

**VIA EMAIL (NMSPlans@sec.gov)**

May 13, 2022

Ms. Vanessa Countryman  
Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

Re: File Number 4-698  
Notice of Filing of Amendment to the National Market System Plan Governing the Consolidated Audit Trail

Dear Ms. Countryman:

The Operating Committee, on behalf of the Participants<sup>1</sup> in the National Market System Plan Governing the Consolidated Audit Trail<sup>2</sup> (the “CAT NMS Plan” or “Plan”), is filing with the Securities and Exchange Commission (the “SEC” or “Commission”) this proposed amendment to the CAT NMS Plan pursuant to Rule 608 of Regulation NMS under the Securities Exchange Act of 1934 (the “Exchange Act”).<sup>3</sup> The Participants propose to amend the CAT NMS Plan to implement a revised funding model (the “Executed Share Model”) for the consolidated audit trail (the “CAT”) and to establish a fee schedule for Participant CAT fees in accordance with the Executed Share Model.<sup>4</sup> The proposed changes to the CAT NMS Plan, including the fee schedule set forth in proposed Appendix B to the CAT NMS Plan, are set forth in Exhibit A to this letter.<sup>5</sup>

The Operating Committee believes that the Executed Share Model satisfies the applicable requirements of the Exchange Act as well as the funding principles and other requirements of the CAT NMS Plan, as proposed to be revised herein. For example, the Operating Committee believes that the Executed Share Model provides for the “equitable allocation of reasonable dues,

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<sup>1</sup> The twenty-five Participants of the CAT NMS Plan are: BOX Exchange LLC, Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe C2 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, 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.

<sup>2</sup> The CAT NMS Plan is a national market system plan approved by the Commission pursuant to Section 11A of the Exchange Act and the rules and regulations thereunder. *See* Securities Exchange Act Rel. No. 79318 (Nov. 15, 2016), 81 Fed. Reg. 84696 (Nov. 23, 2016) (“CAT NMS Plan Approval Order”). The full text of the CAT NMS Plan is available at [www.catnmsplan.com](http://www.catnmsplan.com).

<sup>3</sup> 17 C.F.R. § 242.608.

<sup>4</sup> Unless otherwise defined herein, capitalized terms are defined as set forth in the CAT NMS Plan.

<sup>5</sup> As required by Section 11.1(b) of the CAT NMS Plan, the Participants will file with the SEC under Section 19(b) of the Exchange Act CAT fees applicable to Industry Members that the Operating Committee approves.

fees, and other charges among its members and issuers and other persons using its facilities.”<sup>6</sup> The Operating Committee also believes that the Executed Share Model is “not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.”<sup>7</sup> Furthermore, the Operating Committee believes that the Executed Share Model does “not impose any burden on competition not necessary or appropriate in furtherance of the purposes of [the Exchange Act].”<sup>8</sup> The Operating Committee further believes that the Executed Share Model satisfies the funding principles set forth in Section 11.2 of the CAT NMS Plan, as proposed to be modified herein, as well as the requirements in Section 11.1(c) of the CAT NMS Plan. The Operating Committee therefore believes that the Commission should approve the Executed Share Model as it “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 Act.”<sup>9</sup>

### **Requirements Pursuant to Rule 608(a)**

#### **A. Description of the Proposed Amendments to the CAT NMS Plan**

The Operating Committee proposes to replace the funding model set forth in Article XI of the CAT NMS Plan (the “Original Funding Model”) with the Executed Share Model. The Original Funding Model involves 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. The Operating Committee proposes to amend the CAT NMS Plan to adopt the Executed Share Model. The Executed Share Model would impose fees on CAT Reporters based on the executed equivalent share volume of transactions in Eligible Securities rather than based on market share and message traffic. The Operating Committee also proposes to adopt a fee schedule to establish the CAT fees applicable to Participants based on the Executed Share Model. The Participants separately intend to file rule filings under Section 19(b) to establish the CAT fees applicable to Industry Members based on the Executed Share Model set forth in the CAT NMS Plan.

##### **1. Description of the Executed Share Model**

The Operating Committee proposes to amend the CAT NMS Plan to describe the Executed Share Model. Under the Executed Share Model, the Operating Committee would establish a fee structure in which the fees charged to Participants and Industry Members are based on the executed equivalent share volume of transactions in Eligible Securities using CAT Data.<sup>10</sup>

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<sup>6</sup> Section 6(b)(4) of the Exchange Act. *See also* Section 15A(b)(5) of the Exchange Act.

<sup>7</sup> Sections 6(b)(5) and 15A(b)(6) of the Exchange Act.

<sup>8</sup> Sections 6(b)(8) and 15A(b)(9) of the Exchange Act.

<sup>9</sup> Rule 608(b)(2) of Regulation NMS under the Exchange Act.

<sup>10</sup> The use of CAT Data in the Executed Share Model is discussed in more detail in Section A.5.k below.

For each transaction in Eligible Securities based on CAT Data, the Industry Member that is the clearing member for the seller in the transaction (“Clearing Broker for the Seller” or “CBS”), the Industry Member that is the clearing member for the buyer in the transaction (“Clearing Broker for the Buyer” or “CBB”), and the applicable Participant for the transaction each would pay a fee calculated by multiplying the number of executed equivalent shares in the transaction and the applicable Fee Rate (as defined below) and dividing the product by three. The applicable Participant for the transaction would be the national securities exchange on which the transaction was executed, or FINRA for each transaction executed otherwise than on an exchange. Accordingly, for each transaction, the Clearing Broker for the Buyer would pay one-third of the fee obligation, the Clearing Broker for the Seller would pay one-third of the fee obligation, and the relevant Participant for the transaction would pay the remaining one-third of the fee obligation.

Both Participants and Industry Members would be required to pay CAT fees with regard to CAT costs not previously paid by the Participants (“Prospective CAT Costs”). These are the ongoing budgeted costs for the CAT after the CAT fees become operative. The Fee Rate for the CAT fees related to Prospective CAT Costs would be calculated by dividing the budgeted CAT costs for the relevant period (as determined by the Operating Committee) by the projected total executed equivalent share volume of all transactions in Eligible Securities for the relevant period based on CAT Data. The Fee Rate for these CAT fees would be the same for the calculation of fees for Participants, CBBs and CBSs.

Industry Members also would be required to pay CAT fees with regard to certain CAT costs previously paid by the Participants (“Past CAT Costs”).<sup>11</sup> To date, Participants have paid for all costs of the CAT incurred. Accordingly, Participants would not be required to pay a CAT fee related to Past CAT Costs. However, Participants would remain responsible for one-third of Past CAT Costs, and would remain responsible for 100% of certain other CAT costs incurred in the past (as discussed in more detail below) which are excluded from Past CAT Costs. The Fee Rate for the CAT fees related to Past CAT Costs would be calculated by dividing the Past CAT Costs for the relevant period (as determined by the Operating Committee) by the projected total executed equivalent share volume of all transactions in Eligible Securities for the relevant period based on CAT Data.

## **2. Participant CAT Fees**

The proposed fee schedule in Exhibit B to the CAT NMS Plan, entitled Consolidated Audit Trail Funding Fees for Participants, would establish the CAT fees to be paid by Participants. These CAT fees are designed to operate in accordance with the Executed Share Model as described in proposed Article XI of the CAT NMS Plan. Accordingly, for each transaction in Eligible Securities based on CAT Data, the applicable Participant for the transaction would pay a fee calculated by multiplying the number of executed equivalent shares

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<sup>11</sup> Past CAT Costs are discussed in more detail in Section A.3.b below.

in the transaction and the applicable Fee Rate and dividing the product by three. The applicable Participant for the transaction would be the national securities exchange on which the transaction was executed, or FINRA for each transaction executed otherwise than on an exchange. The proposed fee schedule provides additional detail as to how the Participant fees would be calculated.

Because the Participants have paid all CAT costs to date, the Participants would not make any additional payments to the CAT with regard to CAT costs incurred in the past. The Participants would only pay CAT fees on a going forward basis with regard to new CAT costs. Accordingly, the proposed fee schedule describes these forward-looking CAT fees for Participants.<sup>12</sup>

**a. Calculation of Fee Rate**

The Operating Committee would set the Fee Rate used in determining the CAT fees at the beginning of each year. The Fee Rate would be calculated by dividing the CAT costs budgeted for the upcoming year by the projected total executed equivalent share volume of all transactions in Eligible Securities for the year. The Operating Committee may, but is not required to, adjust the Fee Rate once during the year to seek to more closely coordinate the CAT fees with any adjustments to the budgeted or actual CAT costs or to volume projections during the year. The Operating Committee may only adjust the Fee Rate once during the year to avoid changing the Fee Rate too frequently for CAT Reporters.

Once the Operating Committee has established a Fee Rate, it will remain in effect until the Operating Committee adjusts the Fee Rate during the year or adopts a new Fee Rate for the next year. The proposal does not contemplate that any Fee Rate would automatically terminate. This approach would avoid periods in which no CAT fees are collected, as such a cessation in the collection of CAT fees would adversely affect the ability of the CAT to fund its operations and, therefore, would have a significant negative effect on the CAT's ability to fulfill its regulatory purpose. This approach also recognizes the practical timing issues of ensuring that the Operating Committee has the appropriate CAT budget and CAT Data to calculate the CAT fees.

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, each Participant would be required to pay the applicable CAT fee calculated in accordance with the proposed fee schedule in the CAT NMS Plan. The Operating Committee does not plan to submit an amendment to the CAT NMS Plan each time that the Fee Rate is established or adjusted.<sup>13</sup>

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<sup>12</sup> In contrast, as discussed in more detail below, the Participants would propose to implement CAT fees for Industry Members to reimburse the Participants for certain Past CAT Costs as well as to pay for a share of ongoing CAT costs.

<sup>13</sup> In contrast, the Participants will file a fee filing pursuant to Section 19(b) and Rule 19b-4 thereunder with regard to Fee Rate changes applicable to Industry Members.

The Operating Committee would announce the Fee Rate at the beginning of the year, and any adjustment to the Fee Rate during the year via a CAT alert.<sup>14</sup> In addition, the Operating Committee would provide the Fee Rate and any adjustments, as well as the budget and projection information, on a dedicated webpage on the CAT NMS Plan website to make it readily accessible to CAT Reporters.

**i. Budgeted CAT Costs**

The calculation of the Fee Rate requires the determination of the budgeted CAT costs for the upcoming year. The budgeted CAT costs for the upcoming year would be the costs set forth in the annual operating budget for the Company<sup>15</sup> required pursuant to Section 11.1(a) of the CAT NMS Plan. Section 11.1(a) states that “[o]n an annual basis the Operating Committee shall approve an operating budget for the Company. The budget shall 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 revenue 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.” Using budgeted CAT costs, rather than CAT costs already incurred, allows the Company to collect fees prior to when bills become payable.

The CAT costs budgeted for the year would be comprised of all fees, costs and expenses estimated to be incurred by or for the Company in connection with the development, implementation and operation of the CAT during the year. These CAT costs would include, but not be limited to, Plan Processor costs, insurance costs, third-party support costs and an operational reserve. Plan Processor costs would consist of the Plan Processor’s ongoing costs, including development costs. This amount would be based upon the fees due to the Plan Processor pursuant to the Company’s agreement with the Plan Processor. Insurance costs would include cyber insurance and director liability insurance. Third-party support costs would include legal fees, consulting fees, vendor fees and audit fees. In addition, the Operating Committee aims to accumulate the necessary funds to establish an operating reserve for the Company through the CAT fees charged to CAT Reporters. As set forth in Section 11.1(a) of the CAT NMS Plan, the Operating Committee may include in the budget “funding of any reserve that the Operating Committee reasonably deems appropriate for prudent operation of the Company.”<sup>16</sup> As required by Section 11.1(c) of the CAT NMS Plan, any surpluses collected will be treated as an operational reserve to offset future fees and will not be distributed to the Participants as profits.<sup>17</sup>

To address potential changes related to the CAT during the year, the Operating Committee may adjust the budgeted CAT costs for the year as it reasonably deems appropriate

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<sup>14</sup> Participants do not intend to file a new separate amendment to the CAT NMS Plan for Participants each time a new Fee Rate is approved by the Operating Committee.

<sup>15</sup> As defined in the CAT NMS Plan, the Company is the Consolidated Audit Trail, LLC.

<sup>16</sup> Although the Operating Committee may determine at its discretion that a different level of reserves is appropriate in the future, the Operating Committee proposes to include in the budget for purposes of determining CAT fees an operational reserve comprised of three months of ongoing CAT costs, such as Plan Processor costs, third party support costs and insurance costs.

<sup>17</sup> CAT NMS Plan Approval Order at 84792.

for the prudent operation of the Company. For example, the Operating Committee may determine that an adjustment to the budget is necessary if actual costs during the year are more or less than the budget, or if unanticipated expenditures are necessary. To the extent that the Operating Committee adjusts the budgeted CAT costs during the year and determines to adjust the Fee Rate, the adjusted budgeted CAT costs would be used in calculating the new Fee Rate for the remaining months of the year.

The Operating Committee has determined to publicly provide the annual operating budget for the Company as well as any updates to the budget that occur during the year. This publicly available budget information describes in detail the budget for the Company. For example, among other things, the budget provides specific budgeted technology costs (including cloud hosting services, operating fees, Customer and Account Information System (“CAIS”) operating fees and change request fees) and general and administrative costs (including legal, consulting, insurance, professional and administration, and public relations). The Company provides such budget information on a dedicated webpage on the CAT NMS Plan website to make it readily accessible for CAT Reporters and others.<sup>18</sup>

## **ii. Projected Total Executed Equivalent Share Volume**

The calculation of the Fee Rate also requires the determination of the projected total executed equivalent share volume of transactions in Eligible Securities for the year. Each year, the Operating Committee would determine this projection based on the total executed equivalent share volume of transactions in Eligible Securities from the prior six months.<sup>19</sup> The projection for the year would be calculated by doubling the total executed equivalent share volume from the prior six months. The Operating Committee determined that the use of the data from the prior six months provides an appropriate balance between using data from a period that is sufficiently long to avoid short term fluctuations while providing data close in time to the upcoming year. During the year, the Operating Committee will monitor actual total executed equivalent share volume on a regular basis to determine whether the projected volume is deviating from the actual volume.

To address potential deviations of the projections from actual transactions during the year, the projected total executed equivalent share volume for transactions in Eligible Securities may be adjusted as the Operating Committee reasonably deems appropriate for the prudent operation of the Company. Any adjusted projection would be based on the total executed equivalent share volume of transactions in Eligible Securities from the six months prior to the date of the determination of the new projection.<sup>20</sup> To the extent that the Operating Committee

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<sup>18</sup> The CAT budget, as of April 6, 2022, is currently available on the CAT website at <https://www.catnmsplan.com/cat-financial-and-operating-budget>.

<sup>19</sup> For example, although the six month look back will depend on the circumstances of the filing, one example of such a six month look back would be the use of CAT Data from July through December 2022 for a fee filing in January 2023.

<sup>20</sup> For example, although the six month look back will depend on the circumstances of the filing, one example of such a six month look back for a July 2023 filing of an adjusted Fee Rate would be the use of CAT Data from the prior January through June.

adjusts this projection during the year and determines to adjust the Fee Rate, the adjusted projection would be used in calculating the new Fee Rate for the remaining months of the year.

The Operating Committee will publicly provide the projected total executed equivalent share volume for transactions in Eligible Securities as well as any adjustment to the projections that occurs during the year. The Company would include such projection information on a dedicated webpage on the CAT NMS Plan website to make it readily accessible for CAT Reporters and others.

