235</sup> Id.

<sup>236</sup> SIFMA October 2022 Letter at 5.

<sup>237</sup> See SIFMA January 2023 Letter at 7.

<sup>238</sup> SIFMA June 2023 Letter at 4.

<sup>239</sup> See id.

<sup>240</sup> Id. at 8.

The commenter recommended a reevaluation of the use of transaction fees to assess Past CAT Costs,<sup>241</sup> and suggested an alternative approach in which Past CAT Costs would be assigned to Industry Members “based on the lesser of (i) the CAT Fees that would be assessed on an Industry Member under the Participants’ proposed approach of using current trading activity or (ii) the CAT Fees that would be assessed on such member based on their prior trading activity in the years since 2016 when the CAT was being built and then operationalized...”<sup>242</sup> The commenter stated that the share of Past CAT Costs belonging to Industry Members that are no longer in business could be calculated using this approach and then divided equally among the current Industry Members, while Industry Members that entered into business after certain Past CAT Costs were incurred would be assessed Past CAT Costs starting in the year after which they started operating based on the above approach.<sup>243</sup> The commenter acknowledged that, while this approach would require more effort by the Participants, it would be “significantly closer to the fair and reasonable standard in the Exchange Act than the approach set forth by the Participants in the Executed Share Model.”<sup>244</sup>

Additionally, the commenter stated that the Participants have failed to justify the allocation of Past CAT Costs to Industry Members during the period when only Participants were reporting to the CAT.<sup>245</sup> The commenter argued that Industry Members should not be assessed any fees related to the decision to employ Thesys Technologies, LLC as the Plan Processor or legal or consulting fees incurred by the Participants in the creation of the CAT NMS Plan.<sup>246</sup> The commenter stated that the Proposed Amendment fails to provide how of much of the allocation to Industry Members is related to Thesys Technologies, LLC, and, therefore, the

---

<sup>241</sup> See SIFMA October 2022 Letter at 5.

<sup>242</sup> SIFMA January 2023 Letter at 7.

<sup>243</sup> Id.

<sup>244</sup> Id.

<sup>245</sup> See SIFMA October 2022 Letter at 7.

<sup>246</sup> See SIFMA June 2022 Letter at 7; SIFMA January 2023 Letter at 6–7.

Participants have not demonstrated how the Executed Share Model is consistent with the Exchange Act.<sup>247</sup> The commenter also argued that Industry Members were not subject to CAT obligations before the CAT NMS Plan’s approval, had no input into the selection of the service providers, and that “it is difficult to envision how the Participants could demonstrate that such an allocation provides for the equitable allocation of reasonable fees due to the fact that the CAT NMS Plan did not exist during the period prior to its approval.”<sup>248</sup>

The commenter also argued that the Participants have not analyzed different alternatives to collecting Past CAT Costs and the costs associated with such alternatives or the costs associated with the proposed approach.<sup>249</sup> The commenter urged collaboration between the Participants and Industry Members on the allocation of Past CAT Costs.<sup>250</sup>

With respect to the commenter’s criticisms of the calculation and assessment of the Historical CAT Assessment,<sup>251</sup> CAT LLC stated that the commenter had a “persistent misunderstanding” of the Historical CAT Assessment, explaining that, contrary to the commenter’s assertions in its comment letters, the Historical CAT Assessment would be assessed based on current market activity, not past market activity.<sup>252</sup> While the fee rate would be calculated based on Historical CAT Costs, the fee rate would be applied to current market transactions.<sup>253</sup> CAT LLC stated that the process of assessing fees for the Historical CAT Assessment would be exactly the same as with CAT Fees related to Prospective CAT Costs, and could be passed through in the same manner if a CEBB or CEBS so chooses.<sup>254</sup> CAT LLC also

---

<sup>247</sup> See SIFMA June 2022 Letter at 7.

<sup>248</sup> Id.

<sup>249</sup> See SIFMA October 2022 Letter at 5.

<sup>250</sup> Id. See also SIFMA October 2022 Letter at 2 (“[w]e also reiterate our call for the Participants to work with SIFMA and the industry in a collaborative manner to establish a viable CAT funding model.”).

