



SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-104234; 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

November 21, 2025.

I. Introduction

On September 5, 2025, the Consolidated Audit Trail, LLC (“CAT LLC”), on behalf of the following parties to the National Market System Plan Governing the Consolidated Audit Trail (the “CAT NMS Plan” or “Plan”)¹: 24X National Exchange LLC, 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., 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, MIAX Sapphire, 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 National, Inc., and NYSE Texas, Inc. (collectively, the “Participants,” or “SROs”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) pursuant to Section 11A(a)(3) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”),² and Rule 608 thereunder,³ a

¹ In July 2012, the Commission adopted Rule 613 of Regulation NMS, which required the Participants to jointly develop and submit to the Commission a national market system plan to create, implement, and maintain a consolidated audit trail (the “CAT”). See Securities Exchange Act Release No. 67457 (July 18, 2012), 77 FR 45722 (Aug. 1, 2012 (“Rule 613 Adopting Release”); 17 CFR 242.613. On November 15, 2016, the Commission approved the CAT NMS Plan. 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, at 84943–85034.

² 15 U.S.C 78k-1(a)(3).

³ 17 CFR 242.608.

proposed amendment to implement a revised funding model (the “Proposed Amendment”) for the consolidated audit trail (the “CAT”) and to establish a fee schedule for Participant CAT fees in accordance with the Proposed Amendment.⁴ The Proposed Amendment was published for comment in the Federal Register on September 17, 2025.⁵

This order institutes proceedings, under Rule 608(b)(2)(i) of Regulation NMS,⁶ 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.

II. Background

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.⁷

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.”⁸ The Plan specifies that, in establishing the funding of the Company, the Operating

⁴ See Letter from Robert Walley, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission, dated September 5, 2025.

⁵ See Securities Exchange Act Release No. 103960 (Sept. 12, 2025), 90 FR 44910 (“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>.

⁶ 17 CFR 242.608(b)(2)(i).

⁷ 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 1, at Section 1.1. See also *id.* at Section 11.1(b).

⁸ *Id.* at Section 11.2(b) and (e).

Committee shall establish “a tiered fee structure in which the fees charged to: (1) CAT Reporters⁹ that are Execution Venues,¹⁰ including ATSS,¹¹ 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).”¹²

On March, 13, 2023, the Participants to the CAT NMS Plan, pursuant to Section 11A of the Exchange Act¹³ and Regulation NMS thereunder,¹⁴ filed a proposed amendment to the CAT NMS Plan (the “2023 Funding Model Amendment”) to implement a revised funding model (the “Executed Share Model”) for the CAT and to establish a fee schedule for Participant CAT fees in accordance with the Executed Share Model. The 2023 Funding Model Amendment was published for comment in the Federal Register on March 21, 2023.¹⁵ On September 6, 2023, the Commission approved the 2023 Funding Model Amendment (the “2023 Funding Model Order”).¹⁶ On July 25, 2025, the United States Court of Appeals for the Eleventh Circuit issued an opinion vacating the 2023 Funding Model Order and remanding the matter to the Commission

⁹ 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.

¹⁰ 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.

¹¹ Id.

¹² CAT NMS Plan, supra note 1, at Section 11.2(c). See id. at Article XI for additional detail.

¹³ 15 U.S.C 78k-1.

¹⁴ 17 CFR 242.608.

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

¹⁶ See Securities Exchange Act Release No. 98290, 88 FR 62628 (Sept. 12, 2023).

for further proceedings consistent with its opinion.¹⁷ The Court stayed the effect of its judgment for sixty days from the issuance of its mandate, which is December 1, 2025.¹⁸

III. Summary of Proposal¹⁹

A. Executed Share Model

As described in more detail in the Notice, 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.²⁰ 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.²¹ 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.²² In addition, instead of charging fees to Industry Members, under the Executed Share Model, fees would be charged

¹⁷ See Am. Sec. Ass’n v. SEC, 147 F.4th 1264 (11th Cir. 2025).

¹⁸ Id.

¹⁹ 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 5.

²⁰ The Participants state that other than the addition of a new proposed paragraph (e) to Section 11.3 of the CAT NMS Plan, which provides that each Participant agrees not to establish a new fee for passing through its CAT fees, the Proposed Amendment are identical to the amendments adopted in the 2023 Funding Model Order. See Notice, supra note 5, at 44910; see also infra Part III.A.3.e.

²¹ See CAT NMS Plan, supra note 1, at Section 11.3(a) and (b).