**b. Transactions in Eligible Securities**

Under the Executed Share Model, a CAT fee would be imposed with regard to each transaction in Eligible Securities as reported in CAT Data. As set forth in Section 1.1 of the CAT NMS Plan, “Eligible Securities” are defined to include all NMS Securities and all OTC Equity Securities. Section 1.1 of the CAT NMS Plan, in turn, defines an “NMS Security” as “any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan, or an effective national market system plan for reporting transactions in Listed Options.” In addition, Section 1.1 of the CAT NMS Plan defines an “OTC Equity Security” as “any equity security, other than an NMS Security, subject to prompt last sale reporting rules of a registered national securities association and reported to one of such association’s equity trade reporting facilities.” A CAT fee would be imposed with regard to each transaction in Eligible Securities regardless of whether the trade is executed on an exchange or otherwise than on an exchange.

The Executed Share Model uses the concept of executed equivalent shares as the transactions subject 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 will 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 the CAT fees. Many OTC Equity Securities are priced at less than one dollar – and a significant number are priced at less than one penny - per share and low-priced shares tend to trade in larger quantities. Accordingly, a disproportionately large number of shares are involved in transactions involving OTC Equity

Securities versus NMS Stocks.<sup>21</sup> Because the Executed Share Model would calculate CAT fees based on executed share volume, CAT Reporters trading OTC Equity Securities would likely be subject to higher fees than their market activity may warrant. 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.

The discount to 1% was selected based on a reasoned analysis of a variety of different metrics for comparing the markets for OTC Equity Securities and NMS Stocks, rather than a simple calculation. For example, using 2021 data, the Operating Committee calculated the following metrics: (1) the ratio of total notional dollar value traded for OTC Equity Securities to OTC Equity Securities and NMS Stocks was 0.051%; (2) the ratio of total trades in OTC Equity Securities to total trades in OTC Equity Securities and NMS Stocks was 0.90%; and (3) the ratio of average share price per trade of OTC Equities to average share price per trade for OTC Equity Securities and NMS Stocks was 0.065%. In recognition of the fact that these calculations involve averages and for ease of application, the Operating Committee determined to round these metrics to 1%.

#### **c. Monthly Fees**

Participants would be required to pay monthly fees in accordance with the proposed fee schedule. A Participant's fee for each month would be calculated based on the Participant's transactions in Eligible Securities from the prior month. The CAT fees for each Participant will be calculated by the Plan Processor using the transaction data for such Participant as set forth in the CAT Data. Specifically, each Participant would pay a fee for each month, where the fee would be calculated by multiplying the Participant's transactions in Eligible Securities from the prior month by the Fee Rate determined by the Operating Committee for that period and dividing the product by three. The Operating Committee proposes to require the commencement of the payment of the Participant CAT fees in the first month after the conclusion of the period covered by the Financial Accountability Milestones,<sup>22</sup> subject to SEC approval of this Plan amendment and the CAT fees becoming effective for both Participants and Industry Members.

#### **d. Collection of Fees**

Pursuant to Section 11.4 of the CAT NMS Plan, the Operating Committee proposes to establish a system for the collection of CAT fees from Participants and Industry Members. As set forth in Section 11.4 of the CAT NMS Plan, each Participant would be required to pay its

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<sup>21</sup> For example, based on data from 2021, (1) the average price per executed share of OTC Equity Securities was \$0.072 and the average price per executed share for NMS Stocks was \$49.51; and (2) the average trade size for OTC Equity Securities was 63,474 and the average trade size for NMS Stocks was 166 shares. Trades in OTC Equity Securities accounted for 77% of the number of all equity shares traded, but only 0.51% of the notional value of all equity shares traded.

<sup>22</sup> See Securities Exchange Act Rel. No. 88890 (May 15, 2020), 85 Fed. Reg. 31322 (May 22, 2020) ("Financial Accountability Milestone Release").



CAT fees authorized under the CAT NMS Plan as required by Section 3.7(b) of the CAT NMS Plan.<sup>23</sup> Section 3.7(b) of the CAT NMS Plan provides the following:

Each Participant shall pay all fees or other amounts required to be paid under this Agreement within thirty (30) days after receipt of an invoice or other notice indicating payment is due (unless a longer payment period is otherwise indicated) (the “Payment Date”). The Participant shall pay interest on the outstanding balance from the Payment Date until such fee or amount is paid at a per annum rate equal to the lesser of: (i) the Prime Rate plus 300 basis points; or (ii) the maximum rate permitted by applicable law. If any such remaining outstanding balance is not paid within thirty (30) days after the Payment Date, the Participants shall file an amendment to this Agreement requesting the termination of the participation in the Company of such Participant, and its right to any Company Interest, with the SEC. Such amendment shall be effective only when it is approved by the SEC in accordance with SEC Rule 608 or otherwise becomes effective pursuant to SEC Rule 608.

### **3. Implementation of Industry Member CAT Fees**

Both Participants and Industry Members would be obligated to pay CAT fees under the Executed Share Model as described in proposed Article XI of the CAT NMS Plan. The Operating Committee has voted to charge CBBs and CBSs fees related to CAT costs in accordance with the Executed Share Model as described in proposed Article XI of the CAT NMS Plan. To implement CAT fees applicable to Industry Members, Section 11.1(b) of the CAT NMS Plan requires that the Participants “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.’” Accordingly, each Participant would submit a fee filing pursuant to Section 19(b) of the Exchange Act to propose to add a section entitled “Consolidated Audit Trail Funding Fees” to its fee schedule, and to describe the CAT fees applicable to Industry Members in that section, including the applicable Fee Rate. To implement any new Fee Rates or adjustments thereto for Industry Members during the year, each Participant would submit a fee filing under Section 19(b) of the Exchange Act. Participants plan to submit fee filings for two categories of Industry Member CAT fees: CAT fees related to Prospective CAT Costs and CAT fees related to Past CAT Costs.<sup>24</sup> Although the proposed Industry Member CAT fees will be described in detail in the Participant fee filings pursuant to Section 19(b) of the Exchange Act, the following summarizes these fees.

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<sup>23</sup> Participants would be responsible for a fee each month in which they are a CAT Reporter. If a Participant ceases to meet the definition of a CAT Reporter during a month, the Participant will still be responsible for CAT fees associated with its transactions during that month.

<sup>24</sup> The Participants anticipate providing advance notice of Fee Rate changes prior to implementing such changes in the Fee Rate. Such notice would provide additional transparency regarding the Fee Rate and would assist in planning to implement a new Fee Rate.

**a. Industry Member Prospective CAT Fees**

Under the Executed Share Model, CBBs and CBSs would be required to pay CAT fees related to Prospective CAT Costs. These are the ongoing budgeted costs for the CAT after the implementation of the CAT fees. For each transaction in Eligible Securities, the CBB would pay one-third of the fee obligation, the CBS would pay one-third of the fee obligation, and the relevant Participant for the transaction would pay the remaining one-third of the fee obligation. To implement the CAT fees applicable to CBBs and CBSs related to Prospective CAT Costs, the Participants would file fee filings under Section 19(b) of the Exchange Act. The fee filings would require each CBB and each CBS to pay a fee for each transaction they clear in Eligible Securities from the prior month, where the fee for each transaction will be calculated by multiplying the number of executed equivalent shares in the transaction by one-third and by the Fee Rate approved by the Operating Committee of the CAT NMS Plan for the relevant time period. CBBs and CBSs would be required to pay CAT fees related to Prospective CAT Costs calculated using the same Fee Rate, including any adjustments to the Fee Rate, that is applicable to the Participant CAT fees as described above. In addition, like with the calculation of the Participant CAT fee, the CAT fees for each CBB and CBS would be calculated by the Plan Processor using the transaction data for such Industry Members as set forth in the CAT Data.

**b. Industry Member CAT Fees for Past CAT Costs**

The Operating Committee also has determined to collect CAT fees from Industry Members to recover certain Past CAT Costs. The Industry Member CAT fees for Past CAT Costs would be calculated in accordance with the Executed Share Model as set forth in proposed Article XI of the CAT NMS Plan. The Fee Rate for the CAT fees related to Past CAT Costs would be calculated by dividing the Past CAT Costs for the relevant period (as determined by the Operating Committee) by the projected total executed equivalent share volume of all transactions in Eligible Securities for the relevant period based on CAT Data. To implement the CAT fees related to Past CAT Costs applicable to CBBs and CBSs, the Participants would file a fee filing or fee filings under Section 19(b) of the Exchange Act. The fee filing(s) would require each CBB and each CBS to pay a fee for each transaction in Eligible Securities from the prior month, where the fee for each transaction would be calculated by multiplying the number of executed equivalent shares in the transaction by one-third and by the Fee Rate approved by the Operating Committee of the CAT NMS Plan. CBBs and CBSs would be responsible for any CAT fee related to Past CAT Costs in addition to any CAT fee related to Prospective CAT Costs.

**i. Participant Responsibility for Past CAT Costs**

Because the Participants have paid all CAT costs to date, the Participants would not make any additional payments to the CAT with regard to CAT costs incurred prior to the effectiveness of the CAT fees via CAT fees; only Industry Members would be required to pay CAT fees related to such costs. Proposed Section 11.3(a)(iv) would clarify the Participant's responsibility with regard to CAT costs incurred prior to the effectiveness of the CAT fees by stating that "[n]otwithstanding anything to contrary, Participants will not be required to pay a CAT fee related to CAT costs previously paid by the Participants in a manner determined by the

Operating Committee ('Past CAT Costs')." However, Participants would remain responsible for the one-third of Past CAT Costs allocated to Participants under the Executed Share Model, as well as 100% of certain other past CAT Costs (as discussed in more detail below).

The CAT fees related to included Past CAT Costs would recoup two-thirds of the included Past CAT Costs; the Participants have paid for and would not be reimbursed for the remaining one-third of the included Past CAT Costs. The CAT fees related to included Past CAT Costs paid by the Industry Members would be used to reimburse the Participants for the two-thirds of included Past CAT Costs allocated to Industry Members. The CAT fees for the included Past CAT Costs collected from Industry Members will be allocated to Participants for repayment of the outstanding loan notes of the Participants to the Company on a pro rata basis; such fees would not be allocated to Participants based on the executed equivalent share volume of transactions in Eligible Securities.

## **ii. Past CAT Costs**

The Fee Rate for CAT fees related to Past CAT Costs would be calculated based on actual past costs incurred by the CAT (except for certain costs that the Operating Committee has determined to exclude from the calculation), rather than budgeted costs. The CAT fees related to Past CAT Costs would be designed to collect from Industry Members certain costs paid by the Participants prior to the effectiveness of the CAT fees pursuant to the Executed Share Model.

The Past CAT Costs would include a portion of certain costs incurred prior to January 1, 2022 as well as costs incurred after January 1, 2022 but prior to the effectiveness of the CAT fees pursuant to the Executed Share Model. With regard to costs incurred prior to January 1, 2022, the Participants would remain responsible for 100% of \$48,874,937 of Excluded Costs and certain costs related to the conclusion of the relationship with the Initial Plan Processor. The Excluded Costs are all CAT costs incurred from November 15, 2017 through November 15, 2018 due to the delay in the start of reporting to the CAT. With these costs excluded, the CAT costs prior to January 1, 2022 are \$337,688,610. Under the Executed Share Model, Industry Members would be responsible for two-thirds of these CAT costs. Specifically, one-third of these costs (\$112,562,870) would be paid by CBBs, and one-third (\$112,562,870) would be paid by CBSs, for a total of \$225,125,740. The remaining one-third (\$112,562,870) has previously been paid by the Participants, and the Participants would remain responsible for that third of the costs. These costs are set forth in detail in the audited financial statements for the Company and its predecessor CAT NMS, LLC, which are available on the CAT website.

CBBs and CBSs similarly would pay CAT fees related to CAT costs incurred after January 1, 2022 but prior to the implementation of the CAT fees pursuant to the Executed Share Model. Budgeted CAT costs for 2022 are currently available on the CAT website; actual CAT costs for 2022 will be available in audited financial statements for the Company after year end.

### iii. Fee Calculation and Obligation

The CAT fees related to Past CAT Costs would be calculated based on current transactions, not transactions that occurred in the past when the costs were incurred, and collected from current Industry Members, not Industry Members active in the past when the costs were incurred. For example, if the CAT fee were in place for June 2022, each CBB and CBS with transactions in Eligible Securities in May 2022 would pay a CAT fee related to Past CAT Costs calculated by multiplying the executed equivalent share volume of the transactions they cleared in May 2022 by the applicable Fee Rate (calculated based on Past CAT Costs and current projected total equivalent share volume) and by one-third.

The Operating Committee believes that it is appropriate to collect fees from current Industry Members based on current activity because current market participants are the beneficiaries of the regulatory value provided by the CAT to the securities markets.<sup>25</sup> In addition, the approach recognizes the practical difficulties of imposing fees retroactively on Industry Members' market activity from the past, sometimes years in the past. For example, the practical difficulties may include the following: (1) some Industry Members may no longer be in business; (2) it may be difficult to accurately establish the transactions for the past years; and (3) retroactive fees could not have been taken into consideration by market participants when they decided to enter into the transactions in the past.

### 4. Example of Application of the Executed Share Model

The Operating Committee has prepared an example of how the Executed Share Model would operate for illustrative purposes only. Specifically, the Operating Committee has prepared an example of CAT fees calculated under the Executed Share Model based on the projected annual CAT costs for 2022 and actual total executed equivalent share volume of transactions in Eligible Securities in 2021. Set forth in Exhibit B to this letter is a chart setting forth illustrative CAT fees for each Participant, CBS and CBB for this period. Note Exhibit B only provides an illustrative example of how the Executed Share Model would operate; the calculation of actual fees will differ from this example in various ways. For example, the Participants have paid or will have paid some or all of these costs up to the time of any SEC approval of the Executed Share Model, and, as a result, Participants would not be obligated to pay CAT fees related to 2022 CAT costs to the extent the Participants have already paid such costs. In addition, the illustrative example calculates the fee rate using the total executed equivalent share transactions in Eligible Securities for 2021, rather than the projected volume for 2022 based on the previous six months. Furthermore, the CAT Reporters' monthly CAT fee is not based on the CAT Reporters' transactions from the prior month; instead, it is calculated by using each CAT Reporter's transactions in 2021 and dividing the result by twelve.

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<sup>25</sup> The SEC has emphasized that the CAT provides a benefit to all market participants. *See generally* Securities Exchange Act Rel. No. 67457 (Jul. 18, 2012), 77 Fed. Reg. 45722 (Aug. 1, 2012) ("Rule 613 Adopting Release").

## **5. Advantages of the Executed Share Model**

The Executed Share Model provides a variety of advantages as discussed in more detail below. The Executed Share Model is similar to existing funding approaches employed by the SEC and the Participants. The Executed Share Model is also straightforward to understand and to administer; it provides for predictable fees for CAT Reporters; and it provides equal or equivalent treatment of different trading venues and products. By recognizing the importance of each of the three primary participants in a transaction, the Executed Share Model requires equitable contributions to the cost of the CAT by both Participants and Industry Members.

### **a. Comparable to Existing Fee Precedent**

The Executed Share Model would operate in a manner similar to other funding models employed by the SEC and the Participants, including the SEC's Section 31 fees, FINRA's trading activity fee ("FINRA TAF") and the options regulatory fee ("ORF") utilized by options exchanges. The SEC previously has determined that the Participants' sales value fees related to Section 31, the FINRA TAF and the ORF are consistent with the Exchange Act.

#### **i. Section 31 Fees**

Pursuant to Section 31 of the Exchange Act, a national securities exchange must pay the Commission a fee based on the aggregate dollar amount of sales of securities transacted on the exchange, and a national securities association must pay the Commission a fee based on the aggregate dollar amount of sales of securities transacted by or through any member of the association otherwise than on a national securities exchange (collectively, "covered sales"). The SEC calculates the amount of Section 31 fees due from each exchange or FINRA by multiplying the aggregate dollar amount of its covered sales by the fee rate set by the Commission in a procedure set forth in Section 31(j) of the Exchange Act. These fees are designed to recover the costs related to the government's supervision and regulation of the securities markets and securities professionals. Section 31 requires the SEC to make annual and, in some cases, mid-year adjustments to the fee rate. These adjustments are necessary to make the SEC's total collection of transaction fees in a given year as close as possible to the amount of the regular appropriation to the Commission by Congress for that fiscal year.