<sup>251</sup> See SIFMA May 2023 Letter at 8; SIFMA October 2022 Letter at 4–5; supra notes 87–88 and accompanying text.

<sup>252</sup> See CAT LLC Response Letter at 9.

<sup>253</sup> Id.

<sup>254</sup> Id.

stated that it would provide CAT Executing Brokers with details of their CAT fees to facilitate this process.<sup>255</sup>

In response, the commenter stated that the CAT LLC Response Letter did not meaningfully address the concerns it raised about “the inability of firms defined as ‘executing brokers’ to transfer fees to those who may be more appropriate to bear certain historical CAT costs in the first place.”<sup>256</sup>

F. Other Comments

a. Lack of Industry Input

Two commenters argued that the Proposed Amendment lacks input from the industry.<sup>257</sup> One commenter stated that the Participants did not meaningfully solicit input from the industry when developing the Executed Share Model.<sup>258</sup> Another commenter stated that the Proposed Amendment reflects a lack of representation by executing brokers and offered its participation in future discussions and advisory committees on the topic of CAT funding.<sup>259</sup>

In response, CAT LLC stated that it has engaged with the industry on the funding model over the past seven years, explaining that it has discussed funding model issues with the CAT Advisory Committee, which includes representation from the industry, as well as with industry associations such as SIFMA and the Financial Information Forum, and with individual Industry Members; analyzed and responded to comment letters on the prior proposals; and hosted

---

<sup>255</sup> Id.

<sup>256</sup> See SIFMA June 2023 Letter at 2.

<sup>257</sup> See DASH April 2023 Letter at 2; DASH January 2023 Letter at 3; SIFMA June 2023 Letter at 4; SIFMA May 2023 Letter at 2; SIFMA June 2022 Letter at 2; SIFMA January 2023 Letter at 2. See also FINRA June 2022 Letter at 8, 9 (advocating for a more inclusive development process that would include input from the industry).

<sup>258</sup> See SIFMA May 2023 Letter at 2; see also SIFMA June 2023 Letter at 4, 5; SIFMA June 2022 Letter at 2; SIFMA January 2023 Letter at 2.

<sup>259</sup> See DASH April 2023 Letter at 2; DASH January 2023 Letter at 3.

webinars for the industry on funding issues.<sup>260</sup> CAT LLC stated that it welcomes industry input on the funding model but believes a decision on the model is overdue.<sup>261</sup>

In response, one commenter stated that Industry Members are willing to work with the Commission and the Participants to develop a CAT funding model.<sup>262</sup> The commenter urged collaboration and dialogue between the Participants and the Industry Members before the filing of a formal proposal with the Commission.<sup>263</sup> The commenter stated that limiting industry input to the notice and comment process for NMS plan amendments is an inefficient process resulting in significant delays.<sup>264</sup>

b. Implementation

One commenter suggested that upon approval of any CAT funding model, Industry Members should be given at least a year “to implement any necessary changes to systems and processes for them to be able to capture their portion of CAT costs.”<sup>265</sup> CAT LLC responded that it was unlikely to take Industry Members a year to implement any needed changes, particularly given the relatively small fees likely to be incurred by most small Industry Members that would not require extensive new processes to pay.<sup>266</sup>

c. Rule 613 and the CAT NMS Plan

One commenter stated that the Proposed Amendment is not what was originally envisioned by the Commission in Rule 613 of Regulation NMS and in the CAT NMS Plan as approved in 2016,<sup>267</sup> and recommended that the Commission come up with a new structure for

---

<sup>260</sup> See CAT LLC Response Letter at 12.

<sup>261</sup> Id.

<sup>262</sup> See SIFMA June 2023 Letter at 4.

<sup>263</sup> Id.

<sup>264</sup> Id. at 4–5.

<sup>265</sup> SIFMA May 2023 Letter at 2.

<sup>266</sup> See CAT LLC Response Letter at 12.