²² See Notice, supra note 5, at 44910. Proposed Section 11.3(a)(i)(B) would describe how “executed equivalent shares” would be counted for purposes of calculating CAT Fees: (1) each executed share for a transaction in NMS stocks would be counted as one executed equivalent share; (2) each executed contract for a transaction in Listed Options would be counted using the contract multiplier applicable to the specific Listed Option in the relevant transaction; and (3) each executed share for a transaction in OTC Equity Securities would be considered 0.01 executed equivalent shares. See id. at 44933.

to each Industry Member that is a CAT Executing Broker²³ 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”).²⁴

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”).²⁵ 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”).²⁶ 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.²⁷

²³ 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. *Id.* at 44912.

²⁴ See Notice, *supra* note 5, at 44912.

²⁵ *Id.* at 44910; see also proposed Section 11.3(a). The defined term “CAT Fees” applies specifically to CAT fees related to Prospective CAT Costs. *Id.*

²⁶ See Notice, *supra* note 5, at 44910; see also proposed Section 11.3(b).

²⁷ See Notice, *supra* note 5, at 44921; see also proposed Section 11.3(b)(i)(C).

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.²⁸ 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,²⁹ as described below.³⁰ Participants would 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.³¹ 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.³²

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.³³ 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.³⁴

B. Calculation of Fees

1. 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

²⁸ See Notice, supra note 5, at 44919; see also proposed Section 11.3(a)(iii), proposed Section 11.3(b)(iii).

²⁹ See Notice, supra note 5, at 44916-17 for the definition and description of the calculation of the Fee Rate.

³⁰ Id. at 44919; see also proposed Section 11.3(a)(iii), proposed Section 11.3(b)(iii).

³¹ See Notice, supra note 5, at 44919; see also proposed Section 11.3(a)(ii).

³² See proposed Section 11.3(b)(ii).

³³ See Notice, supra note 5, at 44913.

³⁴ Id.

well as the funding of any reserve that the Operating Committee reasonably deems appropriate for prudent operation of the Company.”

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. 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 also 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.³⁵ CAT LLC states that it will consider the need to provide additional cost disclosure going forward.³⁶

CAT LLC proposes to add paragraph (ii) to Section 11.1(a) of the CAT NMS Plan, which provides that 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

³⁵ 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 5, at 44915.

³⁶ Id.

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).”

2. CAT Fees Related to Prospective CAT Costs

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.³⁷

a. 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.

³⁷ 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.”

b. 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.

c. 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.

d. 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 Section 11.3(a)(iii)(B) 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 thereunder³⁸ 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; (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

³⁸ 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.

budget used in the calculation is reconciled to the collected fees.³⁹ 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.⁴⁰ 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.

3. 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.⁴¹

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

³⁹ 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.

⁴⁰ 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"). See Securities Exchange Act Release No. 88890, 85 FR 31322 (May 22, 2020). 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 from June 22, 2020 until such time that the Participants have completed Full Implementation of CAT NMS Plan Requirements ("Post-Amendment Expenses"). Section 11.6 establishes target deadlines for four Financial Accountability Milestones (Periods 1, 2, 3 and 4) and reduces the amount of fee recovery available to the Participants if these deadlines are missed.

⁴¹ CAT LLC states that, to date, there has been one Historical CAT Assessment ("Historical CAT Assessment 1"). See Notice, *supra* note 5, at 44920; Securities Exchange Act Release No. 100936 (Sept. 5, 2024), 89 FR 74430 (Sept. 22, 2024) (BOX Exchange LLC filing for Historical CAT Assessment 1). The Participants state that there may be one or more Historical CAT Assessments related to CAT costs incurred prior to the completion of the fourth and final Financial Accountability Milestone, which CAT LLC states occurred in July 2024. See Notice, *supra* note 5, at 44920.

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 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.

a. 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.

b. 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.”⁴²

Under proposed Section 11.3(b)(i)(D)(II) of the CAT NMS Plan 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.

c. 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.

d. 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

⁴² CAT LLC states that it used a Historical Recovery Period of two years for Historical CAT Assessment 1, which has a fee rate of \$0.000013 per executed equivalent share. See Notice, *supra* note 5, at 44921; see also Securities Exchange Act Release No. 100936 (Sept. 5, 2024), 89 Fed. Reg. 74430 (Sept. 22, 2024) (BOX Exchange LLC filing for Historical CAT Assessment 1).

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 Assessments are designed to recover two-thirds of the Historical CAT Costs.”

e. 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.⁴³ Specifically, CAT 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.⁴⁴

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

⁴³ 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.

⁴⁴ See proposed Section 11.3(b)(iii)(B)(I).

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.⁴⁵ 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.

