

VIA EMAIL (rule-comments@sec.gov)

August 16, 2022

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

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

Dear Ms. Countryman:

On May 13, 2022, the Consolidated Audit Trail, LLC (“CAT LLC”, on behalf of the Participants¹ in the National Market System Plan Governing the Consolidated Audit Trail (the “CAT NMS Plan” or “Plan”), filed with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed amendment to the CAT NMS Plan.² The SEC published the proposed amendment for comment on May 25, 2022 (“Proposing Release”).³ In the Proposing Release, CAT LLC proposes to amend the CAT NMS Plan⁴ to implement a revised funding model (“Executed Share Model”) for the consolidated audit trail (“CAT”) and to establish a fee schedule for Participant CAT fees in accordance with the Executed Share Model.⁵

Commenters have submitted five comment letters in response to the Proposing Release.⁶ CAT LLC submits this letter to respond to issues raised in these comment letters. This letter is divided into four sections. Section I discusses the details of the Executed Share Model; Section II discusses comments related to CAT costs, including the level and transparency of such costs;

¹ 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, MIAAX Emerald, LLC, MIAAX 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.

² Letter from Michael Simon, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission (May 13, 2022) (“Transmittal Letter”).

³ Securities Exchange Act Rel. No. 94984 (May 25, 2022), 87 Fed. Reg. 33226 (June 1, 2022) (“Proposing Release”).

⁴ The Limited Liability Company Agreement of Consolidated Audit Trail, LLC is the CAT NMS Plan.

⁵ Unless otherwise defined herein, capitalized terms are defined as set forth in the CAT NMS Plan and the Proposing Release.

⁶ See Letter from Marcia E. Asquith, Corporate Secretary, EVP, Board and External Relations, FINRA, to Vanessa Countryman, Secretary, SEC (June 22, 2022) (“FINRA Letter”); Letter from Larry Harris, Fred V. Keenan Chair in Finance, USC Marshall School of Business, to Vanessa Countryman, Secretary, SEC (June 21, 2022) (“Harris Letter”); Letter from Kirsten Wegner, Chief Executive Officer, Modern Markets Initiative, to Vanessa Countryman, Secretary, SEC (June 21, 2022) (“MMI Letter”); Letter from Ellen Greene, Managing Director, Equities & Options Market Structure, SIFMA, to Vanessa Countryman, Secretary, SEC (June 22, 2022) (“SIFMA Letter”); and Letter from Thomas M. Merritt, Deputy General Counsel, Virtu Financial, to Vanessa Countryman, Secretary, SEC (May 25, 2022) (June 22, 2022) (“Virtu Letter”). The comment letters submitted in response to the Proposing Release are available at <https://www.sec.gov/comments/4-698/4-698-a.htm>

Section III addresses comments related to the process for developing the Executed Share Model; and Section IV discusses the filing process for Participant and Industry Member CAT fees under the Executed Share Model. CAT LLC notes that these responses represent the consensus of the Participants, but that all Participants may not fully agree with each response set forth in this letter.

After considering the comments provided, CAT LLC continues to believe 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. The Executed Share Model would provide reasonable fees that are equitably allocated, not unfairly discriminatory, and do not impose an undue burden on competition, in that the model reflects a reasonable effort to allocate costs based on the extent to which different CAT Reporters participate in and benefit from the equities and options markets. Moreover, the Executed Share Model would be consistent with past fee structures that have been approved by the Commission. It also is transparent, would be relatively easy to calculate and administer, and is designed to not have an impact on market activity because it is neutral as to the location and manner of execution. CAT LLC has gone through an extensive process of evaluating and seeking comment on various funding models since the inception of CAT. As the Commission is aware, the Exchange Act does not require CAT LLC to demonstrate that the Executed Share Model is *superior to any other potential proposal*. Instead, CAT LLC must demonstrate that the Executed Share Model is *consistent with the Exchange Act and the rules and regulations thereunder*.⁷ CAT LLC believes that the Executed Share Model satisfies all of the requirements of the Exchange Act and should be approved by the Commission.