<sup>267</sup> See SIFMA June 2023 Letter at 2, 6.

the CAT.<sup>268</sup> The commenter argued that Rule 613 and the 2016 CAT NMS Plan do not support CAT as it is currently structured<sup>269</sup> and provided examples where it believes that subsequent changes to the CAT requested by the Commission have caused the CAT to become inconsistent with the requirements of Rule 613 and the 2016 CAT NMS Plan.<sup>270</sup> The commenter stated that the changes resulted from discussions between the Commission and the Participants, that such changes “significantly increased CAT costs,” and that Industry Members with “no voice and little transparency” into the building of the CAT system would be allocated most of the increased CAT costs.<sup>271</sup> The commenter stated that the Commission cannot approve a funding proposal for a system that is not consistent with Rule 613 and the CAT NMS Plan, stating that this would be arbitrary and capricious action.<sup>272</sup>

d. Funding in the Appropriation Process

The commenter stated that the Proposed Amendment would “evade”<sup>273</sup> the separation of powers established by the Constitution, arguing that since the CAT is a “Commission system used for enforcement”<sup>274</sup> and that law enforcement “is an executive prerogative,”<sup>275</sup> Congress must approve public funds to build the CAT through the appropriations process.<sup>276</sup> The commenter stated “[t]he Constitution does not permit the Commission to fund its own enforcement apparatus through the backdoor—to require the SROs to raise and spend hundreds of millions of dollars to build a new law enforcement tool for the Commission.”<sup>277</sup>

e. Rule 608 of Regulation NMS and Rule 19b-4

---

<sup>268</sup> Id. at 6.

<sup>269</sup> Id. at 6–7.

<sup>270</sup> Id. at 6.

<sup>271</sup> Id. at 7.

<sup>272</sup> Id.

<sup>273</sup> See SIFMA June 2023 Letter at 8.

<sup>274</sup> Id.

<sup>275</sup> Id.

<sup>276</sup> Id.

<sup>277</sup> Id.

One commenter preliminarily believes the assessment of CAT fees through filings submitted by each exchange under Rule 19b-4 is likely inconsistent with Rule 608.<sup>278</sup> The commenter stated that the Commission amended Rule 608 in 2020 to remove the effective-upon-filing procedure for NMS plan fees by requiring that NMS plan fees be subject to notice and comment and Commission approval prior to becoming effective.<sup>279</sup> The commenter stated that Rule 608 was amended by the Commission due to concerns about the assessment of SIP market data fees by the SROs without a meaningful review opportunity.<sup>280</sup> The commenter also stated that the 2020 amendment specifically contemplates that CAT fees would be subject to Rule 608.<sup>281</sup> The commenter stated that the Commission was considering approving a process for CAT fees that would not permit a meaningful review opportunity, contrary to the Rule 608 amendment.<sup>282</sup> The commenter acknowledged that the CAT NMS Plan provides for Section 19(b) fee filings but also stated that the CAT NMS Plan is silent about whether Section 19(b) fee filings would need to be made after the CAT Operating Committee receives approval to assess the fees under Rule 608.<sup>283</sup> The commenter suggested that the CAT Operating Committee create a new funding process consistent with Rule 608 and stated that the Commission cannot find that the Proposed Amendment is consistent with the Exchange Act.<sup>284</sup>

f. Miscellaneous

One commenter stated that the Commission failed to address data security concerns associated with the CAT,<sup>285</sup> and that the Commission is rushing to approve the Proposed

---

<sup>278</sup> Id. at 4, 9.

<sup>279</sup> See SIFMA June 2023 Letter at 9.

<sup>280</sup> Id.

<sup>281</sup> Id.

<sup>282</sup> Id.

<sup>283</sup> Id. at 9, n.45.

<sup>284</sup> Id.

<sup>285</sup> See SIFMA June 2023 Letter at 2.