4. Participant Pass-Through Fees

CAT LLC proposes to add a new paragraph (e) to Section 11.3 of the CAT NMS Plan to state that each Participant agrees not to file with the SEC a proposed rule change pursuant to Section 19(b)(4) and Rule 19b-4 thereunder that would establish a new fee for passing through to its members the CAT fee charged to such Participant in accordance with Section 11.3(a). The proposed amendment does not address whether Industry Members may pass-through their CAT fees to their customers.

C. CAT Fee Schedule for Participants

⁴⁵ 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.

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 CEBB of a transaction. Two commenters oppose the proposed allocation.⁴⁶

One commenter states that once analyzed by the Commission, “it will be clear” that allocating at least two-thirds of CAT system costs to broker-dealers and their customers in the manner contemplated by the Proposed Amendment is not fair and equitable under the Exchange Act.⁴⁷ The commenter states that the Commission must also consider the economic implications of the “winners and losers” in terms of the proposed allocation of costs, including an undue impact on equities (versus options), as well as an undue impact on retail investors and market

⁴⁶ See Letter to Vanessa Countryman, Secretary, Commission, from Stephen John Berger, Managing Director, Global Head of Government & Regulatory Policy, Citadel Securities, dated October 17, 2025 (“Citadel Letter”), at 6-8. Letter to Vanessa Countryman, Secretary, Commission, from Steffen N. Johnson, Wilson Sonsini Goodrich & Rosati, dated October 17, 2025 (“FINRA October 2025 Letter”) at 4 (incorporating by reference FINRA’s prior comment letters concerning the Executed Share Model); 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). 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>.

⁴⁷ Citadel Letter at 8.

makers—market participants that will be responsible for a disproportionate percentage of CAT costs.⁴⁸

The other commenter states that, while the Proposed Amendment justified the fairness of the Executed Share Model by stating that CAT would operate like other fees, such as FINRA’s trading activity fee (“TAF”), Section 31 fees, and the options regulatory fee, the Proposed Amendment did not support why those other fees should be used as a model in this context.⁴⁹ For example, the commenter states 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, operate and administer the CAT.⁵⁰ Further, the commenter states that the Proposed Amendment insufficiently explains the connection between the TAF and CAT fees because CAT LLC focuses solely on their “superficial connection” as fees that are transaction-based fees intended to provide funding for regulatory costs.⁵¹ The commenter states 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.”⁵²

This commenter also argues 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.⁵³ The commenter argues that the Proposed Amendment does not

⁴⁸ Id. at 6-7.

⁴⁹ See FINRA June 2022 Letter at 4.

⁵⁰ See FINRA April 2023 Letter at 8.

⁵¹ Id. The commenter also states 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.

⁵² See FINRA May 2023 Letter at 3.

⁵³ See FINRA June 2022 Letter at 3.

consider alternatives suggested by commenters on a prior proposed funding model,⁵⁴ such as a model similar to Section 31 fees and a CAT funding model based on the “Cost Recovery Principle” and the “Benefits Received Principle,” and that the Participants have not “meaningfully analyzed” the suggested alternatives in the Proposed Amendment.⁵⁵

B. Executed Equivalent Shares

a. Executed Equivalent Share Volume

One commenter argues 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.⁵⁶ The commenter explains 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.⁵⁷ The commenter states 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.⁵⁸ This commenter further states 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.⁵⁹ The commenter states that “the Proposal fails to establish a sufficient nexus

⁵⁴ 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).

⁵⁵ See FINRA April 2023 Letter at 5.

⁵⁶ See FINRA June 2022 Letter at 3. See also Citadel Letter at 6-7 (noting that the Proposed Amendment allocates CAT costs based on executed shares, which may particularly impact retail investors given the amount of retail trading in low-priced NMS stocks).

⁵⁷ See FINRA June 2022 Letter at 3.

⁵⁸ Id. at 4.

⁵⁹ Id. See also FINRA April 2023 Letter at 7-9.

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."⁶⁰

The same commenter expresses concerns regarding CAT LLC's support for the elimination 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."⁶¹ This commenter states that the Proposed Amendment "seeks to amend the core funding principles to align with an unjustified allocation methodology."⁶² The commenter states 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."⁶³

Additionally, the commenter objects 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."⁶⁴ The commenter states that this statement is inconsistent with information that demonstrates that volume from FINRA trade reporting facilities ("TRFs") contribute "a very small percentage of annual CAT compute and storage costs."⁶⁵ The commenter states that as a result, it cannot support the Participants' assertion that trading activity is a reasonable proxy for cost burden.⁶⁶ The commenter states 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

⁶⁰ See FINRA June 2022 Letter at 4.

⁶¹ See FINRA June 2022 Letter at 4; see also FINRA April 2023 Letter at 7.

⁶² See 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.