I. Executed Share Model

A. Use of Executed Share Volume

1. Cost Alignment

One commenter, FINRA, questions the fairness of using executed share volume to allocate CAT costs, noting in particular that executed share volume “is related to, but not precisely linked to, [a] CAT Reporter’s burden on the CAT.”⁸ FINRA argued that “the Proposal fails to establish a sufficient nexus between executed share volume and the technology burdens that generate CAT costs and fails to relate each reporter group’s allocation to the burden that

⁷ See Rule 608 of Regulation NMS under the Exchange Act. See also Exchange Act Section 19(b)(2)(C) (“The Commission shall approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of this title and the rules and regulations issued under this title that are applicable to such organization.”).

⁸ FINRA Letter at 4.

each reporter group imposes on CAT.”⁹ Contrary to these comments, CAT LLC emphasizes that the Exchange Act requires CAT fees to be reasonable and equitably allocated,¹⁰ and CAT LLC believes that the use of executed share volume satisfies these requirements. The Exchange Act does not require a CAT Reporter’s fees to be a proxy for the CAT Reporter’s cost burden on the CAT, let alone an exact proxy.

Although CAT LLC disagrees with the assertion that the Exchange Act requires the metric for the funding model to be a proxy for each CAT Reporter’s burden on the CAT, CAT LLC notes that executed share volume nevertheless has a nexus to a CAT Reporter’s burden on the CAT. Given the many interrelated factors that contribute to CAT costs, including message traffic, data processing, storage, the complexity of reporting requirements, reporting timelines, infrastructure, connectivity and more, determining the precise cost burden of each CAT Reporter is not feasible.¹¹ Accordingly, CAT LLC analyzed reasonable metrics, and determined that, although executed share volume is not an exact proxy for the cost burden (nor need it be), trading activity provides a reasonable proxy for cost burden on the CAT.¹² Increased trading activity impacts message traffic, data processing, storage and other factors, and thus necessarily correlates with increased cost burden on the CAT. Moreover, Industry Member activity in the market generally is engaged in for the purpose of effecting transactions, and, as a result, it is common for Participants to use transaction-based fees. Therefore, executed share volume is an appropriate metric for allocating CAT costs among CAT Reporters.

The use of executed share volume as the metric for the funding model is an improvement over the message traffic model supported by FINRA.¹³ FINRA notes that CAT LLC argued in 2017 that message traffic is a “key component” of CAT costs.¹⁴ However, based on a subsequent study of cost drivers for the CAT, it was determined that although message traffic is one factor in the CAT costs, it is not the primary factor.¹⁵ CAT costs are dominated by technology costs, and the predominant technology costs are data processing (*e.g.*, linker) and storage costs. Compute costs represent more than half of all technology costs. While such costs are related in part to message traffic, they are driven by the stringent performance timelines, data complexity and operational requirements in the CAT NMS Plan. The Plan requires that order events be processed, corrected, and made available to regulatory users within established timeframes, including a four-hour window for initial linkage processing.¹⁶ For this reason, among other issues with the message traffic model and other considerations, CAT LLC

⁹ *Id.*

¹⁰ *See, e.g.*, Section 6(b)(4) of the Exchange Act (requiring an “equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities”); *see also* Securities Exchange Act Rel. No. 79318 (Nov. 15, 2016), 81 Fed. Reg. 84696, 84795 (Nov. 23, 2016) (“CAT NMS Plan Approval Order”) (noting 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.”).

¹¹ Proposing Release at 33232.

¹² *Id.*

¹³ FINRA Letter at 8.

¹⁴ *Id.* at 3.

¹⁵ Proposing Release at 33232.