To recover the costs of their Section 31 fee obligations, each of the national securities exchanges and FINRA have adopted, and the SEC has approved, rules assessing a regulatory transaction fee on their members, the amount of which is set in accordance with Section 31.<sup>26</sup> Broker-dealers, in turn, often impose fees on their customers that provide the funds to pay the fees owed to the exchanges and FINRA.

Like the well-known, longstanding and accepted Section 31-related fee model, the Executed Share Model would use a predetermined fee rate for the calculation of the fees, seek to

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<sup>26</sup> See, e.g., Section 3 of Schedule A of FINRA's By-Laws.

recover designated regulatory costs (as CAT provides a solely regulatory function), and allow for the adjustment of the fee rate during the year to seek to match regulatory costs with fees collected. The Executed Share Model, however, would impose fees based on executed equivalent share volume rather than the sales values of certain transactions. Despite the different calculation metric, the Executed Share Model is similar to a model well known, long accepted and justified under the Exchange Act the purpose of which is also to cover costs associated with the regulation of securities markets and securities professionals.

## ii. FINRA Trading Activity Fee

The transaction-based fees charged under the Executed Share Model also would be similar to FINRA's transaction-based trading activity fee,<sup>27</sup> which was modeled on the Commission's Section 31 fee.<sup>28</sup> Although the FINRA TAF is designed to cover a subset of the costs of FINRA services (*e.g.*, costs to FINRA of the supervision and regulation of members, including performing examinations, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities) rather than all of FINRA's costs like the CAT, the transaction-based calculation of the FINRA TAF and the proposed CAT fees are similar. With the FINRA TAF, FINRA members on the sell-side of a transaction are required to pay a per share fee for each sale of covered securities, which includes exchange registered securities, equity securities traded otherwise than on an exchange, security futures, TRACE-Eligible Securities and municipal securities, subject to certain exceptions. In approving the FINRA TAF, the SEC stated that the implementation of the FINRA TAF "is consistent with section 15A(b)(5) of the Act, in that the proposal is reasonably designed to recover NASD costs related to regulation and oversight of its members."<sup>29</sup> The SEC further stated that "[t]he Commission recognizes the difficulties inherent in restructuring the NASD's regulatory fees, and believes that the NASD has done so in a manner that is fair and reasonable."<sup>30</sup> The CAT fees calculated under the Executed Share Model would be similar to the FINRA TAF in that they would be transaction-based fees intended to provide funding for regulatory costs.

## iii. Options Regulatory Fee

The fees charged under the Executed Share Model also would be similar to the ORF charged by the options exchanges.<sup>31</sup> The ORF is a per contract fee charged by an options exchange for certain options transactions to options members of the relevant exchange. The ORF is collected indirectly from exchange members through their clearing firms by the Options Clearing Corporation on behalf of the Exchange. Revenue generated from the ORF is designed to recover a material portion of an options exchange's regulatory costs related to the supervision and regulation of its members' options business, including performing routine surveillance, investigations, examinations and financial monitoring as well as policy, rulemaking, interpretive,

<sup>27</sup> Section 1 of Schedule A of FINRA's By-Laws.

<sup>28</sup> See Securities Exchange Act Rel. No. 46416 (Aug. 23, 2002), 67 Fed. Reg. 55901 (Aug. 30, 2002).

<sup>29</sup> Securities Exchange Act Rel. No. 47946 (May 30, 2003), 68 Fed. Reg. 34021, 34023 (June 6, 2003) ("TAF Release").

<sup>30</sup> *Id.*

<sup>31</sup> See, *e.g.*, Cboe Fee Schedule, MIAX Fee Schedule, and NYSE Arca Fee Schedule.

and enforcement activities. Exchange members generally pass-through the ORF to their customers in the same manner that firms pass-through to their customers the fees charged by self-regulatory organizations (“SROs”) to help the SROs meet their obligations under Section 31 of the Exchange Act.<sup>32</sup> The CAT fees calculated under the Executed Share Model would be similar to the ORF in that they would be transaction-based fees intended to provide funding for regulatory costs.

**b. Fee Metric: Transaction Volume**

The Operating Committee proposes to use the executed equivalent share volume of transactions in Eligible Securities as the means for allocating CAT costs among Participants and Industry Members. The use of executed equivalent share volume would replace the use of message traffic for allocating costs among Industry Members and the use of market share for allocating costs among Participants as set forth in the Original Funding Model. The use of executed equivalent share volume is a reasonable and equitable method for allocating costs for a variety of reasons, and the Operating Committee believes it improves upon the use of message traffic.

The proposed use of CAT-reported message traffic as set forth in the Original Funding Model raised a variety of issues for allocating CAT costs. First, based on a subsequent study of cost drivers for the CAT, it was determined that message traffic may be a factor in the CAT costs, but it is not the primary factor. CAT costs are dominated by technology costs, and the predominant technology costs are data processing (*e.g.*, linker) and storage costs.<sup>33</sup> The data processing and storage costs are related to the level of message traffic, but such costs also relate to other factors. The data processing and storage costs also are directly related to the complexity of the reporting requirements for the market activity. For example, in light of the complexity of market activity, the CAT’s order reporting and linkage scenarios document is over 600 pages in length, addressing more than 170 scenarios. The processing and storage of such a large number of complex reporting scenarios requires very complex algorithms, which, in turn, lead to significant data processing and storage costs. The data processing and storage costs also are driven by the stringent performance, timelines and operational requirements for processing CAT Data. For example, the CAT NMS Plan requires that CAT order events be processed within established timeframes to ensure data can be made available to Participants’ regulatory staff and the SEC in a timely manner. Accordingly, a CAT Reporter’s message traffic may be a factor, but not a primary factor, in terms of the costs of the CAT.

Second, in general, Industry Member revenue, including revenue derived from fees Industry Members charge their clients, is often driven by transactions. Because message traffic is separate from whether or not a transaction occurs, fees based on message traffic may not

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<sup>32</sup> See, *e.g.*, Securities Exchange Act Rel. No. 58817 (Oct. 20, 2008), 73 Fed. Reg. 63744, 63745 (Oct. 27, 2008).

<sup>33</sup> For a detailed discussion of cost drivers of the CAT, *see* CAT LLC Webinar, CAT Costs (Sept. 21, 2021), <https://www.catnmsplan.com/events/cat-costs-september-21-2021>.

correlate with common revenue or fee models. As a result, CAT fees based on message traffic could impose an outsized adverse financial impact on certain Industry Members.

Third, imposing CAT fees on each CAT Reporter based on its message traffic may have an adverse effect on competition, liquidity or other aspects of market structure, and may increase model complexity. For example, the number of messages for any given order, whether or not ultimately executed, could vary depending on how a given order is processed, leading to a lack of predictability on the applicable cost to process any given order or executions for broker-dealers or non-broker-dealer customers.<sup>34</sup> As one example, discussed in the context of the previously proposed funding models, market makers in Eligible Securities may have very high levels of message traffic due to their quoting obligations. Such high levels of message traffic may lead to outsized fees for market makers in comparison to their transaction activity, thereby placing an excessive financial burden on market makers. This, in turn, may lead to a decrease in the number of market makers, resulting in a decrease in liquidity and a reduction in market quality. To address this effect on market makers, the Operating Committee proposed to discount the fees that market makers would need to pay. However, such a discount adds complexity to the message traffic approach, as the model must determine when a discount is necessary and how much the discount should be.

The use of executed equivalent share volume to allocate CAT costs addresses each of these concerns. As discussed in more detail below, the fees are not divorced from transactions, the traditional source of revenue for Industry Members; fees based on executed equivalent share volume would not adversely impact certain market participants to the detriment of the markets, and the model is simple to understand and implement. Moreover, in addition to these benefits, the executed equivalent share volume is related to, but not precisely linked to, the CAT Reporter's burden on the CAT. In light of the many inter-related cost drivers of the CAT (*e.g.*, storage, message traffic, processing), determining the precise cost burden imposed by each individual CAT Reporter on the CAT is not feasible. Accordingly, the Operating Committee has determined 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. This conclusion is consistent with the SEC's prior recognition of the use of transaction volume in setting regulatory fees. For example, in approving the FINRA TAF, the SEC recognized that transaction volume was closely enough connected to FINRA's regulatory responsibilities to satisfy the statutory standard in the Exchange Act.<sup>35</sup>

**c. One-Third/One-Third/One-Third Allocation between CBS, CBB and Participant**

Under the Executed Share Model, the CBS, the CBB and the relevant Participant each pay one-third of the fee obligation for each transaction. The proposed allocation recognizes the three primary roles in each transaction: the buyer, the seller and the market regulator, and assigns an equal one-third share of the fee per transaction to each of these three roles. The Exchange Act

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<sup>34</sup> The predictability of fees is discussed further below in Section A.3.f.

<sup>35</sup> TAF Release at 34024.



itself recognizes the importance of these three roles in a transaction by imposing registration and other regulatory obligations on the broker-dealers and regulator involved in a transaction.<sup>36</sup> This allocation is similar to the approach taken with the FINRA TAF, ORF and Section 31 fees, and recognizes the role of the market regulator and the buyer in the transaction as well as the seller.

The proposed allocation of one-third of the CAT costs to the Participants also addresses feedback expressed by some commenters on prior fee filings about the amount allocated to Participants versus Industry Members.<sup>37</sup> In the prior fee proposals, Execution Venues, which included Participants and certain ATSS, would have paid 25% of the CAT costs. As a result, Participants would have paid 25% or less of the CAT costs, and commenters questioned whether the Participant allocation was too small. Under the Executed Share Model, CBBs, as a group, would be responsible for paying for one-third of the CAT costs; CBSs, as a group, would be responsible for paying one-third of the CAT costs; and Participants, as a group, would be responsible for paying one-third of the CAT costs. The proposed one-third allocation to Participants with the Executed Share Model substantially increases the Participant allocation and substantially reduces the Industry Member allocation from prior proposals.<sup>38</sup>

#### **d. Clearing Firms**

The Executed Share Model would impose the proposed CAT fees on the clearing members for transactions in Eligible Securities. The Operating Committee determined to charge clearing members (that is, the CBBs and CBSs), rather than all Industry Members, as it is a process that is currently used in other contexts. For example, the ORF is collected indirectly from exchange members through their clearing firms by the Options Clearing Corporation on behalf of the exchanges. Although charging clearing firms reduces administrative issues, the Operating Committee recognizes that imposing this obligation solely on clearing members may impose an excessive financial burden on such firms. Accordingly, CBBs and CBSs may, but are not required to, pass-through the CAT fees to their clients, who may, in turn, pass the fees to their clients until they are imposed ultimately on the account that executed the transaction. This process would operate in a manner similar to the manner in which Industry Members pass-through other fees imposed to cover regulatory costs to their customers, for example, the fees charged by SROs to help the SROs meet their obligation under Section 31 of the Exchange Act or the ORF charged by the options exchanges.

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<sup>36</sup> See Sections 6, 15 and 15A of the Exchange Act.

<sup>37</sup> See Securities Exchange Act Rel. No. 92451 (July 20, 2021), 86 Fed. Reg. 40114, 40123-26 (July 26, 2021) (“Proceedings Order”).

<sup>38</sup> Not only does the Executed Share Model increase the contribution of Participants as a group in comparison to prior proposed models, but it also changes the contributions of each Participant, depending upon the types and amount of securities traded on each market or over-the-counter. For example, as described in [Exhibit B](#), FINRA’s contribution likely would increase under the Executed Share Model in comparison to prior models given FINRA’s responsibility for securities traded in the over-the-counter market.

**e. Straightforward Approach**

Another advantage of the Executed Share Model is that the approach is simple, straightforward and easy to understand. Using the predetermined Fee Rate, Participants, CBBs and CBSs would calculate their fees by multiplying the number of executed equivalent shares in their transactions in Eligible Securities by the Fee Rate and one-third. Both values necessary for the calculation are readily available. The Fee Rates (including initial and adjusted Fee Rates) would be announced by the Operating Committee, and Participants, CBBs and CBSs have easy access to their transaction data. Moreover, the two adjustments – one for Listed Options and one for OTC Equity Securities – are similarly straightforward calculations. The Executed Share Model does not include other complexities, such as tiered fees, minimum or maximum fees, excluded types of Eligible Securities or excluded transactions in Eligible Securities.

**f. Predictable Fees**

The Executed Share Model also provides CAT Reporters with predictable CAT fees. Because the Fee Rate is established in advance, Participants, CBBs and CBSs can calculate the CAT fee that applies to each transaction when it occurs. Accordingly, CAT Reporters with a CAT fee obligation are able to easily estimate and validate their applicable fees based on their own trading data. In addition, to the extent any CAT fees are passed on to customers, such customers also can calculate the applicable CAT fee for each transaction.

The predictability of CAT fees under the Executed Share Model addresses feedback raised by commenters regarding the lack of fee predictability present in prior fee filings.<sup>39</sup> For example, with potential message traffic models,<sup>40</sup> CAT Reporters would not know the actual per message rate until after the end of the relevant reporting period for which they were assessed the fee and also could not determine in advance the number of messages that may be associated with a given order or the total number of messages, thereby making it difficult for a CAT Reporter to predict a CAT fee related to its market activity. In addition, this lack of predictability related to message-based fees also could complicate efforts by Industry Members to estimate, explain and directly pass message-based fees back to customers, particularly if no trade has occurred.

**g. Administrative Ease**

The Executed Share Model also would allow for ease of billing and other administrative functions.<sup>41</sup> As discussed above, the Executed Share Model relies upon a basic calculation using a predetermined Fee Rate, thereby making the fee determination a straightforward process. In addition, the CAT fees will be collected in a manner similar to the collection process that Industry Members are already accustomed, thereby further reducing the administrative burden on the industry.

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<sup>39</sup> See Proceedings Order at 40122.

<sup>40</sup> Potential message traffic models, including the 2018 Fee Proposal and 2021 Fee Proposals, and the message traffic only model are discussed below.

<sup>41</sup> Section 11.2(d) of the CAT NMS Plan.

**h. Equal Treatment of Trading Venues**

The Executed Share Model also has the benefit of treating transactions in Eligible Securities equally regardless of the trading venue. The Fee Rate would be the same regardless of whether a trade was executed on an exchange or in the OTC market, or how the trade ultimately occurred more generally (*e.g.*, in a manner that generated more message traffic). As a result, it would not favor or unfairly burden any one type of trading venue or method.

**i. Equitable Treatment of Different Eligible Securities**

The Executed Share Model also recognizes and addresses the different trading characteristics of different types of securities. Recognizing that Listed Options trade in contracts rather than shares, the Executed Share Model would count executed equivalent share volume differently for Listed Options. Specifically, each executed contract for a transaction in Listed Options would be counted based on the multiplier applicable to the specific Listed Option contract in the relevant transaction (*e.g.*, 100 executed equivalent shares or such other applicable equivalency). 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 the CAT fees. Specifically, each executed share for a transaction in OTC Equity Securities would be counted as 0.01 executed equivalent shares. As a result, the Executed Share Model would not favor or unfairly burden any one type of product or product type.

**j. Contributions by Both Industry Members and Participants**

The Executed Share Model would require both Participants and Industry Members to contribute to the funding of the CAT by paying a CAT fee. To date, the Participants have paid the full cost of the creation, implementation and maintenance of the CAT since 2012, pending Commission approval of a fee program. The continued funding of the CAT solely by the Participants was and is not contemplated by the CAT NMS Plan, nor is it a financially sustainable approach. As noted by the SEC, the CAT “substantially enhance[s] the ability of the SROs and the Commission to oversee today’s securities markets,”<sup>42</sup> thereby benefiting all market participants. The Executed Share Model would require both Participants and Industry Members to contribute to the cost of the CAT, as contemplated by Rule 613 and the CAT NMS Plan.