⁶³ *Id.*; FINRA April 2023 Letter at 8–9.

⁶⁴ See Notice, *supra* note 5, at 44927.

⁶⁵ See FINRA May 2023 Letter at 2.

⁶⁶ See *id.* See also FINRA April 2023 Letter at 8.

the Participants, nor does it transparently or accurately present information regarding the true sources of cost burdens on the CAT.”⁶⁷

b. FINRA Allocation

One commenter objects to the proposed allocation of Participant CAT fees to FINRA.⁶⁸ This commenter objects to the allocation to FINRA of the total CAT costs to be borne by the Participants, stating that the Proposed Amendment acknowledges that FINRA would be forced to bear a disproportionate share of CAT costs.⁶⁹ The commenter states that the Proposed Amendment does not grapple with the implications of these costs, particularly given FINRA’s status as a non-profit, member-funded national securities association.⁷⁰ The commenter also states that FINRA’s allocation would largely be based on transaction volume reported to the TRF; however, the commenter states that TRF transactions generate fewer costs for the CAT,⁷¹ 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.⁷²

The commenter argues that, unlike the exchange Participants, transactions are not executed on a FINRA marketplace and FINRA does not receive commercial revenue for those transactions.⁷³ The commenter explains that FINRA does not currently directly receive fees from its TRFs for listed stocks that would cover CAT costs, because each FINRA TRF is operated by an exchange business member that retains the trade reporting and market data

⁶⁷ See FINRA May 2023 Letter at 4.

⁶⁸ See FINRA October 2025 Letter; FINRA May 2023 Letter; FINRA April 2023 Letter; FINRA June 2022 Letter.

⁶⁹ See FINRA October 2025 Letter at 4, 6-7; see also FINRA May 2023 Letter at 2; FINRA April 2023 Letter at 3.

⁷⁰ See FINRA October 2025 Letter at 6-7. See also FINRA April 2023 Letter at 3; FINRA June 2022 Letter at 6. The commenter has previously stated that FINRA’s share was more than double that of the next highest Participant and \$4 million more than all option exchanges combined. See FINRA April 2023 Letter at 4; see also FINRA June 2022 Letter at 5.

⁷¹ See FINRA April 2023 Letter at 8, n.23.

⁷² Id.; FINRA May 2023 Letter at 2.

⁷³ See FINRA April 2023 Letter at 3; FINRA October 2025 Letter at 12.

revenues generated by TRFs, subject to certain payments to FINRA for agreed-upon costs.⁷⁴ Thus, the commenter states that exchanges have direct revenue streams from the operation of facilities on which the transactions that are taxed using the Executed Share Model occur, whereas FINRA generally does not retain such revenue for over-the-counter transactions in listed securities.⁷⁵ The commenter also states 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.⁷⁶

The commenter further states that FINRA cannot necessarily recoup its costs through regulatory services agreements (“RSAs”) that the commenter has entered into with various exchanges because these are voluntary commercial contracts that are not and cannot be reasonably viewed as a reliable source of sustainable CAT funding sufficient to replace membership fees at the levels required by the Executed Share Model.⁷⁷ Additionally, the commenter questions 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.”⁷⁸ Specifically, the commenter asks how CAT LLC’s statement explains the size of FINRA’s allocation⁷⁹ and notes that this statement “conflates the costs to create and operate the CAT with the usage of CAT data.”⁸⁰

This commenter also expresses concern about alleged arbitrary treatment of FINRA by the other Participants of the CAT NMS Plan.⁸¹ This commenter believes that FINRA’s “outsized

⁷⁴ See FINRA October 2025 Letter at 12. See also FINRA April 2023 Letter at 3.

⁷⁵ See FINRA October 2025 Letter at 12. See also FINRA April 2023 Letter at 4.

⁷⁶ Id. FINRA April 2023 Letter 3, n.8.

⁷⁷ See FINRA October 2025 Letter at 12. See also FINRA April 2023 Letter at 4.

⁷⁸ Id. FINRA April 2023 Letter at 7.

⁷⁹ Id.

⁸⁰ Id.; see also FINRA June 2022 Letter at 6.