¹⁶ *See* CAT LLC Webinar, CAT Costs (Sept. 21, 2021), available at <https://www.catnmsplan.com/events/cat-costs-september-21-2021>.

determined to shift its focus to the new metric of executed share volume from the message traffic and market share metrics set forth in the CAT NMS Plan as approved.

Despite FINRA’s stated concern about the proposed use of a metric that provides a reasonable, but not perfect, proxy for cost burden, FINRA itself has supported its own regulatory fees with this exact logic. For example, in approving FINRA’s transaction-based trading activity fee (“TAF”), the SEC recognized that transaction volume was closely enough connected to FINRA’s broad regulatory responsibilities to satisfy the statutory standard in the Exchange Act.¹⁷ FINRA proposed a transaction-based TAF to fund its member regulatory activities in a variety of areas such as “sales practices, routine examinations, financial and operational reviews, new member applications, enforcement * * * wherever such member activity occurs.”¹⁸ The SEC noted that “[a]ssessing fees in relation to transactions correlates to heightened NASD responsibilities regarding firms that engage in the trading,”¹⁹ but the fees were not an exact proxy for the costs of such regulatory responsibilities. The SEC noted this lack of a precise correlation:

In most cases, the NASD has direct responsibility to oversee the firm’s dealing with the public in effecting the transactions; the NASD may also have responsibility to oversee the impact of the trading on the firm’s financial condition. In most cases, where responsibility for certain member activities has been allocated to other SROs, the NASD retains responsibility for other member functions.²⁰

Nevertheless, the SEC concluded that “while trading activity is not wholly correlated to the full range of NASD responsibility for members in all instances, the Commission believes that they are closely enough connected to satisfy the statutory standard.”²¹ CAT LLC believes that this same logic is applicable to the proposed Executed Share Model.

2. Previously Recognized Metric

Commenters also questioned CAT LLC’s reference to other transaction-based regulatory fees – such as the TAF, options regulatory fees (“ORFs”) and Section 31-related fees – as support for the proposed transaction-based CAT fee.²² These commenters argued that just because the SROs have been allowed to charge certain transaction-based fees in the past does not mean that the Executed Share Model, as another form of a transaction-based fee, meets the relevant Exchange Act fee standards for CAT fees. CAT LLC, however, does not assert that the CAT fees should be approved merely because the SEC has approved other transaction-based regulatory fees. Rather, CAT LLC cites these regulatory fees as precedent that the SEC has found in variety of contexts that using trading activity as a metric for calculating fees intended to

¹⁷ Securities Exchange Act Rel. No. 47946 (May 30, 2003), 68 Fed. Reg. 34021, 34023 (June 6, 2003) (“TAF Release”).

¹⁸ *Id.* at 34023.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.* at 30424.

²² FINRA Letter at 3-4; SIFMA Letter at 4.

pay for a variety of different types of regulatory activity satisfies the requirements of the Exchange Act. The SEC previously has determined that the Participants' sales value fees related to Section 31, the FINRA TAF and ORFs are consistent with the Exchange Act.²³ Accordingly, CAT fees, which are transaction-based fees intended to pay for the costs related to the CAT, a system created for regulatory surveillance and oversight purposes, would operate in a manner similar to this precedent.²⁴ As with other transaction-based regulatory fees, CAT LLC provided further support for the use of the trading activity metric, including the relationship of trading to CAT costs, as discussed above.

B. Fee Allocation

1. Allocation between Industry Members and Participants

a. One-Third/One-Third/One-Third Allocation Between CBS, CBB and Participant

Commenters requested additional justification for the proposed allocation under the Executed Share Model in which the CBS, the CBB and the relevant Participant each pay one-third of the fee obligation for each transaction, including justification for allocating two-thirds of the costs to Industry Members.²⁵ CAT LLC believes that the proposed allocation between the CBS, CBB and relevant Participant satisfies the requirements of the Exchange Act.

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 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. This allocation is similar to the approach taken with the FINRA TAF, ORFs and Section 31 sales value fees, and also recognizes the role of the market regulator and the buyer in the transaction as well as the seller.