Rule 613(a)(1)(vii)(D) specifically contemplates Industry Members contributing to the payment of CAT costs. Specifically, this provision requires the CAT NMS Plan to address “[h]ow the plan sponsors propose to fund the creation, implementation, and maintenance of the consolidated audit trail, including the proposed allocation of such estimated costs among the plan sponsors, and between the plan sponsors and members of the plan sponsors.” In approving Rule 613, the SEC noted that “although the plan sponsors likely would initially incur the costs to

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<sup>42</sup> Rule 613 Adopting Release at 45726.

establish and fund the central repository directly, they may seek to recover some or all of these costs from their members.”<sup>43</sup>

In addition, as approved by the SEC, the CAT NMS Plan specifically contemplates CAT fees to be paid by both Industry Members and Participants. Section 11.1(b) of the CAT NMS Plan states that “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 the Participants.”<sup>44</sup> The Commission stated in approving the CAT NMS Plan the following:

The Commission believes that the proposed funding model reflects a reasonable exercise of the Participants’ funding authority to recover the Participants’ costs related to the CAT. The CAT is a regulatory facility jointly owned by the Participants and, as noted above, the Exchange Act specifically permits the Participants to charge members fees to fund their self-regulatory obligations. The Commission further believes that the proposed funding model is designed to impose fees reasonably related to the Participants’ self-regulatory obligations because the fees would be directly associated with the costs of establishing and maintaining the CAT, and not unrelated SRO services.<sup>45</sup>

Likewise, the Commission stated that “the Participants are permitted to recoup their regulatory costs under the Exchange Act through the collection of fees from their members, as long as such fees are reasonable, equitably allocated and not unfairly discriminatory, and otherwise are consistent with Exchange Act standards,”<sup>46</sup> and noted that “Rule 613(a)(1)(vii)(D) requires the Participants to discuss in the CAT NMS Plan how they propose to fund the creation, implementation and maintenance of the CAT, including the proposed allocation of estimated costs among the Participants, and *between the Participants and Industry Members*.”<sup>47</sup>

In its amendments to the CAT NMS Plan regarding financial accountability, the SEC reaffirmed the ability for the Participants to charge Industry Members a CAT fee. Specifically, the SEC noted that the amendments were not intended to change the basic funding structure for the CAT, which may include fees established by the Operating Committee, and implemented by the Participants, to recover from Industry Members the costs and expenses incurred by the Participants in connection with the development and implementation of the CAT.<sup>48</sup>

#### **k. Use of CAT Data**

CAT Data would be used to calculate the CAT fees under the Executed Share Model. CAT Data would be used to identify each transaction in Eligible Securities for which a CAT fee

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<sup>43</sup> *Id.* at 45795.

<sup>44</sup> *See also* Sections 11.1(c), 11.2(c), and 11.3(a) and (b) of the CAT NMS Plan.

<sup>45</sup> CAT NMS Plan Approval Order at 84794.

<sup>46</sup> *Id.* at 84795.

<sup>47</sup> *Id.* at 84797 (emphasis added).

<sup>48</sup> Financial Accountability Milestone Release at 31329.

would be collected. Specifically, CAT fees will be charged with regard to trades reported to CAT by FINRA via the Alternative Trading Facility (“ADF”), Over-the-Counter Reporting Facility (“ORF”) and the Trade Reporting Facilities (“TRF”) and by the exchanges. In addition, the same transaction data in the CAT Data would be used in the calculation of the projected total executed equivalent share volume for the Fee Rate. Furthermore, the transaction data in the CAT Data provides the identity of the relevant clearing broker for each trade. This data would be used to identify the CBB and CBS for each trade for purposes of the CAT fees. Using CAT Data for the CAT fee calculations provides administrative efficiency, as the data will be accessible via the CAT. In addition, the transaction data would be the same transaction data used by the Participants in calculating their fee obligations with regard to Section 31 of the Exchange Act.

### **I. Six Month Look Back**

The calculation of the Fee Rate also requires the determination of the projected total executed equivalent share volume of transactions in Eligible Securities for the year. The Operating Committee proposes to determine this projection based on the total executed equivalent share volume of transactions in Eligible Securities from the prior six months. The Operating Committee determined that the use of the data from the prior six months provides an appropriate balance between using data from a period that is sufficiently long to avoid short term fluctuations while providing data close in time to the calculation of the Fee Rate. Moreover, given that the Executed Share Model contemplates setting the Fee Rate at the beginning of the year, and allows for an adjustment of the Fee Rate during the year, the projections may be based on different sets of six months, thereby ensuring that the projections are not always based on certain months of the year that may exhibit different trading patterns from other times of the year.

### **m. Cost Discipline Mechanisms**

The reasonableness of the Executed Share Model and the fees calculated under the Executed Share Model are supported by key cost discipline mechanisms for the CAT – a cost-based funding structure, cost transparency, cost management efforts and oversight. Together, these mechanisms help ensure the ongoing reasonableness of the CAT’s costs and the level of fees assessed to support those costs.

First, the CAT NMS Plan requires that the Company operate on a “break-even” basis, with fees imposed to cover costs and an appropriate reserve. Any surpluses would be treated as an operational reserve to offset future fees and would not be distributed to the Participants as profits.<sup>49</sup> To ensure that the Participants’ operation of the CAT will not contribute to the funding of their other operations, Section 11.1(c) of the CAT NMS Plan specifically states that “[a]ny surplus of the Company’s revenues over its expenses shall be treated as an operational reserve to offset future fees.” In addition, as set forth in Article VIII of the CAT NMS Plan, the Company

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<sup>49</sup> CAT NMS Plan Approval Order at 84792.

“intends to operate in a manner such that it qualifies as a ‘business league’ within the meaning of Section 501(c)(6) of the [Internal Revenue] Code.” To qualify as a business league, an organization must “not [be] organized for profit and no part of the net earnings of [the organization can] inure[] to the benefit of any private shareholder or individual.”<sup>50</sup> As the SEC stated when approving the CAT NMS Plan, “the Commission believes that the Company’s application for Section 501(c)(6) business league status addresses issues raised by commenters about the Plan’s proposed allocation of profit and loss by mitigating concerns that the Company’s earnings could be used to benefit individual Participants.”<sup>51</sup> The Internal Revenue Service has determined that the Company is exempt from federal income tax under Section 501(c)(6) of the Internal Revenue Code.

Second, the CAT’s commitment to reasonable funding in support of its regulatory obligations is further reinforced by the transparency it has committed to provide on an ongoing basis regarding its financial performance. The Company currently makes detailed financial information about the CAT publicly available. Section 9.2(a) of the CAT NMS Plan requires the Operating Committee to maintain a system of accounting established and administered in accordance with GAAP and requires “all financial statements or information that may be supplied to the Participants shall be prepared in accordance with GAAP (except that unaudited statements shall be subject to year-end adjustments and need not include footnotes).” Section 9.2(a) of the CAT NMS Plan also requires the Company to prepare and provide to each Participant “as soon as practicable after the end of each Fiscal Year, a balance sheet, income statement, statement of cash flows and statement of changes in equity for, or as of the end of, such year, audited by an independent public accounting firm.” The CAT NMS Plan requires that this audited balance sheet, income statement, statement of cash flows and statement of changes in equity be made publicly available. Among other things, these financial statements provide operating expenses, including technology, legal, consulting, insurance, professional and administration and public relations costs. The Company also maintains a dedicated webpage on the CAT NMS Plan website that consolidates its annual financial statements in a public and readily accessible place.<sup>52</sup>

In addition, the Company publicly provides the annual operating budget for the Company as well as periodically provides updates to the budget that occur during the year. The Company includes such budget information on a dedicated webpage on the CAT NMS Plan website to make it readily accessible, like the CAT financial statements.

The Operating Committee also has held webinars providing additional detail about CAT costs and about potential alternative funding models for the CAT.<sup>53</sup> In addition, the Operating Committee plans to offer additional webinars on cost and funding for the industry as appropriate going forward. Collectively, these reports and other efforts provide extensive and

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<sup>50</sup> 26 U.S.C. 501(c)(6).

<sup>51</sup> CAT NMS Plan Approval Order at 84793.

<sup>52</sup> See CAT Audited Financial Statements, <https://www.catnmsplan.com/audited-financial-statements>.

<sup>53</sup> See, e.g., CAT LLC Webinar CAT Costs (Sept. 21, 2021), <https://www.catnmsplan.com/events/cat-costs-september-21-2021>; CAT LLC Webinar, CAT Funding (Sept. 22, 2021), <https://www.catnmsplan.com/events/cat-funding-september-22-2021>; and CAT LLC Webinar, CAT Funding (Apr. 6, 2022),

comprehensive information regarding the CAT's operations with respect to its budgets, revenues, costs, and financial reserves, among other information.

Third, the Operating Committee regularly engages in and oversees efforts to reduce CAT costs responsibly while appropriately funding its regulatory obligations. The Operating Committee's efforts to manage its expenses responsibly include oversight of the CAT's annual budget, including technology and other expenditures and initiatives. This oversight is informed by key CAT working groups, such as the Technology Working Group, Regulatory Working Group and Interpretive Working Group, each of which brings varied expertise to issues of responsible cost management. In particular, the Operating Committee currently utilizes a Cost Management Working Group to analyze opportunities to manage CAT costs responsibly. In addition, the Plan Processor regularly reviews options to lower compute and storage needs and works with CAT technology providers to provide services in a cost-effective manner. These collective efforts have led to a variety of technological changes to reduce costs.

Fourth, the CAT's funding and operations are subject to the oversight of the Commission. The CAT is extensively supervised by the Commission, including regular and continuous attendance at Operating Committee, Subcommittee and working group meetings. In addition, CAT fees as well as cost management efforts that require an amendment of the CAT NMS Plan are subject to review by the Commission's Division of Trading and Markets, as well as public comment.

## **6. Alternative Models Considered**

The Operating Committee has determined to propose the Executed Share Model to fund the CAT for the reasons discussed above. In reaching this conclusion, the Operating Committee considered the advantages and disadvantages of a variety of possible alternative funding and cost allocation models for the CAT in detail. After analyzing the various alternatives and considering comments on the previously proposed models, the Operating Committee determined that, although various funding models may be reasonable and appropriate, the Executed Share Model provides a variety of advantages in comparison to the alternatives, and satisfies the requirements of the Exchange Act, including providing for an equitable allocation of reasonable fees among CAT Reporters, not being designed to permit unfair discrimination among CAT Reporters and not imposing any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

### **a. 2018 Fee Proposal**

The Operating Committee previously filed a fee proposal in line with the CAT NMS Plan – the 2018 Fee Proposal.<sup>54</sup> Under that model, the Operating Committee, among other things, proposed a 75%-25% allocation of CAT costs between Execution Venues (which included

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<sup>54</sup> For a description of the 2018 Fee Proposal, *see* Securities Exchange Act Rel. No. 82451 (Jan. 5, 2018), 83 Fed. Reg. 1399 (Jan. 11, 2018) ("2018 Fee Proposal Release"). The Participants later withdrew this proposed amendment. Securities Exchange Act Rel. No. 82892 (Mar. 16, 2018), 83 Fed. Reg. 12633 (Mar. 22, 2018).

Participants and Execution Venue ATSS) and Industry Members (other than Execution Venue ATSS), and required Execution Venues to pay fees based on market share, and Industry Members (other than Execution Venue ATSS) to pay fees based on CAT message traffic.<sup>55</sup>

Each Industry Member (other than Execution Venue ATSS) would be placed into one of seven tiers of fixed fees, based on CAT message traffic in Eligible Securities. Options Market Maker and equity market maker quotes would be discounted when calculating message traffic.

The Operating Committee determined to allocate 67% of Execution Venue costs recovered to Equity Execution Venues and 33% to Options Execution Venues. Each Equity Execution Venue would be placed in one of four tiers of fixed fees based on market share, and each Options Execution Venue would be placed in one of two tiers of fixed fees based on market share. Equity Execution Venue market share would be determined by calculating each Equity Execution Venue's proportion of the total volume of NMS Stock and OTC Equity shares reported by all Equity Execution Venues during the relevant time period. For purposes of calculating market share, the OTC Equity Securities market share of Execution Venue ATSS trading OTC Equity Securities as well as the market share of the FINRA OTC reporting facility would be discounted. Similarly, market share for Options Execution Venues would be determined by calculating each Options Execution Venue's proportion of the total volume of Listed Options contracts reported by all Options Execution Venues during the relevant time period.

The 2018 Fee Proposal was a very complex model with many interrelated parts, including allocation percentages, discounts for certain market behavior, and multiple tiered fees, and the complexity raised concerns from the Commission regarding its use as the CAT funding model. In addition, in response to the proposal, the industry provided a number of other comments related to the proposal, including comments regarding the proposed allocation of CAT costs between Participants and Industry Members, and the ability of certain market segments to afford the proposed CAT fee.<sup>56</sup>

#### **b. 2021 Fee Proposal**

In response to the comments on the 2018 Fee Proposal, the Operating Committee determined to revise various aspects of the proposed model, thereby developing the 2021 Fee Proposal.<sup>57</sup> The 2021 Fee Proposal would have continued to require many of the same elements as the 2018 model, including the bifurcated funding approach, and the use of market share and message traffic for allocating costs, as required by the current CAT NMS Plan. The 2021 Fee

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<sup>55</sup> In developing the 2018 Fee Proposal, the Operating Committee considered many variations of different aspects of that model. For example, the Operating Committee evaluated different cost allocations between Industry Members (other than Execution Venue ATSS) and Execution Venues, including 80%-20%, 75%-25%, 70%-30% and 65%-35% allocations, and different cost allocations between Equity and Options Execution Venues. The Operating Committee also considered different discounts for equities and options market makers, different numbers of tiers of Industry Members and Execution Venues, different fee levels for each tier, and other aspects of the model.

<sup>56</sup> For a discussion of comments made regarding the Original Funding Model and the 2018 Fee Proposal, see generally 2018 Fee Proposal Release.

<sup>57</sup> Securities Exchange Act Rel. No. 91555 (Apr. 14, 2021), 86 Fed. Reg. 21050 (Apr. 21, 2021).



Proposal, however, proposed to revise the model in certain ways, including (1) dividing the CAT costs between Participants and Industry Members, rather than between Execution Venues and Industry Members (other than Execution Venue ATs); (2) eliminating the use of tiers in calculating CAT fees for Participants and Industry Members; (3) adopting certain minimum and maximum CAT fees for Industry Members and Participants; (4) revising the allocation between Equity Execution Venues and Options to be 60%-40%; and (5) excluding, rather than discounting, market share in OTC Equity Shares from the calculation of market share for FINRA.

Although the revisions of the 2021 Fee Proposal addressed certain comments on the prior 2018 Fee Proposal, commenters continued to raise issues regarding the proposal. For example, commenters provided feedback regarding the 75%-25% cost allocation between Industry Members and Participants, the 60%-40% cost allocation between Equity Participants and Options Participants, the use of market share and message traffic for allocating costs among Participants and Industry Members, respectively, and the proposed minimum and maximum fees. Noting these and other issues, the SEC determined to institute proceedings to determine whether to disapprove the 2021 Fee Proposal or to approve the proposal with any changes or subject to any conditions the SEC deemed necessary or appropriate after considering public comment.<sup>58</sup> Ultimately, the Operating Committee determined to withdraw the 2021 Fee Proposal.<sup>59</sup>

### **c. Revenue Funding Model**

The Operating Committee also considered a model in which all CAT Reporters, including both Industry Members and Participants, would pay fees based solely on revenue. The concept underlying this proposal is that CAT costs would be borne by CAT Reporters based on their ability to pay. Under this model, Industry Member revenue would be calculated based on revenue reported in FOCUS reports, and Participant revenue would be calculated based on revenue information in Form 1 amendments and other publicly reported figures.