⁸¹ See FINRA April 2023 Letter at 6, n.16.

allocation”⁸² 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.⁸³ This commenter states that it is critical for the Commission to consider the differences among Participants and the inevitable impact on FINRA members of any cost allocation to FINRA.⁸⁴

C. Pass-Through Prohibition

Two commenters state that the Proposed Amendment exceeds CAT LLC’s authority and is unlawful, because the Exchange Act and Rule 608 of Regulation NMS do not empower CAT LLC or the Plan Participants to restrict fee filings made by other Plan Participants or control how other Plan Participants internally fund their costs.⁸⁵ One commenter states that both the text and history of Rule 608’s predecessor establishes that Rule 608’s scope of fee authority is limited to joint fees for NMS plans.⁸⁶ This commenter states that the proposed pass-through provision would not control CAT LLC fees, but instead purport to control how a Participant SRO funds its own SRO costs through separate SRO fees, which could potentially establish a dangerous precedent and enable similar overreach in other NMS plans.⁸⁷

Two commenters object to the language of the Proposed Amendment and proposed provisions insofar as it states each Participant agrees not to file with the SEC rule change(s) a new fee for passing through to its members the CAT fee charged to such Participant.⁸⁸ One commenter states that while it would contemplate agreeing not to file new fees for passing

⁸² See FINRA April 2023 Letter at 7; FINRA June 2022 Letter at 6.

⁸³ See FINRA April 2023 Letter at 4, 8. See also FINRA June 2022 Letter at 8.

⁸⁴ See FINRA October 2025 Letter at 15-16.

⁸⁵ See FINRA October 2025 Letter at 2, 7-10; Letter to Vanessa Countryman, Secretary, Commission, from Patrick Sexton, EVP, General Counsel, Corporate Secretary, Cboe Exchanges, dated October 31, 2025 (“Cboe Letter”) at 1-2. The Cboe Exchanges include Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., and Cboe Exchange, Inc. See Cboe Letter at 1, n.1.

⁸⁶ See FINRA October 2025 Letter at 8-9.

⁸⁷ Id. at 9. This commenter further states that the Plan may violate FINRA’s due process rights and run afoul of the Takings Clause. Id. at 10.

⁸⁸ See FINRA October 2025 Letter at 10; Cboe Letter at 2.

through SRO CAT costs under certain conditions, it has not yet done so and did not agree to do so under the terms of the Proposed Amendment.⁸⁹ The other commenter states that the Proposed Amendment is “factually incorrect” because it purports to reflect an agreement by the commenter and each CAT Plan Participant to refrain from establishing certain fees, which the commenter did not agree to.⁹⁰

Multiple commenters state that the proposed language that would prohibit pass-through fees by the Participants would be ineffective in its stated goal.⁹¹ Three commenters specifically note that the provision only purports to prevent a Participant from filing a rule change with the Commission to establish a “new fee.”⁹² One of these commenters states that this usage of the term “new fee” raises the specter of adding CAT costs to existing fees the SROs already charge their members to recoup their CAT costs, thus doing indirectly what they cannot do directly. Another commenter notes that this theoretical limit on pass-through fees also ignores the reality of FINRA’s funding structure, because the most direct way to allocate FINRA’s designated CAT costs to its members (who ultimately will bear costs allocated to FINRA) would be to apply cost recovery fees to members whose activities most directly contribute to FINRA’s designated portion of Participant CAT fees.⁹³ Another commenter states that CAT LLC is “clearly” attempting to preserve the ability for SROs to pass through some of all of their CAT costs to their members in other ways in direct contravention of the Eleventh Circuit’s decision.⁹⁴ This commenter states that allowing SRO pass-throughs directly conflicts with the Eleventh Circuit’s

⁸⁹ See FINRA October 2025 Letter at 10.

⁹⁰ See Cboe Letter at 2.

⁹¹ See FINRA October 2025 Letter at 10-11; Citadel Letter at 9-10; Letter to Vanessa Countryman, Secretary, Commission, from Katie Kolchin, CFA, Managing Director, Head of Equity & Options Market Structure and Joseph Corcoran, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, dated October 21, 2025 (“SIFMA October 2025 Letter”) at 2; Letter to Vanessa Countryman, Secretary, Commission, from Gentry Collins, CEO, AmFree Chamber, dated October 17, 2025 (“AmFree Letter”), at 5.

⁹² See FINRA October 2025 Letter at 10-11; Citadel Letter at 9; SIFMA October 2025 Letter at 2.

⁹³ See FINRA October 2025 Letter at 11-12.

⁹⁴ See Citadel Letter at 9.

decision and fundamentally alters the allocation formula that the Commission is considering.⁹⁵

Another commenter states that FINRA is responsible for roughly 10% of the entire CAT budget, and nothing in the Proposed Amendment stops FINRA from passing on 100% of those costs to its members by increasing its existing membership fees.⁹⁶ Two commenters state that the Proposed Amendment is simply an attempt to circumvent the Eleventh Circuit’s opinion vacating the 2023 Funding Model Order, and that the Proposed Amendment should be disapproved.⁹⁷

D. Other Comments

a. Lack of Industry Input

Commenters state that the Proposed Amendment lacks input from the industry.⁹⁸ One commenter states that the SROs through the CAT Operating Committee have for years sought to establish a funding model for CAT without meaningful industry input, including the Proposed Amendment which was filed without prior consultation with Industry Members.⁹⁹ One commenter states that the Commission must conduct a “complete and comprehensive analysis of every CAT-related cost,” including an examination of how broker-dealer financial responsibilities were determined, and produce a public report detailing the findings of this audit.¹⁰⁰ Another commenter recommends engagement of a third-party technology firm to

⁹⁵ See id.