Furthermore, the allocation of two-thirds of the CAT costs to Industry Members and only one-third to Participants recognizes that a substantial portion of CAT costs originate from Industry Members. CAT costs are dominated by technology costs, and the predominant technology costs are data processing (*e.g.*, linker) and storage costs. The data processing and storage costs are related to message traffic and the complexity of the reporting requirements for CAT, which, in turn, are determined by market activity.²⁶ Industry Members are responsible for originating trading activity that necessitates message traffic to the CAT.

²³ Proposing Release at 33231.

²⁴ In addition, the CAT NMS Plan as approved by the Commission and deemed consistent with the Exchange Act established a funding model in which fees for Participants would be based on market share, and, therefore, on executed transactions. Therefore, the Commission previously has recognized a funding model that relied, in part, on a transaction-based CAT fee. Article XI of the CAT NMS Plan.

²⁵ FINRA Letter at 3, 4; SIFMA Letter at 4; and Virtu Letter at 3-4.

²⁶ Proposing Release at 33232

One of the factors driving CAT costs is the complexity of the Industry Members' CAT reporting requirements, which are driven by the inherent complexity of Industry Members' chosen business models.²⁷ For example, in light of the complexity of market activity, the CAT's reporting scenarios document for Industry Members is over 800 pages in length, addressing almost 200 scenarios, including, for example, scenarios related to representative orders, internal routing, order modification, order cancellation, ATS scenarios, OTC scenarios, foreign scenarios, child orders, proprietary orders, fractional shares, stop and conditional orders, RFQs, floor activity and more.²⁸ 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. In contrast, the Participants do not originate market activity or orders or otherwise bring this level of complexity to the markets. As a result, the technical specifications for the Participants are far less complex than for Industry Members. For example, the technical specifications for Participants have 13 reporting events for stock exchanges compared to 33 equity reporting events in the technical specifications for Industry Members, and the technical specifications for Participants have 14 reporting events for options exchanges,²⁹ compared to 43 reporting options events in the technical specifications for Industry Members.³⁰ Since the complexity of Industry Members' chosen business models contribute substantially to the costs of the CAT, it is reasonable and equitable to require that Industry Members pay a substantial portion of those costs.

Moreover, allocating a greater percentage of the CAT costs to Participants would raise fairness issues in light of the greater financial resources of Industry Members. There are only 25 Participants and approximately 1100 Industry Members.³¹ Moreover, based upon an analysis of available CAT Reporter revenue, Participants only represented approximately 4% of the total CAT Reporter revenue while Industry Members represented 96% of the total CAT Reporter revenue.³² In addition, various individual Industry Members have revenue in excess of some or all of the Participants. Accordingly, CAT LLC determined that allocating a higher percentage of the total CAT costs to the Participants was not a fair and equitable approach.

²⁷ One commenter finds fault with the fact that “the technical specifications and reporting scenarios for [the SROs] are far simpler than the ones for Industry Members.” FINRA Letter at 4-5. However, the complexity of the Industry Member technical specifications reflects the complexity of the Industry Member's business practices.

²⁸ CAT Industry Member Reporting Scenarios, Version 4.9 (March 9, 2022) (available at https://www.catnmsplan.com/sites/default/files/2022-03/03.11.22_Industry_Member_Tech_Specs_Reporting_Scenarios_v4.9_CLEAN_0.pdf).

²⁹ CAT Reporting Technical Specifications for Participants, Version 4.1.0-r14 (July 8, 2022) (available at <https://www.catnmsplan.com/sites/default/files/2022-07/07.08.2022-CAT-Reporting-Technical-Specifications-for-Participants-4.1.0-r14.pdf>).

³⁰ CAT Reporting Technical Specifications for Industry Members, Version 4.0.0 r15 (May 16, 2022) (available at https://www.catnmsplan.com/sites/default/files/2022-05/05.16.2022_CAT_Reporting_Technical_Specifications_for_Industry_Members_v4.0.0r15_CLEAN.pdf).