The Operating Committee did not select this model for various reasons. Under this approach, Participants as a group would only pay approximately 4% of the total CAT costs. Given their role as SROs and their use of the CAT, the Operating Committee did not believe that such a small allocation of the CAT costs to the Participants was appropriate. Using revenue also raised a variety of practical issues. For example, questions were raised as to what revenue was appropriate to include in the calculation of revenue for Industry Members. The gross revenue set forth on FOCUS reports was proposed, as it was similar to an existing FINRA regulatory fee.<sup>60</sup> However, questions were raised as to whether revenue unrelated to NMS Securities or OTC Equity Securities, or otherwise unrelated to the CAT, should be included for calculation of the

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<sup>58</sup> Securities Exchange Act Rel. No. 92451 (July 20, 2021), 86 Fed. Reg. 40114 (July 26, 2021). *See also* Securities Exchange Act Rel. No. 93227 (Oct. 1, 2021), 86 Fed. Reg. 55900 (Oct. 7, 2021).

<sup>59</sup> Letter to Vanessa Countryman, Secretary, SEC from Mike Simon, Chair, CAT NMS Plan Operating Committee re: File Number 4-698 – Withdrawal of Amendment to the National Market System Plan Governing the Consolidated Audit Trail (Dec. 8, 2021).

<sup>60</sup> *See* paragraphs (c) and (d) of Section 1 of Schedule A of FINRA's By-Laws regarding FINRA's annual Gross Income Assessment.

CAT fee. Eliminating revenue unrelated to CAT-related activity would have been difficult or impossible. In addition, the lack of a uniform approach to calculating revenue for the Participants could raise inequities in the collection of a CAT fee.

To address the issues regarding the 96%-4% allocation and the calculation of the Participant revenue in the straight revenue model described above, the Operating Committee considered an alternative version of the revenue model in which the CAT costs would be allocated between Industry Members and Participants based on a set percentage (*e.g.*, 75%-25%) and the Industry Member allocation would be allocated among Industry Members based on revenue and the Participant allocation would be allocated among Participants based on market share. However, this alternative revenue model failed to address the issues regarding the appropriate revenue calculations for Industry Members.

**d. Message Traffic Only Model**

The Operating Committee considered a funding model in which CAT costs were allocated across all CAT Reporters – both Industry Members and Participants – based on message traffic in the CAT. Specifically, the Operating Committee considered eliminating the concepts of a Participant allocation and an Industry Member allocation entirely, and treating Participants and Industry Members the same under the model. The use of message traffic, however, raised issues regarding the predictability of fees. It also introduced complexity to the model, as discounts were necessary for certain types of activity to avoid fees that may adversely impact market making activity and other market activity.

**e. Alternative Allocation for Executed Share Model**

The Operating Committee also discussed an alternative funding model that would calculate fees in a manner similar to the Executed Share Model, but would allocate the fee to one Industry Member, the CBS, rather than allocating one-third of the fees each to the CBS, the CBB and the applicable Participant. This allocation would more closely parallel the existing Section 31 fee allocation structure that is already in place. This alternative allocation for the Executed Share Model would eliminate complexity from the fee process, including the process of allocating fees among Industry Members and Participants that are likely to be passed through to the ultimate investors, and would provide for a more transparent funding process for investors. Instead of using this approach, the Operating Committee determined to allocate costs among the main participants in a transaction and allow those participants to determine whether and how to recover the costs.

**f. Sales Value Model**

The Operating Committee also considered a funding model in which fees would be calculated based on transaction sales values, similar to the method used in the Section 31/sales value fee programs. Under this model, the per sales value fee rate would be calculated by dividing the annual CAT budget by the projected annual total industry transaction sales values. The fee would be calculated by multiplying the sales value fee rate by a given trade's sales value.

The CBB, the CBS and the relevant Participant would each be assessed one-third of the fee, or, in the alternative, the CBS would be assessed two-thirds of the fee and the relevant Participants would be assessed one-third of the fee. The same rate would apply to all transactions equally, regardless of the type of product in the trade (*i.e.*, NMS Stocks, Listed Options or OTC Equity Securities). Based on an analysis of 2021 data, the Operating Committee observed that the sales value model could potentially impose a disproportionate share of the CAT costs on Participants and Industry Members trading NMS Stocks versus Listed Options. In comparison, also based on an analysis of 2021 data, the Operating Committee observed that the Executed Share Model would impose an equitable allocation of fees among Participants and Industry Members trading NMS Stocks and Listed Options, as well as OTC Equity Securities.

#### **g. Other Models**

The Operating Committee also considered other possible funding models. For example, the Participants considered allocating the CAT costs equally among each of the Participants, and then permitting each Participant to charge its own members as it deems appropriate. The Operating Committee determined that such an approach raised a variety of issues, including the likely inconsistency of the ensuing charges, potential for lack of transparency, and the impracticality of multiple SROs submitting invoices for CAT charges. The Operating Committee also discussed the advantages and disadvantages of various alternative models during the development of the CAT NMS Plan, such as a cost allocation based on a strict pro-rata distribution, regardless of the type or size of the CAT Reporters.<sup>61</sup> The Operating Committee believes that the Executed Share Model provides advantages over each of these previously considered models and provides an equitable allocation of reasonable fees among CAT Reporters.

### **7. Proposed Amendments to CAT NMS Plan for the Executed Share Model**

To implement the Executed Share Model and to impose the associated CAT fees on the Participants, the Operating Committee proposes to amend the CAT NMS Plan. The following discusses the proposed amendments to the CAT NMS Plan, including the addition of a Participant CAT fee schedule, entitled “Consolidated Audit Trail Funding Fees,” to Exhibit B of the CAT NMS Plan.

#### **a. 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 Section 11.2 and 11.3 of the CAT NMS Plan to describe how CAT costs would be allocated among CAT Reporters under the Original Funding Model. The Original Funding Model would have imposed fees based on

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<sup>61</sup> For a discussion of alternatives considered in the drafting of the CAT NMS Plan, see Appendix C of the CAT NMS Plan at C-88-C-89.

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

**b. Use of Executed Equivalent Shares for CAT Fees**

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). The Operating Committee proposes to amend the CAT NMS Plan to require each of the Participants, CBBs and CBSs to pay a CAT fee 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 "In 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." The Operating Committee 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." 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. 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." The Operating Committee 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.”<sup>62</sup>

Section 11.3(a) of the CAT NMS Plan provides additional detail regarding the market share based fees to be paid by Participants and Execution Venue ATs under the Original Funding Model. Specifically, Section 11.3(a) of the CAT NMS Plan states:

(a) The Operating Committee will establish fixed fees to be payable by Execution Venues as provided in this Section 11.3(a):

(i) Each Execution Venue that: (A) executes transactions; or (B) in the case of a national securities association, has trades reported by its members to its trade reporting facility or facilities for reporting transactions effected otherwise than on an exchange, in NMS Stocks or OTC Equity Securities will pay a fixed fee depending on the market share of that Execution Venue in NMS Stocks and OTC Equity Securities, with the Operating Committee establishing at least two and no more than five tiers of fixed fees, based on an Execution Venue’s NMS Stocks and OTC Equity Securities market share. For these purposes, market share for Execution Venues that execute transactions will be calculated by share volume, and market share for a national securities association that has trades reported by its members to its trade reporting facility or facilities for reporting transactions effected otherwise than on an exchange in NMS Stocks or OTC Equity Securities will be calculated based on share volume of trades reported, provided, however, that the share volume reported to such national securities association by an Execution Venue shall not be included in the calculation of such national security association’s market share.

(ii) Each Execution Venue that executes transactions in Listed Options will pay a fixed fee depending on the Listed Options market share of that Execution Venue, with the Operating Committee establishing at least two and no more than five tiers of fixed fees, based on an Execution Venue’s Listed Options market share. For these purposes, market share will be calculated by contract volume.

The Operating Committee proposes to delete Section 11.3(a) of the CAT NMS Plan and replace this paragraph with a description of the fees to be paid by each Participant under the Executed Share Model. Specifically, proposed Section 11.3(a)(i) of the CAT NMS Plan would state that “[e]ach Participant that is a national securities exchange will be required to pay a fee for each transaction in Eligible Securities executed on the exchange based on CAT Data. Each Participant that is a national securities association will be required to pay a fee for each transaction in Eligible Securities executed otherwise than on an exchange based on CAT Data.” Proposed Section 11.3(a)(ii) of the CAT NMS Plan would state that “[t]he fee for each transaction in Eligible Securities will be calculated by multiplying the number of executed

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<sup>62</sup> As discussed in the next section, the Operating Committee also proposes to delete the reference to a “tiered” fee structure.

equivalent shares in the transaction by one-third and by the applicable fee rate for the relevant period.”

The Operating Committee proposes to add proposed Section 11.3(a)(iii), which would require Participants “to pay a CAT fee with regard to CAT costs not previously paid by the Participants (“Prospective CAT Costs”).” Proposed Section 11.3(a)(iii) would describe how the Fee Rate would be calculated for these CAT fees. Specifically, proposed Section 11.3(a)(iii) would state that “[t]he Fee Rate for the CAT fees related to Prospective CAT Costs will be calculated by dividing the budgeted CAT costs for the relevant period (as determined by the Operating Committee) by the projected total executed equivalent share volume of all transactions in Eligible Securities for the relevant period based on CAT Data.” The Operating Committee would utilize budgeted costs in calculating the proposed forward-looking fees.

The Operating Committee also proposes to add Section 11.3(a)(iv) to describe Participants’ obligations under the funding model with regard to CAT costs previously paid by Participants. Specifically, proposed Section 11.3(a)(iv) would state that “[n]otwithstanding anything to contrary, Participants will not be required to a pay a CAT fee related to CAT costs previously paid by the Participants in a manner determined by the Operating Committee (‘Past CAT Costs’).” Accordingly, under those circumstances, Industry Members would be required to pay two-thirds of such Past CAT Costs in accordance with the Executed Share Model. The Participants would remain responsible for the other one-third of the Past CAT Costs, but such one-third of the Past CAT Costs has already been paid in a manner determined by the Operating Committee; that one-third of Past CAT Costs would not be paid pursuant to the Executed Share Model. The two-thirds of the Past CAT Costs to be collected from Industry Members would be allocated to the Participants for repayment of the outstanding loan notes of the Participants to the Company on a pro rata basis.

Section 11.3(b) of the CAT NMS Plan provides additional detail regarding the message traffic-based CAT fees to be paid by Industry Members (other than Execution Venue ATSS). Specifically, Section 11.3(b) of the CAT NMS Plan states:

The Operating Committee will establish fixed fees to be payable by Industry Members, based on the message traffic generated by such Industry Member, with the Operating Committee establishing at least five and no more than nine tiers of fixed fees, based on message traffic. For the avoidance of doubt, the fixed fees payable by Industry Members pursuant to this paragraph shall, in addition to any other applicable message traffic, include message traffic generated by: (i) an ATS that does not execute orders that is sponsored by such Industry Member; and (ii) routing orders to and from any ATS sponsored by such Industry Member.

The Operating Committee proposes to delete Section 11.3(b) of the CAT NMS Plan and replace this paragraph with a description of the fees to be paid by CBBs and CBSs under the Executed Share Model as follows:

The Operating Committee will establish fees to be payable by Industry Members as follows:

(i) Each Industry Member that is the clearing firm for the buyer in a transaction in Eligible Securities (“Clearing Broker for the Buyer” or “CBB”) will be required to pay a fee for each such transaction in Eligible Securities based on CAT Data. The CBB’s fee for each transaction Eligible Securities will be calculated by multiplying the number of executed equivalent shares in the transaction by one-third and by the Fee Rate.

(ii) Each Industry Member that is the clearing firm for the seller in a transaction in Eligible Securities (“Clearing Broker for the Seller” or “CBS”) will be required to pay a fee for each transaction in Eligible Securities based on CAT Data. The CBS’s 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 the Fee Rate.

The Operating Committee proposes to add proposed Section 11.3(b)(iii) to the CAT NMS Plan to further describe the fee obligations of CBBs and CBSs with regard to Past CAT Costs. Specifically, proposed Section 11.3(b)(iii) would state that “CBBs and CBSs will be required to pay CAT fees related to Past CAT Costs. The Fee Rate for the CAT fees related to Past CAT Costs will be calculated by dividing the Past CAT Costs for the relevant period (as determined by the Operating Committee) by the projected total executed equivalent share volume of all transactions in Eligible Securities for the relevant period based on CAT Data.” As discussed in detail above, the Operating Committee would utilize actual CAT costs in calculating these CAT fees.

The Operating Committee also proposes to add proposed Section 11.3(b)(iv) to the CAT NMS Plan to further describe the fee obligations of CBBs and CBSs with regard to Prospective CAT Costs. Specifically, proposed Section 11.3(b)(iv) would state that “CBBs and CBSs will be required to pay CAT fees related to Prospective CAT Costs. The Fee Rate for the CAT fees related to Prospective CAT Costs will be the same as set forth in paragraph (a)(iv) above.” Accordingly, the Participants, CBBs and CBSs would pay the same Fee Rate for CAT fees related to Prospective CAT Costs.

**c. Elimination of Tiered Fees**

The Operating Committee proposes to eliminate the use of tiered fees for the Executed Share Model. Instead, under the Executed Share Model, each Participant, CBB or CBS 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.

By removing the concept of fee tiering for both Industry Members and Participants, the Executed Share Model addresses various comments regarding the use of tiering.<sup>63</sup> Utilizing a tiered fee structure, by its nature, would create certain inequities among the CAT fees paid by CAT Reporters. For example, two CAT Reporters with comparable executed equivalent share volume may pay notably different fees if one falls in a higher tier and the other falls within a lower tier. Correspondingly, a tiered fee structure generally reduces fees for CAT Reporters with higher executed share volume in one tier, while increasing fees for Industry Members with lower executed share volume in the same tier, as compared to a non-tiered fee. Furthermore, CAT Reporters in lower tiers potentially pay more than they would without the use of tiers. While tiering appropriately exists in various other self-regulatory fee programs, in response to feedback on the 2018 and 2021 Fee Proposals, the Operating Committee is proposing to eliminate the tiering concept, rendering past comments about a tiered model moot.

By charging each Participant, CBB and CBS a CAT fee directly based on its own executed equivalent share volume, rather than charging a tiered fee, the Executed Share Model would result in a CAT fee being tied more directly to the CAT Reporter's executed share volume. In contrast, with a tiered fee, CAT Reporters with different levels of executed equivalent share volume that are placed in the same tier would all pay the same CAT fee, thereby limiting the correlation between a CAT Reporter's activity and its CAT fee.

The proposed non-tiering approach is simpler and more objective to administer than the tiering approach. With a tiering approach, the number of tiers for Participants, CBBs and CBSs, the boundaries for each tier and the fees assigned to each tier must be established. In the absence of clear groupings of CAT Reporters, selecting the number of, boundaries for, and the fees associated with each tier would be subject to some level of subjectivity. Furthermore, the establishment of tiers would need to be continually reassessed based on changes in the executed equivalent share volume of transactions in Eligible Securities, thereby requiring regular subjective assessments. Accordingly, the removal of tiering from the funding model eliminates a variety of subjective analyses and judgments from the model and simplifies the determination of CAT fees.

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, the Operating Committee proposes to delete the reference to “assignment of tiers” from Section 11.1(d).

Section 11.1(d) of the CAT NMS Plan also states that:

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

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<sup>63</sup> For a discussion of comments on prior fee models, *see, e.g.*, Securities Exchange Act Rel. No. 80167 (June 30, 2017), 82 Fed. Reg. 31656, 31664 (July 7, 2017).



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.

As noted above, unlike the Original Funding Model, the Executed Share Model would not utilize tiered fees. Accordingly, these two sentences would not be applicable to the Executed Share Model. Therefore, the Operating Committee proposes to delete these two sentences from Section 11.1(d) of the CAT NMS Plan.

The Operating Committee proposes to delete the reference to “tiered” fees from Section 11.2(c) of the CAT NMS Plan. 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. . .” The Participants propose to delete the word “tiered” from this provision as the CAT fees would not be tiered under the Executed Share Model.

The Operating Committee also proposes to delete paragraph (iii) of Section 11.2(c) of the CAT NMS Plan. Paragraph (iii) of Section 11.2(c) of the CAT NMS Plan states that the Operating Committee shall seek to establish a tiered fee structure in which fees charged to:

the CAT Reporters with the most CAT-related activity (measured by market share and/or message traffic, as applicable) be 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).