⁹⁶ See AmFree Letter at 5. The commenter states that at minimum the Proposed Amendment must prohibit FINRA from increasing its existing membership fees to account for CAT costs. Id. at 6. See also Citadel Letter at 9 (stating that the Proposed Amendment provides no explanation as to how FINRA, as a not-for-profit-organization, will fund its allocation of CAT costs, which amounts to more than 10% of the entire CAT budget).

⁹⁷ See Citadel Letter at 1; SIFMA Letter at 1-3. See also Letter to Vanessa Countryman, Secretary, Commission, from Christopher A. Iacovella, President & Chief Executive Officer, American Securities Association, dated October 31, 2025 (“ASA Letter”) at 1-2 (stating that the Proposed Amendment “mirrors the unlawful 2023 plan in every essential respect”).

⁹⁸ See, e.g., SIFMA October 2025 Letter at 3. See also FINRA June 2022 Letter at 8, 9 (advocating for a more inclusive development process that would include input from the industry).

⁹⁹ See SIFMA October 2025 Letter at 3; supra note 17.

¹⁰⁰ See ASA Letter at 3.

perform an independent review of the technological design of CAT to identify opportunities to optimize and reduce costs.¹⁰¹

b. Rule 613 and the CAT NMS Plan

Two commenters state that the Proposed Amendment is unlawful because the CAT itself is unlawful.¹⁰² These commenters state that no federal statute authorizes the creation of CAT and that the lack of statutory authority to create the CAT means the Commission necessarily lacks the authority to compel broker-dealers to fund CAT.¹⁰³ One commenter states that the 2023 Funding Model Order fails to identify any statutory authority explicitly granting the Commission the power to create the CAT.¹⁰⁴ One commenter further asserts that it is unlawful for the Commission to outsource the funding of the CAT as to effectively immunize it from congressional appropriations or oversight, amounting to an “end-run” that turns the Appropriations Clause on its head by permitting an executive branch agency to fund its own regulatory initiatives through outsourcing taxing authority to the SROs.¹⁰⁵

Another commenter asserts that the CAT has violated the constitutional right to privacy for millions of Americans, and asks the Commission to undertake an analysis as to whether any system that looks like the current CAT is consistent with existing law, and if so, any funding mechanism must be consistent with the appropriations clause of the Constitution and not rely entirely on fees from broker-dealers and their customers.¹⁰⁶

c. Economic Analysis

¹⁰¹ See Citadel Letter at 13.

¹⁰² See Citadel Letter at 2; AmFree Letter at 1-2.

¹⁰³ See Citadel Letter at 2; AmFree Letter at 1-2 (stating that the CAT exceeds the Commission’s statutory authority).

¹⁰⁴ See Citadel Letter at 2. See also AmFree Letter at 1 (stating that the Commission has conceded that Congress has never provided “express authorization for CAT,” and that agencies require “clear congressional authorization” before making “major policy decisions” on matters of vast public significance such as the ones here).

¹⁰⁵ See Citadel Letter at 3.

¹⁰⁶ See ASA Letter at 2-3.

One commenter states that the Proposed Amendment does not address concerns regarding the economic analysis used in the 2023 Funding Amendment Approval, stating that the Participants fail to provide any updated data that the Commission must obtain and assess to conduct its analysis, including, among other things, the current and future trajectory of the CAT budget, broker-dealer CAT reporting costs, and the impact of the proposed funding model.¹⁰⁷ Another commenter notes that while it is the Commission's responsibility, independent of the SROs, to weigh the costs and benefits of the Proposed Amendment and determine its impact on efficiency, competition, and capital formation, that the Commission should require the SROs to provide necessary data.¹⁰⁸ Another commenter states that the Proposed Amendment does not address how FINRA's collection and payment of CAT fees will affect efficiency, competition, and capital formation.¹⁰⁹

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

One commenter states that the Proposed Amendment is unlawful because it does not include any detail regarding actual CAT costs that will be allocated to broker-dealers and instead relies on future filings made by each SRO pursuant to Commission Rule 19b-4.¹¹⁰ This commenter states that this unlawfully circumvents Rule 608 of Regulation NMS, which states that fee filings relating to an NMS Plan cannot be filed as immediately effective, and instead must be approved by the Commission prior to becoming effective.¹¹¹ In addition, the commenter

¹⁰⁷ See SIFMA October 2025 Letter at 2.