³¹ An average of 1,124 unique CAT Reporters sent transaction data to the CAT from July 1, 2022 to August 8, 2022.

³² See Securities Exchange Act Rel. No. 91555 (Apr. 14, 2021), 86 Fed. Reg. 21050, 20155 (Apr. 21, 2021) (“2021 CAT Funding Proposal”). Industry Member revenue was calculated based on the total revenue reported in the Industry Member's FOCUS reports. Participant revenue was calculated based on revenue information provided in Form 1 amendments and/or publicly reported figures. Participants are not required to file uniform FOCUS-type reports regarding revenue like Industry Members. Accordingly, the revenue calculation for Participants is not as straightforward as for Industry Members.

b. Commenter's Alternative Allocation Proposal: 50-50 Allocation

One commenter suggested, “[i]n the absence of a clear way to justify the allocation of Prospective CAT Costs under the Exchange Act fee standards,”³³ that 50% of the CAT costs should be paid by Participants and 50% of the CAT costs should be paid by Industry Members, with Industry Members funding of FINRA taken into account in such a model.³⁴ The commenter did not offer a reasoned basis for why a 50-50 allocation would satisfy the standards set forth in the Exchange Act. CAT LLC has previously considered and rejected a 50-50 allocation because, among other things, although the 50-50 allocation would provide a mathematically equal split between the two groups, it would not provide an equitable allocation between and among Industry Members and Participants. As discussed above, such an allocation raises fairness issues as Industry Members have far greater financial resources than the Participants, and the complexity of Industry Members’ chosen business models contribute substantially to the costs of the CAT.

c. Effect of FINRA's Allocation

Commenters raised the issue that the Industry Member allocation will effectively be larger than two-thirds because Industry Members already pay the entire costs of operating FINRA through regulatory fees and fines, and thus would be indirectly assessed this portion of CAT costs.³⁵ This argument inappropriately looks to how any fee is ultimately paid for, rather than at the fee at issue.³⁶

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.³⁷ All Participants are SROs that have the same regulatory obligations under the Exchange Act. Their usage of CAT Data would be for the same regulatory purposes in accordance with those obligations. By treating each Participant the same, the CAT fees would not become a competitive issue by and among the Participants.³⁸

Moreover, FINRA and the exchanges should not be evaluated differently based upon the potential for any particular Participant to pass its CAT fees onto its members through regulatory, trading or other fees. Each Participant will need to determine for itself how it will obtain the funds to pay for its CAT fees. Because each Participant, not just FINRA, is using CAT Data to satisfy the same self-regulatory obligations, each Participant may determine to charge their

³³ SIFMA Letter at 5.

³⁴ *Id.* at 5.

³⁵ *Id.* at 4.

³⁶ The comments also fail to recognize that each of the Participants, not just FINRA, has the ability to assess regulatory fees and fines and that each of the Participants, including FINRA, have other sources of revenue other than regulatory fees.

³⁷ Proposing Release at 33242.

³⁸ *Id.*

members fees to fund their share of the CAT fees, subject to the requirements of the Exchange Act, and the Exchange Act specifically permits SROs to do so. Indeed, in approving the CAT NMS Plan, the SEC stated “the Exchange Act specifically permits the Participants to charge members fees to fund their self-regulatory obligations.”³⁹ Any review of how the Participants obtain their funds to pay CAT fees is beyond the scope of the CAT fee filing.