Under the Original Funding Model, the comparability provision was an important factor in determining the tiers for Industry Members and Execution Venues. In determining the tiers, the Operating Committee sought to establish comparable fees among the CAT Reporters with the most Reportable Events.<sup>64</sup> Under the Executed Share Model, however, the comparability provision is no longer necessary, as a tiered fee structure would not be used for Industry Members or Participants.

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. Specifically, Section 11.3(a)(i) of the CAT NMS Plan states that the Operating Committee, when establishing fees for Execution Venues for NMS Stocks and OTC Equity Securities, will establish “at least two and no more than five tiers of fixed fees, based on an Execution Venue’s NMS Stocks and OTC Equity Securities market share.” Similarly, Section 11.3(a)(ii) of the CAT NMS Plan states that the Operating Committee, when establishing fees for Execution Venues that execute

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<sup>64</sup> See, e.g., Securities Exchange Act Rel. No. 82451 (Jan. 5, 2018), 83 Fed. Reg. 1399, 1406-07 (Jan. 11, 2018).

transactions in Listed Options, will establish “at least two and no more than five tiers of fixed fees, based on an Execution Venue’s Listed Options market share.” Section 11.3(b) of the CAT NMS Plan states that the Operating Committee, when establishing fees to be payable by Industry Members, will establish “at least five and no more than nine tiers of fixed fees, based on message traffic.” The Operating Committee proposes to delete each of these references to tiers from the CAT NMS Plan.

**d. No Fixed Fees**

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 also would remove the references to “fixed fees” in Sections 11.3(a), 11.3(a)(i) and 11.3(a)(ii) and replaced them with references to “fees.” Under the Executed Share Model, the CAT fees to be paid by Participants, CBBs and CBSs 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. Therefore, the concept of a fixed fee – that is, a fee that does not vary depending on circumstances - is not relevant under the Executed Share Model.

**e. Proposed CAT Fee Schedule for Participants**

To implement the Participant CAT fees, the Operating Committee proposes to add a fee schedule, entitled “Consolidated Audit Trail Funding Fees,” to Exhibit B of the CAT NMS Plan. Proposed paragraph (a) of the fee schedule would describe the CAT fee to be paid by the Participants under the Executed Share Model. Specifically, paragraph (a)(1) of the fee schedule would state that “[e]ach Participant that is a national securities exchange shall pay a fee for each transaction in Eligible Securities executed on the exchange based on CAT Data, where the fee for each transaction will be calculated by multiplying the number of executed equivalent shares in the transaction by one-third and by the Fee Rate.” Paragraph (a)(2) of the fee schedule would state that “[e]ach Participant that is a national securities association shall pay a fee for each transaction in Eligible Securities executed otherwise than on exchange based on CAT Data, where the fee for each transaction will be calculated by multiplying the number of executed equivalent shares in the transaction by one-third and by the Fee Rate.”

Proposed paragraph (b) of the fee schedule would describe how and when the Operating Committee would set the Fee Rate. Proposed paragraph (b)(1) of the fee schedule would state that “[t]he Operating Committee will calculate the Fee Rate at the beginning of each year by dividing the budgeted CAT costs for the year by the projected total executed equivalent share volume of all transactions in Eligible Securities for the year. After setting the Fee Rate at the beginning of the year, the Fee Rate may be adjusted once during the year, if necessary, due to changes in the budgeted or actual costs or projected or actual total executed equivalent share volume during the year.”

Proposed paragraph (b)(2) of the fee schedule would describe the method for counting executed equivalent shares in a transaction in Eligible Securities. Specifically, proposed paragraph (b)(2)(i) would state that “each executed share for a transaction in NMS Stocks will be counted as one executed equivalent share.” Proposed paragraph (b)(2)(ii) of the fee schedule would state that “each executed contract for a transaction in Listed Options will be counted based on the multiplier applicable to the specific Listed Option (i.e., 100 executed equivalent shares or such other applicable multiplier).” Proposed paragraph (b)(2)(iii) of the fee schedule would state that “each executed share for a transaction in OTC Equity Securities shall be counted as 0.01 executed equivalent share.”

Proposed paragraph (b)(3) of the fee schedule would describe the budgeted CAT costs and adjustments to the budgeted CAT costs to be used in calculating the Fee Rate. Proposed paragraph (b)(3) of the fee schedule would state that “[t]he budgeted CAT costs for the year shall be comprised of all fees, costs and expenses 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.”

Proposed paragraph (b)(4) of the fee schedule would describe the projected total executed equivalent share volume of transactions in Eligible Securities to be used in calculating the Fee Rate as well as any adjustments to such projections. Proposed paragraph (b)(4) of the fee schedule would state that “[t]he Operating Committee shall determine the projected total executed equivalent share volume of all transactions in Eligible Securities for each relevant period based on the executed equivalent share volume of all transactions in Eligible Securities for the prior six months.”

Proposed paragraph (c) of the fee schedule would describe the payment of the CAT fees by Participants. Proposed paragraph (c) would state that “[e]ach Participant shall pay the CAT fee set forth in paragraph (a) 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 the prior month.”

## **8. Satisfaction of Exchange Act and CAT NMS Plan Requirements**

The Executed Share Model offers a variety of benefits and satisfies the funding principles and other requirements of the CAT NMS Plan, as proposed to be revised herein, as well as the applicable requirements of the Exchange Act.

### **a. Funding Principle: Section 11.2(a) of the CAT NMS Plan**

The Executed Share Model satisfies the funding principles set forth in Section 11.2(a) of the CAT NMS Plan, as proposed to be modified herein. Section 11.2(a) requires the Operating Committee, in establishing the funding of the Company, to seek “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.”

First, by adopting a CAT-specific fee tied directly to CAT costs, the Operating Committee would be fully transparent regarding the costs of the CAT and how those costs would be allocated among CAT Reporters. The CAT fees would be designed solely to cover CAT costs, and no other regulatory costs. In contrast, charging a general regulatory fee, which might otherwise be used to cover CAT costs as well as other regulatory costs, would be less transparent than the selected approach of charging a fee designated to cover CAT-related costs only. Such a general regulatory fee could cover a variety of regulatory costs without differentiating those costs related to the CAT.

Second, the Executed Share Model would provide a predictable revenue stream for the Company. The Executed Share Model is designed to collect the annual CAT costs each year, thereby providing for a predictable revenue stream. In addition, to address the possibility of some variability in the collected CAT fees, an unexpected increase in costs or variations from the budgeted costs or projected executed equivalent share volume of transactions in Eligible Securities, the CAT costs covered by the Executed Share Model would include an operational reserve. The operational reserve could be used in the event that the total CAT fees collected differ from the actual CAT costs. Moreover, the Executed Share Model includes a method for adjusting the calculation of the Fee Rate during the year if there are changes in the projected total volume of transactions in Eligible Securities or the CAT costs.

Third, as discussed above, the Executed Share Model provides for a revenue stream for the Company that is aligned with the anticipated costs to build, operate and administer the CAT and the other costs of the Company. The total CAT fees to be collected from CAT Reporters are designed to cover the CAT costs. Any surpluses collected would be treated as an operational reserve to offset future fees and would not be distributed to the Participants as profits.<sup>65</sup>

**b. Funding Principle: Section 11.2(b) of the CAT NMS Plan**

The Executed Share Model satisfies the funding principle set forth in Section 11.2(b) of the CAT NMS Plan, as proposed to be amended herein, which would require the Operating Committee to seek “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.” As described in more detail below, the Executed Share Model establishes an allocation of Company’s related costs among Participants and Industry Members that is consistent with the Exchange Act. In addition, as described in more detail below, the Executed Share Model provides for an equitable allocation of reasonable dues, is not unfairly discriminatory and does not impose a burden on competition that is not necessary or appropriate in furtherance of the Exchange Act. In addition, the Executed Share Model takes into account

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<sup>65</sup> CAT NMS Plan Approval Order at 84792.

the timeline for implementation of the CAT. The CAT fees are designed to cover the CAT costs for each relevant period.

**c. Funding Principle: Section 11.2(c) of the CAT NMS Plan**

The Executed Share Model satisfies the funding principle set forth in Section 11.2(c) of the CAT NMS Plan, as proposed to be modified herein. Section 11.2(c), as proposed to be modified herein, requires the Operating Committee to seek “to establish a 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.” The Executed Share Model requires Participants and Industry Members to pay a fee based upon the executed equivalent share volume of transactions in Eligible Securities.

**d. Funding Principle: Section 11.2(d) of the CAT NMS Plan**

The Executed Share Model satisfies the funding principle set forth in Section 11.2(d) of the CAT NMS Plan, which requires the Operating Committee to seek “to provide for ease of billing and other administrative functions.” The Executed Share Model satisfies this principle in several ways. The Executed Share Model is modeled after the existing Section 31-related fee programs, with which the Participants and Industry Members have a longstanding familiarity. The Executed Share Model relies upon a basic calculation using a predetermined Fee Rate along with an Industry Member or Participant’s own information regarding its executed equivalent share volume, thereby making the fee determination a straightforward process.

Furthermore, the Executed Share Model provides CAT Reporters with predictable CAT fees. Because the Fee Rate is established in advance for a relevant time period, Participants, CBBs and CBSs know the CAT fee that applies to each transaction when it occurs. Accordingly, Participants, CBBs and CBSs are able to easily estimate and validate their applicable fees based on their own trading data. In addition, to the extent any CAT fees are passed on to customers, the customers, too, can calculate the applicable CAT fee for each transaction.

**e. Funding Principle: Section 11.2(e) of the CAT NMS Plan**

The Executed Share Model satisfies the funding principle set forth in Section 11.2(e) of the CAT NMS Plan, which requires the Operating Committee to seek “to avoid any disincentives such as placing an inappropriate burden on competition and a reduction in market quality.” The Executed Share Model would operate in a manner similar to the funding models employed by the SEC and the Participants related to Section 31 of the Exchange Act, the FINRA TAF and the ORF. These fees are long-standing, and have been approved by the Commission as satisfying the requirements under the Exchange Act, including not imposing a burden on the competition that is not necessary or appropriate under the Exchange Act. In addition, the Executed Share Model avoids potentially burdensome fees for market makers or other market participants based on message traffic. Furthermore, the Executed Share Model addresses the specific trading characteristics of Listed Options and OTC Equity Securities to avoid adverse effects of the trading of those instruments. For example, the Executed Share Model also includes the

discounting of transactions involving OTC Equity Shares which, given the volume of shares typically involved in such securities transactions, otherwise may result in disproportionate fees to market participants transaction these securities.

The Executed Share Model also would not unfairly burden FINRA or any of the exchanges. The Executed Share Model is designed to be neutral as to the manner of execution and place of execution. The CAT fees would be the same regardless of whether the transaction is executed on an exchange or in the over-the-counter market. All Participants are SROs that have the same regulatory responsibilities under the Exchange Act. Their usage of CAT Data will be for the same regulatory purposes. By treating each Participant the same, the CAT fees would not become a competitive issue by and among the Participants.

The Executed Share Model also would not unfairly burden CBBs and CBSs. The Operating Committee determined to charge CBBs and CBSs, rather than Industry Members buyers and sellers more generally, because such a fee collection model is currently used and well-known in the securities markets. For example, SRO members regularly rely on their clearing firms to assist with the payment of SRO fees. As a result, the CAT fees could be paid by Industry Members without requiring significant and potentially costly changes. In addition, this approach would limit the number of Industry Members charged a CAT fee to a few hundred, rather than a few thousand, thereby limiting the costs for collecting the fees. Moreover, the CBBs and CBSs would be permitted, but not required, to pass their CAT fees through to their customers, who, in turn, could pass their CAT fees to their customers, until the fee is imposed on the ultimate participant in the transaction. With such a pass through, the CBBs and CBSs would not ultimately incur the cost of all CAT fees related to the transactions that they clear.

**f. Funding Principle: Section 11.2(f) of the CAT NMS Plan**

The Executed Share Model satisfies the funding principle set forth in Section 11.2(f) of the CAT NMS Plan, which requires the Operating Committee to seek “to build financial stability to support the Company as a going concern.” The Operating Committee believes that the Executed Share Model is structured to collect sufficient funds to pay for the cost of the CAT going forward. In addition, the Executed Share Model would collect an operational reserve for the CAT. This operational reserve is intended to address potential shortfalls in collected CAT fees versus actual CAT costs. Moreover, the Executed Share Model includes a method for adjusting the calculation of the Fee Rate during the year if there are changes in the projected total volume of transactions in Eligible Securities or the CAT costs.

**g. Section 11.1(c) of the CAT NMS Plan**

The Executed Share Model would satisfy the requirements in Section 11.1(c) of the CAT NMS Plan. Section 11.1(c) of the CAT NMS Plan states that “[t]o fund the development and implementation of the CAT, the Company shall time the imposition and collection of all fees on Participants and Industry Members in a manner reasonably related to the timing when the Company expects to incur such development and implementation costs.” The CAT fees are

designed to cover the CAT costs for a relevant period. As such, on a going forward basis, they are designed to be imposed close in time to when costs are incurred.

Section 11.1(c) of the CAT NMS Plan also requires that “[a]ny surplus of the Company’s resources over its expenses shall be treated as an operational reserve to offset future fees.” The Company would operate on a “break-even” basis, with fees imposed to cover costs and an appropriate reserve. Any surpluses would not be distributed to the Participants as profits.<sup>66</sup> In addition, as set forth in Article VIII of the CAT NMS Plan, the Company “intends to operate in a manner such that it qualifies as a ‘business league’ within the meaning of Section 501(c)(6) of the [Internal Revenue] Code.” To qualify as a business league, an organization must “not [be] organized for profit and no part of the net earnings of [the organization can] inure[] to the benefit of any private shareholder or individual.”<sup>67</sup> As the SEC stated when approving the CAT NMS Plan, “the Commission believes that the Company’s application for Section 501(c)(6) business league status addresses issues raised by commenters about the Plan’s proposed allocation of profit and loss by mitigating concerns that the Company’s earnings could be used to benefit individual Participants.”<sup>68</sup> The Internal Revenue Service has determined that the Company is exempt from federal income tax under Section 501(c)(6) of the Internal Revenue Code.

#### **h. Equitable Allocation of Reasonable Fees**

The proposed CAT fees provide for the “equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities necessary or appropriate in furtherance of the purposes of this chapter,”<sup>69</sup> as required by the Exchange Act. The Operating Committee believes that the CAT fees equitably allocate CAT costs between and among Participants and Industry Members, as discussed in detailed above. For the reasons discussed above, the Operating Committee believes that the allocation of one-third of the CAT costs each to Participants, CBBs and CBSs in the Executed Share Model as well as the use of the total equivalent share volume of transactions in Eligible Securities for allocating costs provide for an equitable allocation of CAT costs among CAT Reporters.

The Operating Committee also believes that the Executed Share Model would provide for reasonable fees. The transaction-based fees contemplated by the Executed Share Model are a reasonable fee structure. The SROs have a long history of charging transaction-based fees, as transactions are the intended economic goal of the securities markets. In addition to the transaction-based regulatory fees discussed above (*e.g.*, the SROs’ Section 31-related fees, the FINRA TAF and the ORF), the SROs charge a variety of other types of transaction fees to fund their operations.<sup>70</sup> Indeed, each of the SROs collect transaction-based fees from their members.<sup>71</sup> In each case, the transaction-based fees charged by SROs have been subject to the fee filing process and found to satisfy the requirements of the Exchange Act. Not only is the type of fee

<sup>66</sup>

*Id.*

<sup>67</sup> 26 U.S.C. 501(c)(6).

<sup>68</sup> CAT NMS Plan Approval Order at 84793.

<sup>69</sup> Sections 6(b)(4) and 15A(b)(5) of the Exchange Act.

<sup>70</sup> The SEC has noted that SRO transaction fees account for a significant portion of SRO revenue. Securities Exchange Act Rel. No. 50700 (Nov. 18, 2004); 69 Fed. Reg. 71256, 71271 (Dec. 8, 2004).