¹⁰⁸ See Citadel Letter at 4. This commenter states that in its review, among other things, the Commission must address the current CAT budget, the inaccuracy of 2016 cost estimates, updated estimates of the future trajectory of the CAT budget, broker-dealer reporting costs, electronic blue sheet costs, and the industry's allocation of CAT operational costs. Id. at 4-7. In addition, the commenter states that the Commission must consider the economic implications of the proposed allocation methodology's undue impact on equities (versus options), undue impact on retail investors, and undue impact on market makers. Id. at 6-7.

¹⁰⁹ See AmFree Letter at 6.

¹¹⁰ See Citadel Letter at 10.

¹¹¹ Id.

states that the Commission must assess whether the actual costs that may be allocated are fair and reasonable because post hoc review of fee filings is insufficient.¹¹²

e. Alternatives to the Proposed Amendment

Two commenters suggest that the Commission should consider a “time-limited interim funding solution” instead of approving the Proposed Amendment.¹¹³ Two other commenters state that the Proposed Amendment should be abandoned in favor of a new CAT funding approach involving the fee process in Section 31 of the Exchange Act.¹¹⁴ One commenter states that in addition to being required by law, for the first time there will be meaningful checks and balances as part of the governance process and the Commission will be incentivized to carefully oversee the size of the CAT budget and carefully weigh the costs and benefits of required functionality, while Congress will have a clear role in order to protect against waste and regulatory overreach.¹¹⁵ The other commenter states that this approach would better align incentives to control costs, address longstanding concerns about ineffective governance, and subject CAT to the checks and balances of the appropriations process for the SEC.¹¹⁶

f. Financial Accountability Milestones

The Participants are not permitted to recoup CAT costs from broker-dealers and their customers until a series of Financial Accountability Milestones are met, and one commenter states that the Commission must independently validate SRO assertions regarding various dates by which they assert that specific Financial Accountability Milestones were met.¹¹⁷ The

¹¹² Id. at 11. The commenter states that historical CAT costs and the current CAT budget are known right now, and the Commission must determine whether those costs are reasonable to recoup. Id.

¹¹³ See Cboe Letter at 2. Cboe states that in connection with an interim funding model, that Cboe is open to discussing a voluntary agreement by all of the SROs not to make rule filings seeking to pass through their CAT costs for a specified period (e.g., one year). Cboe Letter at 2.

¹¹⁴ See Citadel Letter at 13; SIFMA October 2025 Letter at 4-5.

¹¹⁵ See Citadel Letter at 13.

¹¹⁶ See SIFMA October 2025 Letter at 4-5.

¹¹⁷ See Citadel Letter at 11-13. The commenter states that the Proposed Amendment provides the only opportunity for the Commission to scrutinize and clearly document SRO compliance with the Financial Accountability Milestones. Id. at 12.

commenter states that the SROs assert that “Full Implementation of CAT NMS Plan Requirements” was achieved in July 2024, but that this is in reliance on various exemptive orders issued by the Commission.¹¹⁸ In addition, the commenter states that belated exemptive relief cannot retroactively bring the SROs into compliance with an earlier Financial Accountability Milestone, which would mean no historical fees could be collected.¹¹⁹

g. Comprehensive Review of the CAT

Multiple commenters reference a “comprehensive review” of the CAT that was initiated by the Chairman of the Commission, which includes consideration of mechanisms to address CAT costs.¹²⁰ One commenter states that rushing to adopt the Proposed Amendment would front-run the outcome of the comprehensive CAT review initiated by the Chairman and prevents a full evaluation of cost allocation in line with the Eleventh Circuit’s decision.¹²¹ One commenter suggests that the Commission should allocate its limited resources to implement the call for a comprehensive review and to chart a new path forward, rather than becoming embroiled in yet another controversy over the funding of a “broken system.”¹²² Another commenter states that the comprehensive review of the CAT, “is the only rational path forward to ending the constant escalation of implementation costs.”¹²³ Other commenters were positive regarding the comprehensive review.¹²⁴

h. Previously Collected Fees from Broker-Dealers

¹¹⁸ Id. at 12.

¹¹⁹ Id. at 12-13.

¹²⁰ See Prepared Remarks Before SEC Speaks, Chairman Paul S. Atkins, May 19, 2025, available at <https://www.sec.gov/newsroom/speeches-statements/atkins-prepared-remarks-sec-speaks-051925>.

¹²¹ See FINRA October 2025 Letter at 14.