Furthermore, the commenters fail to recognize the basic fact that Industry Members themselves face the same issue that they raise with regard to the FINRA. Industry Members may determine to pass their CAT fees through to their customers, just as they may do with Section 31-related fees and other fees.⁴⁰ Accordingly, the two-thirds allocation of CAT costs to Industry Members may be entirely passed through to investors, thereby alleviating Industry Members of any burden of funding the CAT.⁴¹

d. Commenter’s Alternative Allocation: Allocation Based on Responsibility

One commenter proposed an alternative allocation method in which CAT costs would be allocated between Participants and Industry Members based on who is most directly responsible for those costs.⁴² Under this commenter’s proposal, Industry Members would be allocated the portion of CAT costs for creating the order and transactional data that is initially ingested into the CAT System. After the data is initially ingested into the CAT System, it is subject to further processing to make it fit for regulatory use and then is used by the Participants and the Commission in fulfillment of their regulatory obligations as overseers of the equity and options markets. Because the regulators directly control and benefit from these stages of the CAT System after ingestion, the commenter suggests that Participants should be responsible for the costs associated with these stages of the CAT System. CAT LLC would not support this model as it is not only impractical, but it would not lead to an equitable allocation of reasonable fees as required by the Exchange Act.

Such a model would be impractical to implement as it is difficult to parse who is responsible for or who benefits from each aspect of the CAT. The commenter’s proposed model does not accurately describe the responsibility of Industry Members with regard to CAT costs. Industry Members are not limited to being directly responsible only for ingestion costs. Contrary to the commenter’s assertion, as discussed in more detail above, the complexity of the Industry Member technical specifications is directly necessitated by the complexity of Industry Members’ business methods and activities. Moreover, this complexity leads to substantial costs related not only to ingesting but processing and storage of the data as well.

³⁹ CAT NMS Plan Approval Order at 84794.

⁴⁰ See CAT NMS Plan Approval Order at 84992 (noting that “[i]n some cases, broker-dealers may pass on regulatory charges that support Participant supervision, such as with respect to Section 31 fees.”).

⁴¹ Moreover, the one-third allocation to each Participant, if ultimately separately passed through by the Participant to its members, could also ultimately be passed through by those members to investors.

⁴² SIFMA Letter at 5-6.

The commenter's proposal also does not accurately reflect who benefits from the various cost drivers. The Participants are not the only beneficiaries of CAT processing merely because they, as regulators, make use of the data for surveillance and oversight. The CAT is designed to benefit the national market system and all market participants. The SEC has repeatedly indicated that the CAT is critical for the protection of investors and to support fair and efficient capital markets⁴³—which directly benefits Industry Members. In addition, in adopting Rule 613, the Commission noted that one of the objectives of the CAT is to reduce the sometimes significant compliance burden on broker-dealers associated with producing regulatory data, thus further benefiting Industry Members.⁴⁴ Likewise, in adopting the CAT NMS Plan, the Commission explained that “[t]he CAT is expected to provide a more resilient audit trail system that may benefit broker-dealers,” that “more effective oversight of market activity may increase investor confidence and help expand the investment opportunity set through increased listings,” and that “broker-dealers may experience less burden, to the extent that data provided to the Central Repository reduces the number of direct requests by regulators for their surveillance, examination and enforcement programs.”⁴⁵ Accordingly, CAT LLC disagrees with the assertion that Industry Members do not directly benefit from the CAT.

e. Internal Cost of Compliance by Industry Members

One commenter urged CAT LLC to take into consideration the internal costs incurred by Industry Members in complying with CAT requirements in determining how to allocate costs between Industry Members and Participants.⁴⁶ This commenter argues that Industry Members should be allocated a smaller portion of CAT costs because of their substantial CAT compliance costs.⁴⁷ CAT LLC disagrees with this novel and unworkable approach.⁴⁸ There is no precedent for regulatory fees to be determined based on the cost of compliance of the regulated entity. Regulatory fees are intended to cover the regulatory costs of the entity providing the regulation. In the case of the CAT, the CAT funding model is intended to charge fees to pay for the direct costs of the CAT, not for ancillary compliance costs of Industry Members.⁴⁹ Moreover, as a practical matter, accurately determining an Industry Member's compliance costs, without recordkeeping requirements and appropriate standards to determine expenses accurately, would be infeasible.