<sup>71</sup> *See, e.g.*, NYSE Price List; Nasdaq Price List.

reasonable, but the level of the fee is reasonable as well. Although the exact Fee Rate to be paid for any particular period will be determined at a later date, the illustrative example provides a per-transaction Fee Rate that is not excessive in comparison to existing transaction fee rates.

**i. No Unfair Discrimination**

The Executed Share Model is “not designed to permit unfair discrimination between customers, issuers, brokers, or dealers,”<sup>72</sup> as required by the Exchange Act. In addition, the Executed Share Model does not unfairly discriminate between Industry Members and Participants, among Industry Members or among Participants. Both Participants and Industry Members would contribute to the cost of the CAT; Participants alone would no longer be required to shoulder the burden without the contribution of Industry Members. In addition, both Participants and Industry Members would pay a fee based on the total equivalent share volume of their transactions in Eligible Securities; the type of metric would not vary based on whether the CAT Reporter is an Industry Member or Participant.

Furthermore, the Fee Rate would be the same regardless of the type of venue a trade was executed on, or how the trade ultimately occurred more generally (*e.g.*, in a manner that generated more message traffic). In addition, the Executed Share Model recognizes the different trading characteristics of Listed Options and OTC Equity Securities as compared to NMS Stocks. The Executed Share Model recognizes that Listed Option trade in contracts rather than shares, and, therefore, counts the executed equivalent shares for Listed Options accordingly. 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 the CAT fees. Furthermore, although the fee would be charged to the CBB and the CBS, the CBB and CBS may pass through the fee to their clients. Therefore, CBBs and CBSs would not need to bear all the CAT costs for Industry Members. As a result, the Executed Share Model would not favor or unfairly burden any one type of trading venue, product or product type.

With the elimination of tiers, fees for Industry Members and Participants are directly related to their executed equivalent share volume of their transactions. With tiers, the relationship between a CAT Reporter’s share volume and the CAT fee would not have been as direct.

**j. No Burden on Competition**

The Executed Share Model does “not impose any burden on competition not necessary or appropriate in furtherance of the purposes of this chapter,”<sup>73</sup> as required by the Exchange Act. Moreover, the Operating Committee believes that the proposed fee schedule fairly and equitably allocates costs among CAT Reporters. The Executed Share Model would operate in a manner similar to the funding model employed by the SEC and the Participants related to Section 31 of

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<sup>72</sup> Sections 6(b)(5) and 15A(b)(6) of the Exchange Act.

<sup>73</sup> Sections 6(b)(8) and 15A(b)(9) of the Exchange Act.



the Exchange Act as well as the FINRA TAF<sup>74</sup> and the ORF rules, and these long-standing fees to cover regulatory costs have been approved by the Commission as satisfying the requirements under the Exchange Act, including not imposing a burden on the competition that is not necessary or appropriate under the Exchange Act. Furthermore, the Executed Share Model does not impose a burden on competition for reasons set forth above in Section A.8.e above.

**B. Governing or Constituent Documents**

Not applicable.

**C. Implementation of Amendment**

The Participants are filing this proposed amendment pursuant to Rule 608(b)(1) of Regulation NMS under the Exchange Act.<sup>75</sup>

**D. Development and Implementation Phases**

The Participants expect to implement the proposed Participant CAT fees upon approval by the SEC, provided, however, that the Participant CAT fees would not be collected unless the Industry Member CAT fees for the same time period are effective at that time.

**E. Analysis of Impact on Competition**

The Operating Committee does not believe that the proposed amendment would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The Operating Committee notes that the proposed amendment implements provisions of the CAT NMS Plan approved by the Commission, subject to proposed revisions to the CAT NMS Plan described above, and is designed to assist the Participants in meeting their regulatory obligations pursuant to the Plan. Because all Participants are subject to the Executed Share Model set forth in the proposed amendment, this is not a competitive filing that raises competition issues between and among the Participants. Furthermore, for the reasons discussed above, including in Sections A.8.e and A.8.j above, the Operating Committee does not believe that the Executed Share Model would result in any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Exchange Act.

**F. Written Understanding or Agreements Relating to Interpretation of, or Participation in, Plan.**

Not applicable.

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<sup>74</sup> Although the FINRA TAF is designed to cover a subset of the costs of FINRA services (*e.g.*, costs to FINRA of the supervision and regulation of members, including performing examinations, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities) rather than all of FINRA's costs like the CAT, the transaction-based calculation of the FINRA TAF and the proposed CAT fees are similar.

<sup>75</sup> 17 CFR § 242.608(b)(1).

**G. Approval by Plan Sponsors in Accordance with Plan**

Section 12.3 of the CAT NMS Plan states that, subject to certain exceptions, the CAT NMS Plan may be amended from time to time only by a written amendment, authorized by the affirmative vote of not less than two-thirds of all of the Participants, that has been approved by the SEC pursuant to Rule 608 of Regulation NMS under the Exchange Act or has otherwise become effective under Rule 608 of Regulation NMS under the Exchange Act. In addition, Section 4.3(a)(vi) of the Plan requires the Operating Committee, by Majority Vote, to authorize action to determine the appropriate funding-related policies, procedures and practices-consistent with Article XI. The Operating Committee has satisfied both of these requirements. In addition, the Executed Share Model was discussed and voted on during a general session of the Operating Committee.

**H. Description of Operation of Facility Contemplated by the Proposed Amendment**

Not applicable.

**I. Terms and Conditions of Access**

Not applicable.

**J. Method of Determination and Imposition, and Amount of, Fees and Charges**

Section A of this letter describes in detail how the Participants developed the Executed Share Model for the CAT.

**K. Method and Frequency of Processor Evaluation**

Not applicable.

**L. Dispute Resolution**

Section 11.5 of the CAT NMS Plan addresses the resolution of disputes regarding CAT fees charged to Participants and Industry Members. Specifically, Section 11.5 of the CAT NMS Plan states that

[d]isputes with respect to fees the Company charges Participants pursuant to Article XI of the CAT NMS Plan shall be determined by the Operating Committee or a Subcommittee designated by the Operating Committee. Decisions by the Operating Committee or such designated Subcommittee on such matters shall be binding on Participants, without prejudice to the rights of any Participant to seek redress from the SEC pursuant to Rule 608 of Regulation NMS under the Exchange Act or in any other appropriate forum.

In addition, the Participants adopted rules to establish the procedures for resolving potential disputes related to CAT fees charged to Industry Members.<sup>76</sup>

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Thank you for your attention to this matter. Please contact me at (212) 229-2455 if you have any questions or comments.

Respectfully submitted,



Michael Simon  
CAT NMS Plan Operating Committee Chair

cc: The Hon. Gary Gensler, Chair  
The Hon. Allison Herren Lee, Commissioner  
The Hon. Hester M. Peirce, Commissioner  
The Hon. Caroline A. Crenshaw, Commissioner  
Mr. Hugh Beck, Senior Advisor for Regulatory Reporting  
Mr. Haoxiang Zhu, Director, Division of Trading and Markets  
Mr. David S. Shillman, Associate Director, Division of Trading and Markets  
Mr. David Hsu, Assistant Director, Division of Trading and Markets  
Mr. Mark Donohue, Senior Policy Advisor, Division of Trading and Markets  
Ms. Erika Berg, Special Counsel, Division of Trading and Markets  
CAT NMS Plan Participants

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<sup>76</sup> See Securities Exchange Act Rel. No. 81500 (Aug. 30, 2017), 82 Fed. Reg. 42143 (Sept.6, 2017).

## EXHIBIT A

Additions underlined; deletions [bracketed]

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### ARTICLE I

#### DEFINITIONS

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**[“Execution Venue” means 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).]**

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### ARTICLE XI

#### FUNDING OF THE COMPANY

##### **Section 11.1. Funding Authority.**

(a) On an annual basis the Operating Committee shall approve an operating budget for the Company. The budget shall 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.

(b) 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.”

(c) To fund the development and implementation of the CAT, the Company shall time the imposition and collection of all fees on Participants and Industry Members in a manner reasonably related to the timing when the Company expects to incur such development and implementation costs. In determining fees on Participants and Industry Members the Operating Committee shall take into account fees, costs and expenses (including legal and consulting fees and expenses) incurred by the Participants on behalf of the Company prior to the Effective Date in connection with the creation and implementation of the CAT, and such fees,

costs and expenses shall be fairly and reasonably shared among the Participants and Industry Members. Any surplus of the Company's revenues over its expenses shall be treated as an operational reserve to offset future fees.

(d) Consistent 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. **[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.]**

**Section 11.2. Funding Principles.** In establishing the funding of the Company, the Operating Committee shall seek:

(a) 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;

(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];**

(c) to establish a **[tiered]** fee structure in which the fees charged to **[: (i) Participants and [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 the executed equivalent share volume of transactions in Eligible Securities [message traffic; and (iii) 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)]].**

(d) to provide for ease of billing and other administrative functions;

(e) to avoid any disincentives such as placing an inappropriate burden on competition and a reduction in market quality; and

(f) to build financial stability to support the Company as a going concern.

**Section 11.3. Recovery.**

(a) The Operating Committee will establish [fixed] fees to be payable by **Participants [Execution Venues] as follows [provided in this Section 11.3(a)]:**

(i) **Each Participant that is a national securities exchange will be required to pay a fee for each transaction in Eligible Securities executed on the exchange based on CAT Data. Each Participant that is a national securities association will be required to pay a fee for each transaction in Eligible Securities executed otherwise than on an exchange based on CAT Data.**

(ii) **The 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 applicable fee rate for the relevant period (“Fee Rate”).**

(iii) **Participants will be required to pay a CAT fee with regard to CAT costs not previously paid by the Participants (“Prospective CAT Costs”). The Fee Rate for the CAT fees related to Prospective CAT Costs will be calculated by dividing the budgeted CAT costs for the relevant period (as determined by the Operating Committee) by the projected total executed equivalent share volume of all transactions in Eligible Securities for the relevant period based on CAT Data.**

(iv) **Notwithstanding anything to contrary, Participants will not be required to a pay a CAT fee related to CAT costs previously paid by the Participants in a manner determined by the Operating Committee (“Past CAT Costs”).**

(i) Each Execution Venue that: (A) executes transactions; or (B) in the case of a national securities association, has trades reported by its members to its trade reporting facility or facilities for reporting transactions effected otherwise than on an exchange, in NMS Stocks or OTC Equity Securities will pay a fixed fee depending on the market share of that Execution Venue in NMS Stocks and OTC Equity Securities, with the Operating Committee establishing at least two and no more than five tiers of fixed fees, based on an Execution Venue’s NMS Stocks and OTC Equity Securities market share. For these purposes, market share for Execution Venues that execute transactions will be calculated by share volume, and market share for a national securities association that has trades reported by its members to its trade reporting facility or facilities for reporting transactions effected otherwise than on an exchange in NMS Stocks or OTC Equity Securities will be calculated based on share volume of trades reported, provided, however, that the share volume reported to such national securities association by an Execution Venue shall not be included in the calculation of such national security association’s market share.]

(ii) Each Execution Venue that executes transactions in Listed Options will pay a fixed fee depending on the Listed Options market share of that Execution Venue, with the Operating Committee establishing at least two and no more than five tiers of fixed fees, based on an Execution Venue’s Listed Options market share. For these purposes, market share will be calculated by contract volume.]

(b) The Operating Committee will establish [fixed] fees to be payable by Industry Members as follows:

**(i) Each Industry Member that is the clearing firm for the buyer in a transaction in Eligible Securities (“Clearing Broker for the Buyer” or “CBB”) will be required to pay a fee for each such transaction in Eligible Securities based on CAT Data. The CBB’s 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.**

**(ii) Each Industry Member that is the clearing firm for the seller in a transaction in Eligible Securities (“Clearing Broker for the Seller” or “CBS”) will be required to pay a fee for each transaction in Eligible Securities based on CAT Data. The CBS’s 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.** [, based on the message traffic generated by such Industry Member, with the Operating Committee establishing at least five and no more than nine tiers of fixed fees, based on message traffic. For the avoidance of doubt, the fixed fees payable by Industry Members pursuant to this paragraph shall, in addition to any other applicable message traffic, include message traffic generated by: (i) an ATS that does not execute orders that is sponsored by such Industry Member; and (ii) routing orders to and from any ATS sponsored by such Industry Member.]

**(iii) CBBs and CBSs will be required to pay CAT fees related to Past CAT Costs. The Fee Rate for the CAT fees related to Past CAT Costs will be calculated by dividing the Past CAT Costs for the relevant period (as determined by the Operating Committee) by the projected total executed equivalent share volume of all transactions in Eligible Securities for the relevant period based on CAT Data.**

**(iv) CBBs and CBSs will be required to pay CAT fees related to Prospective CAT Costs. The Fee Rate for the CAT fees related to Prospective CAT Costs will be the same as set forth in paragraph (a)(iv) above.**

(c) The Operating Committee may establish any other fees ancillary to the operation of the CAT that it reasonably determines appropriate, including fees: (i) for the late or inaccurate reporting of information to the CAT; (ii) for correcting submitted information; and (iii) based on access and use of the CAT for regulatory and oversight purposes (and not including any reporting obligations).

(d) The Company shall make publicly available a schedule of effective fees and charges adopted pursuant to this Agreement as in effect from time to time. The Operating Committee shall review such fee schedule on at least an annual basis and shall make any changes to such fee schedule that it deems appropriate. The Operating Committee is authorized to review such fee schedule on a more regular basis, but shall not make any changes on more than a

semiannual basis unless, pursuant to a Supermajority Vote, the Operating Committee concludes that such change is necessary for the adequate funding of the Company.

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## **APPENDIX B**

### **Fee Schedule**

#### **Consolidated Audit Trail Funding Fees for Participants**

##### **(a) CAT Fee**

**(1) Each Participant that is a national securities exchange shall pay a fee for each transaction in Eligible Securities executed on the exchange based on CAT Data, where the fee for each transaction will be calculated by multiplying the number of executed equivalent shares in the transaction by one-third and by the Fee Rate.**

**(2) Each Participant that is a national securities association shall pay a fee for each transaction in Eligible Securities executed otherwise than on exchange based on CAT Data, where the fee for each transaction will be calculated by multiplying the number of executed equivalent shares in the transaction by one-third and by the Fee Rate.**

##### **(b) Fee Rate**

**(1) The Operating Committee will calculate the Fee Rate at the beginning of each year by dividing the budgeted CAT costs for the year by the projected total executed equivalent share volume of all transactions in Eligible Securities for the year. After setting the Fee Rate at the beginning of each year, the Fee Rate may be adjusted once during the year, if necessary, due to changes in the budgeted or actual costs or projected or actual total executed equivalent share volume during the year.**

**(2) For purposes of calculating the fees, executed equivalent shares in a transaction in Eligible Securities will be counted as follows:**

**(i) each executed share for a transaction in NMS Stocks will be counted as one executed equivalent share;**

**(ii) each executed contract for a transaction in Listed Options will be counted based on the multiplier applicable to the specific Listed Option (i.e., 100 executed equivalent shares or such other applicable multiplier); and**

**(iii) each executed share for a transaction in OTC Equity Securities shall be counted as 0.01 executed equivalent share.**



**(3) Budgeted CAT Costs. The budgeted CAT costs for the year shall be comprised of all fees, costs and expenses 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.**

**(4) Projected Total Executed Equivalent Share Volume of Transactions in Eligible Securities. The Operating Committee shall determine the projected total executed equivalent share volume of all transactions in Eligible Securities for each relevant period based on the executed equivalent share volume of all transactions in Eligible Securities for the prior six months.**

**(c) Fee Payments/Collection. Each Participant shall pay the CAT fee set forth in paragraph (a) 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 the prior month.**

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## EXHIBIT B

The following sets forth an illustrative example of CAT fees calculated under the Executed Share Model based on the budgeted annual CAT Costs for 2022 and the actual total executed equivalent share volume of transactions in Eligible Securities in 2021. Note Exhibit B only provides an illustrative example of how the Executed Share Model would operate; the calculation of actual fees will differ from this example in various ways. For example, the Participants have paid or will have paid some or all of these costs up to the time of any SEC approval of the Executed Share Model, and, as a result, Participants would not be obligated to pay CAT fees related to 2022 CAT costs to the extent the Participants have already paid such costs. In addition, the illustrative example calculates the fee rate using the total executed equivalent share transactions in Eligible Securities for 2021, rather than the projected volume for 2022 based on the previous six months. Furthermore, the CAT Reporters' monthly CAT fee is not based on the CAT Reporters' transactions from the prior month; instead, it is calculated by using each CAT Reporter's transactions in 2021 and dividing the result by twelve.