Amendment without careful consideration.<sup>286</sup> The commenter also argued that the Commission is prematurely moving forward with the Proposed Amendment while simultaneously considering revisions of the rules governing equity and options market structure and proceeding with other proposals that will impose costs on Industry Members.<sup>287</sup> The commenter stated that “[t]he unequitable distribution of CAT costs contemplated by the Funding Proposal will exacerbate these problems, harming the functioning of U.S. securities markets.”<sup>288</sup> The commenter argued that the Commission cannot determine whether the proposed allocation of costs is equitable without assessing the distribution of costs and benefits under the other pending proposals.<sup>289</sup>

V. Proceedings to Determine Whether to Approve or Disapprove the Proposed Amendment

The Commission is instituting proceedings pursuant to Rule 608(b)(2)(i) of Regulation NMS,<sup>290</sup> and Rules 700 and 701 of the Commission’s Rules of Practice,<sup>291</sup> to determine whether to disapprove the Proposed Amendment or to approve the Proposed Amendment with any changes or subject to any conditions the Commission deems necessary or appropriate. The Commission is instituting proceedings to have sufficient time to consider the complex issues raised by Proposed Amendment, including comments received. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, the Commission seeks and encourages interested persons to provide additional comment on the Proposed Amendment to inform the Commission’s analysis.

Rule 608(b)(2) of Regulation NMS provides that the Commission “shall approve a national market system plan or proposed amendment to an effective national market system plan, with such changes or subject to such conditions as the Commission may deem necessary or

---

<sup>286</sup> Id. at 3.

<sup>287</sup> Id.

<sup>288</sup> Id.

<sup>289</sup> Id.

<sup>290</sup> 17 CFR 242.608.

<sup>291</sup> 17 CFR 201.700; 17 CFR 201.701.

appropriate, if it finds that such plan or amendment is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Exchange Act.”<sup>292</sup> Rule 608(b)(2) further provides that the Commission shall disapprove a national market system plan or proposed amendment if it does not make such a finding.<sup>293</sup> In the Notice, the Commission sought comment on the Proposed Amendment, including whether the Proposed Amendment is consistent with the Exchange Act.<sup>294</sup> In this order, pursuant to Rule 608(b)(2)(i) of Regulation NMS,<sup>295</sup> the Commission is providing notice of the grounds for disapproval under consideration:

- Whether, consistent with Rule 608 of Regulation NMS, the Participants have demonstrated how the Proposed Amendment is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Exchange Act;<sup>296</sup>

---

<sup>292</sup> 17 CFR 242.608(b)(2).

<sup>293</sup> Id.

<sup>294</sup> See Notice, supra note 6.

<sup>295</sup> 17 CFR 242.608(b)(2)(i).

<sup>296</sup> 17 CFR 242.608(b)(2).

- Whether the Participants have demonstrated how the Proposed Amendment is consistent with Section 6(b)(4)<sup>297</sup> and Section 15A(b)(5),<sup>298</sup> of the Exchange Act, which require that the rules of a national securities exchange “provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities” and that the rules of a national securities association “provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the association operates or controls;”
- Whether the Participants have demonstrated how the Proposed Amendment is consistent with Section 6(b)(5)<sup>299</sup> and Section 15A(b)(6),<sup>300</sup> of the Exchange Act, which require that the rules of a national securities exchange or national securities association “promote just and equitable principles of trade... protect investors and the public interest; and [to be] not designed to permit unfair discrimination between customers, issuers, brokers, or dealers;”
- Whether the Participants have demonstrated how the Proposed Amendment is consistent with Section 6(b)(8)<sup>301</sup> and Section 15A(b)(9)<sup>302</sup> of the Exchange Act, which require that the rules of a national securities exchange or national securities association “do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of [the Exchange Act];” and
- Whether the Participants have demonstrated how the Proposed Amendment is consistent with the funding principles of the CAT NMS Plan that are not proposed

---

<sup>297</sup> 15 U.S.C. 78f(b)(4).

<sup>298</sup> 15 U.S.C. 78o-3(b)(5).

<sup>299</sup> 15 U.S.C. 78f(b)(5).

<sup>300</sup> 15 U.S.C. 78o-3(b)(6).

<sup>301</sup> 15 U.S.C. 78f(b)(8).