⁴³ See, e.g., CAT NMS Plan Approval Order at 84727 (“The Commission believes that improved regulatory efforts [facilitated by the CAT] will strengthen the integrity and efficiency of the markets, which will enhance investor protection and increase capital formation.”).

⁴⁴ Securities Exchange Act Rel. No. 67457 (Jul. 18, 2012), 77 Fed. Reg. 45722, 45730-31 (Aug. 1, 2012) (“Rule 613 Adopting Release”); see also CAT NMS Plan Approval Order at 84697.

⁴⁵ CAT NMS Plan Approval Order at 84993.

⁴⁶ CAT LLC notes that the substantial internal compliance costs of the Participants also are not taken into consideration in the proposed fee model.

⁴⁷ SIFMA Letter at 4-5.

⁴⁸ CAT LLC also believes that it is unworkable to take into account their significant compliance costs.

⁴⁹ See CAT NMS Plan Approval Order at 84795 n.1749 (“The Participants stated that the funding model provides a framework for the recovery of the costs to create, develop and maintain the CAT, and is not meant to address the cost of compliance for Industry Members and Participants with the reporting requirements of Rule 613.”).

Furthermore, the substantial internal compliance costs of the Participants are not taken into consideration in the Executed Share Model. Each Participant incurs its own internal cost to comply with the requirements of the CAT NMS Plan, including, among other things, updating its systems for CAT reporting. Additionally, Participants have expended countless internal hours on the creation, implementation and operation of the CAT. These costs are not included in the funding model.

2. Allocation between Options and Equities

One commenter states that the proposal does not provide adequate support for the allocation of costs between equity and options.⁵⁰ The Executed Share Model does not allocate costs between the equities and options markets, like other previously proposed models; instead, the fees attributable to a transaction in an equity or option security depends on equivalent executed share volume. The use of equivalent executed share volume is designed to normalize options and equities in the calculation of fees. 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.

3. Allocation to FINRA

a. Burden on FINRA

FINRA argued that the Executed Share Model would place an undue burden on FINRA compared to other SROs. Specifically, FINRA argued that, “[b]y shifting nearly all of the Participants’ increased share to FINRA, the current Proposal places an undue burden on FINRA, notwithstanding FINRA’s standing among Participants as the only not-for-profit national securities association that relies primarily on regulatory fees from its members for funding and the only Participant not operating a national securities exchange.”⁵¹

As discussed above, 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.⁵² All Participants are SROs that have the same regulatory obligations under the Exchange Act, regardless of whether

⁵⁰ FINRA Letter at 4.

⁵¹ *Id.* at 6.

⁵² Proposing Release at 33242.

they operate as a for-profit or not-for-profit entity. 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.⁵³ Moreover, the size of FINRA's fee is calculated based on the activity in the over-the-counter market, which is substantial. For example, the executed equivalent share volume for over-the-counter trades in Eligible Securities in 2021 was 1,361,484,729,008 out of a total volume of 3,963,697,612,395 executed equivalent shares for trades in Eligible Securities.⁵⁴ Accordingly, approximately 34% of the executed equivalent share volume in Eligible Securities took place in the over-the-counter market.

b. FINRA's CAT Usage

FINRA objected to one rationale set forth in the Proposing Release in support of FINRA's allocation.⁵⁵ The Proposing Release stated that FINRA's allocation was appropriate "given FINRA's responsibility for securities traded in the over-the-counter market." CAT LLC believes that FINRA's allocation calculated pursuant to the Executed Share Model is appropriate as it reflects FINRA's role in the trades effected in the over-the-counter market, just as the allocation to exchanges reflects their role in the trades effected on each of their markets. The footnote was intended to indicate that the over-the-counter market is substantial (as noted above) and that a large fee would be appropriate for the regulator of such activity.