### CAT FEE EXAMPLE FOR ILLUSTRATIVE PURPOSES ONLY

Budgeted CAT Costs for 2022: \$165,841,447.00  
 Total Executed Equivalent Share Volume of Transactions  
 in Eligible Securities for 2021: 3,963,697,612,395  
 Fee Rate: \$0.0000418401 per executed equivalent share

### PARTICIPANT CAT FEES

Participant	Executed Equivalent Share Volume of Transactions in Eligible Securities for 2021	Annual CAT Fee <sup>77</sup>	Monthly CAT Fee
1	46,400,250,500	\$647,130.15	\$53,927.51
2	204,330,644,337	\$2,849,737.21	\$237,478.10
3	40,241,451,971	\$561,235.26	\$46,769.61
4	37,837,901,411	\$527,713.68	\$43,976.14
5	239,781,829,838	\$3,344,164.09	\$278,680.34
6	149,570,501,700	\$2,086,014.19	\$173,834.52
7	36,318,789,800	\$506,527.09	\$42,210.59
8	1,361,484,729,008	\$18,988,212.50	\$1,582,351.04
9	64,139,149,375	\$894,529.16	\$74,544.10
10	51,910,120,400	\$723,974.63	\$60,331.22

<sup>77</sup> Under the Executed Share Model, Participants, CBBs and CBSs will pay a monthly fee based on actual executed equivalent share volume for the prior calendar month. The annual CAT fee is provided here for informational purposes only.

Participant	Executed Equivalent Share Volume of Transactions in Eligible Securities for 2021	Annual CAT Fee <sup>77</sup>	Monthly CAT Fee
11	55,784,034,310	\$778,002.92	\$64,833.58
12	38,683,005,800	\$539,500.09	\$44,958.34
13	531,025,057,170	\$7,406,044.60	\$617,170.38
14	30,117,744,430	\$420,043.00	\$35,003.58
15	135,340,379,281	\$1,887,551.01	\$157,295.92
16	62,342,194,800	\$869,467.59	\$72,455.63
17	39,349,215,400	\$548,791.51	\$45,732.63
18	14,998,526,300	\$209,179.87	\$17,431.66
19	277,173,161,059	\$3,865,649.59	\$322,137.47
20	345,397,838,631	\$4,817,158.37	\$401,429.86
21	90,011,105,331	\$1,255,357.45	\$104,613.12
22	30,979,556,597	\$432,062.43	\$36,005.20
23	5,507,340,998	\$76,809.21	\$6,400.77
24	5,581,710	\$77.85	\$6.49
25	74,967,502,238	\$1,045,548.90	\$87,129.08

**INDUSTRY MEMBER CAT FEES<sup>78</sup>**

CBBs & CBSs	Executed Equivalent Share Volume of Transactions in Eligible Securities for 2021	Annual CAT Fee	Monthly CAT Fee
1	859,841,671,740	\$11,991,949.69	\$999,329.14
2	778,256,091,356	\$10,854,100.47	\$904,508.37
3	740,559,440,045	\$10,328,356.76	\$860,696.40
4	536,740,052,223	\$7,485,749.89	\$623,812.49
5	467,988,393,675	\$6,526,891.47	\$543,907.62
6	380,556,173,472	\$5,307,500.95	\$442,291.75

<sup>78</sup> The Operating Committee recognizes that an Industry Member's knowledge of its own fees in the illustrative example would be helpful in analyzing the Executed Share Model. Accordingly, if a CBB or CBS is interested in learning which anonymized CBB or CBS in the illustrative example represents its volume and fees, the CBB or CBS may contact the FINRA CAT Helpdesk by email at [help@finracat.com](mailto:help@finracat.com). Industry Members other than CBBs and CBSs will not be charged a fee under the Executed Share Model; however, CBBs and CBSs may choose to pass-through CAT fees to such Industry Members. Therefore, if an Industry Member other than a CBB or CBS is interested in learning its associated volume in the illustrative example and potential fee (assuming the CBB or CBS passes the fee through), the Industry Member may also contact the FINRA Helpdesk by email at [help@finracat.com](mailto:help@finracat.com). Accordingly, subject to verification of the identity of the requesting party as an authorized representative of the relevant Industry Member, the Helpdesk will provide the authorized representative of the CBB or CBS with the number of the applicable anonymized CBB or CBS in [Exhibit B](#), or the authorized representative of the Industry Member other than the CBB or CBS with its associated volume and potential pass-through fee from the illustrative example.

CBBs & CBSs	Executed Equivalent Share Volume of Transactions in Eligible Securities for 2021	Annual CAT Fee	Monthly CAT Fee
7	350,408,314,337	\$4,887,037.94	\$407,253.16
8	316,955,750,074	\$4,420,485.23	\$368,373.77
9	312,687,014,481	\$4,360,950.47	\$363,412.54
10	291,608,017,108	\$4,066,968.12	\$338,914.01
11	285,766,444,467	\$3,985,497.49	\$332,124.79
12	257,779,680,900	\$3,595,174.63	\$299,597.89
13	220,269,528,700	\$3,072,031.97	\$256,002.66
14	145,075,274,359	\$2,023,320.63	\$168,610.05
15	141,826,246,034	\$1,978,007.42	\$164,833.95
16	139,111,829,825	\$1,940,150.28	\$161,679.19
17	126,903,666,123	\$1,769,886.75	\$147,490.56
18	117,993,448,569	\$1,645,618.66	\$137,134.89
19	109,530,158,500	\$1,527,583.73	\$127,298.64
20	108,170,149,680	\$1,508,616.10	\$125,718.01
21	94,948,734,900	\$1,324,221.06	\$110,351.76
22	80,808,074,508	\$1,127,005.58	\$93,917.13
23	77,877,312,671	\$1,086,131.14	\$90,510.93
24	71,627,190,900	\$998,962.60	\$83,246.88
25	65,979,744,166	\$920,199.38	\$76,683.28
26	62,476,795,435	\$871,344.82	\$72,612.07
27	59,962,856,615	\$836,283.68	\$69,690.31
28	53,277,619,100	\$743,046.71	\$61,920.56
29	48,251,539,722	\$672,949.52	\$56,079.13
30	43,794,466,264	\$610,788.07	\$50,899.01
31	40,818,110,970	\$569,277.75	\$47,439.81
32	39,413,060,847	\$549,681.95	\$45,806.83
33	25,642,997,831	\$357,635.07	\$29,802.92
34	24,274,017,616	\$338,542.32	\$28,211.86
35	24,265,127,300	\$338,418.33	\$28,201.53
36	23,768,492,482	\$331,491.92	\$27,624.33
37	20,802,708,100	\$290,129.03	\$24,177.42
38	20,019,521,644	\$279,206.17	\$23,267.18
39	18,035,978,054	\$251,542.29	\$20,961.86
40	16,828,270,736	\$234,698.76	\$19,558.23
41	16,627,104,316	\$231,893.16	\$19,324.43
42	16,270,456,203	\$226,919.09	\$18,909.92
43	15,560,896,419	\$217,023.08	\$18,085.26
44	15,340,132,696	\$213,944.15	\$17,828.68
45	14,357,387,825	\$200,238.11	\$16,686.51

CBBs & CBSs	Executed Equivalent Share Volume of Transactions in Eligible Securities for 2021	Annual CAT Fee	Monthly CAT Fee
46	13,794,427,204	\$192,386.67	\$16,032.22
47	10,844,249,411	\$151,241.44	\$12,603.45
48	10,345,612,840	\$144,287.11	\$12,023.93
49	10,047,142,100	\$140,124.43	\$11,677.04
50	9,676,729,440	\$134,958.40	\$11,246.53
51	9,525,189,150	\$132,844.91	\$11,070.41
52	9,497,695,858	\$132,461.47	\$11,038.46
53	9,141,959,858	\$127,500.13	\$10,625.01
54	9,111,887,600	\$127,080.72	\$10,590.06
55	8,246,296,500	\$115,008.58	\$9,584.05
56	7,409,804,367	\$103,342.28	\$8,611.86
57	5,943,333,522	\$82,889.86	\$6,907.49
58	5,537,962,838	\$77,236.28	\$6,436.36
59	4,969,306,436	\$69,305.40	\$5,775.45
60	4,858,930,658	\$67,766.02	\$5,647.17
61	4,724,287,600	\$65,888.20	\$5,490.68
62	4,688,574,389	\$65,390.12	\$5,449.18
63	4,619,665,921	\$64,429.07	\$5,369.09
64	4,586,579,797	\$63,967.63	\$5,330.64
65	4,552,355,173	\$63,490.31	\$5,290.86
66	4,530,370,991	\$63,183.70	\$5,265.31
67	4,432,887,822	\$61,824.14	\$5,152.01
68	4,188,226,789	\$58,411.92	\$4,867.66
69	4,095,928,162	\$57,124.66	\$4,760.39
70	3,615,599,600	\$50,425.67	\$4,202.14
71	3,411,736,434	\$47,582.45	\$3,965.20
72	3,411,224,100	\$47,575.30	\$3,964.61
73	3,290,953,800	\$45,897.93	\$3,824.83
74	3,199,333,714	\$44,620.13	\$3,718.34
75	2,924,604,582	\$40,788.57	\$3,399.05
76	2,888,374,000	\$40,283.27	\$3,356.94
77	2,839,512,902	\$39,601.82	\$3,300.15
78	2,659,506,700	\$37,091.33	\$3,090.94
79	2,537,489,086	\$35,389.59	\$2,949.13
80	2,459,185,612	\$34,297.51	\$2,858.13
81	2,395,884,300	\$33,414.67	\$2,784.56
82	2,336,005,686	\$32,579.56	\$2,714.96
83	2,328,536,077	\$32,475.38	\$2,706.28
84	2,006,993,344	\$27,990.92	\$2,332.58

CBBs & CBSs	Executed Equivalent Share Volume of Transactions in Eligible Securities for 2021	Annual CAT Fee	Monthly CAT Fee
85	1,991,341,100	\$27,772.63	\$2,314.39
86	1,926,691,600	\$26,870.98	\$2,239.25
87	1,818,491,446	\$25,361.95	\$2,113.50
88	1,807,513,774	\$25,208.84	\$2,100.74
89	1,798,384,897	\$25,081.53	\$2,090.13
90	1,499,870,900	\$20,918.24	\$1,743.19
91	1,407,921,581	\$19,635.85	\$1,636.32
92	1,343,940,690	\$18,743.53	\$1,561.96
93	1,292,476,485	\$18,025.78	\$1,502.15
94	1,263,050,400	\$17,615.38	\$1,467.95
95	1,259,148,848	\$17,560.97	\$1,463.41
96	1,239,077,200	\$17,281.03	\$1,440.09
97	1,229,508,300	\$17,147.58	\$1,428.96
98	1,192,809,266	\$16,635.75	\$1,386.31
99	1,161,692,310	\$16,201.77	\$1,350.15
100	1,103,718,859	\$15,393.23	\$1,282.77
101	1,036,854,477	\$14,460.69	\$1,205.06
102	903,767,212	\$12,604.57	\$1,050.38
103	764,853,800	\$10,667.18	\$888.93
104	749,409,514	\$10,451.79	\$870.98
105	736,464,500	\$10,271.25	\$855.94
106	579,536,030	\$8,082.61	\$673.55
107	574,150,273	\$8,007.50	\$667.29
108	554,402,371	\$7,732.08	\$644.34
109	528,767,825	\$7,374.56	\$614.55
110	475,219,998	\$6,627.75	\$552.31
111	439,220,400	\$6,125.67	\$510.47
112	403,544,995	\$5,628.12	\$469.01
113	389,096,923	\$5,426.62	\$452.22
114	352,562,888	\$4,917.09	\$409.76
115	324,569,237	\$4,526.67	\$377.22
116	287,942,268	\$4,015.84	\$334.65
117	279,648,356	\$3,900.17	\$325.01
118	268,773,558	\$3,748.50	\$312.38
119	242,088,969	\$3,376.34	\$281.36
120	240,735,871	\$3,357.47	\$279.79
121	227,696,800	\$3,175.62	\$264.63
122	223,889,862	\$3,122.52	\$260.21
123	219,207,411	\$3,057.22	\$254.77

CBBs & CBSs	Executed Equivalent Share Volume of Transactions in Eligible Securities for 2021	Annual CAT Fee	Monthly CAT Fee
124	215,960,600	\$3,011.94	\$250.99
125	208,506,846	\$2,907.98	\$242.33
126	177,727,500	\$2,478.71	\$206.56
127	175,224,523	\$2,443.80	\$203.65
128	156,286,900	\$2,179.69	\$181.64
129	150,735,418	\$2,102.26	\$175.19
130	148,742,902	\$2,074.47	\$172.87
131	119,952,427	\$1,672.94	\$139.41
132	118,614,304	\$1,654.28	\$137.86
133	95,597,569	\$1,333.27	\$111.11
134	85,976,961	\$1,199.09	\$99.92
135	81,558,800	\$1,137.48	\$94.79
136	73,755,556	\$1,028.65	\$85.72
137	73,265,165	\$1,021.81	\$85.15
138	70,050,100	\$976.97	\$81.41
139	57,611,957	\$803.50	\$66.96
140	50,604,392	\$705.76	\$58.81
141	42,751,230	\$596.24	\$49.69
142	41,893,367	\$584.27	\$48.69
143	36,371,376	\$507.26	\$42.27
144	34,981,349	\$487.87	\$40.66
145	34,223,462	\$477.30	\$39.78
146	32,885,122	\$458.64	\$38.22
147	32,396,791	\$451.83	\$37.65
148	28,510,532	\$397.63	\$33.14
149	23,936,450	\$333.83	\$27.82
150	23,569,357	\$328.71	\$27.39
151	20,131,196	\$280.76	\$23.40
152	19,520,773	\$272.25	\$22.69
153	14,373,735	\$200.47	\$16.71
154	14,322,926	\$199.76	\$16.65
155	12,213,708	\$170.34	\$14.20
156	6,548,894	\$91.34	\$7.61
157	6,017,900	\$83.93	\$6.99
158	3,678,840	\$51.31	\$4.28
159	3,035,249	\$42.33	\$3.53
160	2,036,500	\$28.40	\$2.37
161	1,670,000	\$23.29	\$1.94
162	1,498,709	\$20.90	\$1.74

CBBs & CBSs	Executed Equivalent Share Volume of Transactions in Eligible Securities for 2021	Annual CAT Fee	Monthly CAT Fee
163	1,106,266	\$15.43	\$1.29
164	1,085,833	\$15.14	\$1.26
165	656,400	\$9.15	\$0.76
166	456,577	\$6.37	\$0.53
167	355,000	\$4.95	\$0.41
168	205,844	\$2.87	\$0.24
169	189,206	\$2.64	\$0.22
170	100,000	\$1.39	\$0.12
171	78,367	\$1.09	\$0.09
172	50,000	\$0.70	\$0.06
173	49,658	\$0.69	\$0.06
174	19,500	\$0.27	\$0.02
175	10,000	\$0.14	\$0.01
176	4,200	\$0.06	\$0.00
177	2,200	\$0.03	\$0.00
178	1,379	\$0.02	\$0.00
179	300	\$0.00	\$0.00
180	225	\$0.00	\$0.00
181	125	\$0.00	\$0.00
182	18	\$0.00	\$0.00
183	3	\$0.00	\$0.00