¹²² See Citadel Letter at 14.

¹²³ See ASA Letter at 2.

¹²⁴ See SIFMA October 2025 Letter at 4 (looking forward to further engagement to reduce CAT costs as well as on other significant CAT reforms the Commission should consider); AmFree Letter at 1 (stating that the commenter appreciates a comprehensive review that examines not only the system’s staggering costs, but also its overbroad scope and onerous requirements); Citadel Letter at 1 (noting that current Commission leadership “has rightly indicated that a new course must be charted”).

One commenter states that the Proposed Amendment does not mention the millions of dollars of extra fees that broker-dealers and their customers “were unlawfully compelled to pay to FINRA under the 2023 funding order as an explicit SRO pass-through,” and that these unlawful payments must be accounted for in any funding model.¹²⁵ Another commenter states that the Commission should consider reimbursing broker-dealers for funds they have collectively been forced to contribute to the CAT, and provides a list of possible mechanisms for reimbursement including direct reimbursement from a Commission administered fund, an offset or waiver or other regulatory fees, or Congressional appropriations.¹²⁶

i. FINRA Constitutionality

One commenter argues that FINRA’s regulatory authority over broker-dealers is unconstitutional, either because FINRA violates the private non-delegation doctrine as a private entity, or the Appointments Clause if FINRA is considered a government entity.¹²⁷ This commenter states that the constitutional problems with FINRA require rejecting the Proposed Amendment for a number of reasons, including that the Proposed Amendment depends on the authority and involvement of an unlawful entity, including FINRA’s role in the operation of CAT and calculation of proposed fees, and the probability that at least one court will hold FINRA to be unlawful.¹²⁸

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,¹²⁹ and Rules 700 and 701 of the Commission’s Rules of Practice,¹³⁰ to determine whether to disapprove the Proposed Amendment or to approve the Proposed Amendment with any

¹²⁵ See Citadel Letter at 10.

¹²⁶ See ASA Letter at 3-4.

¹²⁷ See AmFree Letter at 2-4.

¹²⁸ Id. at 4-6.

¹²⁹ 17 CFR 242.608(b)(2)(i).

¹³⁰ 17 CFR 201.700; 17 CFR 201.701.

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 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."¹³¹ 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.¹³² In the Notice, the Commission sought comment on the Proposed Amendment, including whether the Proposed Amendment is consistent with the Exchange Act.¹³³ In this order, pursuant to Rule 608(b)(2)(i) of Regulation NMS,¹³⁴ the Commission is providing notice of the grounds for disapproval under consideration:

- Whether, consistent with Rule 608 of Regulation NMS, 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;

¹³¹ 17 CFR 242.608(b)(2).

¹³² Id.

¹³³ See Notice, supra note 5.

¹³⁴ 17 CFR 242.608(b)(2)(i).

- Whether the Participants have demonstrated how the Proposed Amendment is consistent with Section 6(b)(4)¹³⁵ and Section 15A(b)(5),¹³⁶ 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)¹³⁷ and Section 15A(b)(6),¹³⁸ 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)¹³⁹ and Section 15A(b)(9)¹⁴⁰ 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, and if so how, the Proposed Amendment would impact efficiency, competition or capital formation.

¹³⁵ 15 U.S.C. 78f(b)(4).

¹³⁶ 15 U.S.C. 78o-3(b)(5).

¹³⁷ 15 U.S.C. 78f(b)(5).

¹³⁸ 15 U.S.C. 78o-3(b)(6).

¹³⁹ 15 U.S.C. 78f(b)(8).

¹⁴⁰ 15 U.S.C. 78o-3(b)(9).

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.”¹⁴¹ 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.¹⁴² 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.¹⁴³

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 the written views of interested persons concerning whether the Proposed Amendment is consistent with the Exchange Act, the rules and regulations thereunder, or any other provisions 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,¹⁴⁴ any request for an opportunity to make an oral presentation.¹⁴⁵

Interested persons are invited to submit written data, views, and arguments regarding whether the proposals should be approved or disapproved by [insert date 21 days from

¹⁴¹ 17 CFR 201.701(b)(3)(ii).

¹⁴² Id.

¹⁴³ Id.

¹⁴⁴ 17 CFR 242.608(b)(2)(i).

¹⁴⁵ 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).

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 from publication in the Federal Register]. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number 4-698 [(CAT Funding Model)] 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 [(CAT Funding Model)]. 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 filing also will be available for inspection and copying at the Participants' offices. 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 [(CAT Funding Model)] 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.¹⁴⁶

Sherry R. Haywood,

Assistant Secretary.

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¹⁴⁶ 17 CFR 200.30-3(a)(85).