<sup>302</sup> 15 U.S.C. 78o-3(b)(9).

to be amended by the Proposed Amendment, which principles state that the Operating Committee shall seek, among other things, “to create transparent, predictable revenue streams for the Company that are aligned with the anticipated costs to build, operate and administer the CAT and the other costs of the Company,”<sup>303</sup> “to provide for ease of billing and other administrative functions,”<sup>304</sup> “to avoid any disincentives such as placing an inappropriate burden on competition and a reduction in market quality,”<sup>305</sup> and “to build financial stability to support the Company as a going concern.”<sup>306</sup>

Under the Commission’s Rules of Practice, the “burden to demonstrate that a NMS plan filing is consistent with the Exchange Act and the rules and regulations issued thereunder... is on the plan participants that filed the NMS plan filing.”<sup>307</sup> The description of the NMS plan filing, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding.<sup>308</sup> Any failure of the plan participants that filed the NMS plan filing to provide such detail and specificity may result in the Commission not having a sufficient basis to make an affirmative finding that the NMS plan filing is consistent with the Exchange Act and the applicable rules and regulations thereunder.<sup>309</sup>

#### VI. Commission’s Solicitation of Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the Proposed Amendment. In particular, the Commission invites

---

<sup>303</sup> See CAT NMS Plan, supra note 1, at Section 11.2(a).

<sup>304</sup> Id. at Section 11.2(d).

<sup>305</sup> Id. at Section 11.2(e).

<sup>306</sup> Id. at Section 11.2(f).

<sup>307</sup> 17 CFR 201.701(b)(3)(ii).

<sup>308</sup> Id.

<sup>309</sup> Id.

the written views of interested persons concerning whether the Proposed Amendment is consistent with Section 11A, Section 6(b)(4), Section 6(b)(5), Section 6(b)(8), Section 15A(b)(5), Section 15A(b)(6), Section 15A(b)(9), or any other provision of the Exchange Act, or the rules and regulations thereunder, or the funding principles of the CAT NMS Plan. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 608(b)(2)(i) of Regulation NMS,<sup>310</sup> any request for an opportunity to make an oral presentation.<sup>311</sup> The Commission asks that commenters address the sufficiency and merit of the Participants' statements in support of the Proposed Amendment,<sup>312</sup> in addition to any other comments they may wish to submit about the proposed rule changes. In addition, the Commission seeks comment on the following:

1. Commenters' views on any questions in the Solicitation of Comments Section of the Order Instituting Proceedings related to a prior funding model amendment that are relevant to the Proposed Amendment,<sup>313</sup>
2. Commenters' views on whether the proposed definition of "CAT Executing Broker" is clear and whether identification of those brokers who meet the definition is easily available through CAT Data; and
3. Commenters' views on the incentives of the Participants to control Prospective CAT Costs.

The Commission also requests that commenters provide analysis to support their views, if possible.

---

<sup>310</sup> 17 CFR 242.608(b)(2)(i).

<sup>311</sup> Rule 700(c)(ii) of the Commission's Rules of Practice provides that "[t]he Commission, in its sole discretion, may determine whether any issues relevant to approval or disapproval would be facilitated by the opportunity for an oral presentation of views." 17 CFR 201.700(c)(ii).

<sup>312</sup> See Notice, *supra* note 6.

<sup>313</sup> See Securities Exchange Act Release No. 95634 (Aug. 30, 2022), 87 FR 54558, 54577–79 (Sept. 6, 2022).

Interested persons are invited to submit written data, views, and arguments regarding whether the Proposed Amendment should be approved or disapproved by [insert date 21 days after publication in the Federal Register]. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by [insert date 35 days after publication in the Federal Register]. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include file number 4-698 on the subject line.

Paper Comments:

- Send paper comments in triplicate to: Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to file number 4-698. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All

submissions should refer to file number 4-698 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>314</sup>

**J. Matthew DeLesDernier,**

*Deputy Secretary.*

[FR Doc. 2023-13340 Filed: 6/22/2023 8:45 am; Publication Date: 6/23/2023]

---

<sup>314</sup> 17 CFR 200.30-3(a)(85).