c. Transparency of FINRA Increase

FINRA also expressed concern that the disproportionate increase in FINRA's fees with the Executed Share Model, as opposed to the exchanges' fees, was not clearly explained in the Plan amendment filing.⁵⁶ CAT LLC disagrees with this characterization. CAT LLC explained that the Executed Share Model would change the contributions of each Participant, depending upon the types and amount of securities traded on each market or over-the-counter,⁵⁷ and provided a chart that set forth illustrative fees for each of the 25 Participants.⁵⁸ CAT LLC stated that FINRA's contribution "may" increase under the Executed Share Model in comparison to prior models given FINRA's responsibility for securities traded in the over-the-counter market because CAT LLC could not state with certainty that FINRA's responsibility always would increase over prior models in any given time period.

⁵³ *Id.* at 33242.

⁵⁴ These figures for executed equivalent share volume for 2021 are set forth in the illustrative example in the Proposing Release. *See* Proposing Release at 33246.

⁵⁵ FINRA Letter at 6.

⁵⁶ *Id.* at 5-6.

⁵⁷ Proposing Release at 33233.

⁵⁸ *Id.* at 33246-7.

D. Effect on Clearing Firms

1. Clearing Firm Costs

One commenter noted that “[t]he Executed Share Model does not adequately address the impact of the Executed Share Model on Industry Members that are clearing firms.”⁵⁹ The commenter noted that clearing firms would serve as fee collectors under the Executed Share Model, and such a role would require the clearing firms to incur costs to develop new systems and processes to implement the Executed Share Model if it is approved. CAT LLC proposes to make use of clearing firms for fee collection as this proposal would make use of existing industry collection systems for efficiency and cost purposes.

2. Buy-Side Fees

Commenters noted that the Executed Share Model is different than existing transaction-based fee models because it would require clearing firms to assess charges on buyers and seller in securities transactions, not just sellers.⁶⁰ The commenters indicated that charging both buyers and sellers would require industry-wide system modifications, which would introduce new costs and complexity to the industry. CAT LLC disagrees with this characterization of the proposal. Transaction-based fees charged to both the buyer and the seller are regularly used in the industry. For example, the ORF is charged to both the buy side and sell side of the transaction, as are trading fees imposed by the Participants.

3. Fees Attributable to Clearing Firm Clients

Commenters encouraged CAT LLC to provide detailed data to each clearing firm and to each CAT Reporter regarding the CAT fees and their relevant trading activity.⁶¹ Specifically, these commenters recommend that CAT LLC break-out and share with each Industry Member its individual share of monthly CAT costs, as well as share with clearing firms break-outs of the CAT-related fees attributable to each one of their clearing clients. CAT LLC agrees with the commenters that such data would allow clearing firms to determine which part of the CAT fees are attributable to their clearing clients and would facilitate any pass throughs of fees. Accordingly, CAT LLC agrees that data related to clearing clients should be made available to clearing firms and their Industry Member clients.

4. Determining Clearing Firm for Fee Obligation

One commenter inquired how the clearing firm for the buyer and the seller for each trade would be determined for purposes of calculating the CAT fees under the Executed Share Model, including in those cases in which a CAT Reporter has multiple clearing firms.⁶² As described in

⁵⁹ SIFMA Letter at 9.

⁶⁰ MMI Letter at 3; SIFMA Letter at 9-10.

⁶¹ MMI Letter at 4-5; SIFMA Letter at 10.

⁶² MMI Letter at 4.

the Proposing Release, “the transaction data in the CAT Data provides the identity of the relevant clearing broker for each trade.”⁶³ Specifically, Section 6.4(d)(ii)(A)(2) of the CAT NMS Plan requires the reporting of an SRO-Assigned Market Participant identifier of the clearing broker when an order is executed. The clearing broker data provided in accordance with this provision would be used to identify the relevant clearing firm for each trade for purposes of the Executed Share Model.

E. Additive Fee

One commenter questioned the need for an additional regulatory fee for Industry Members to fund the CAT given the existing regulatory fees imposed on Industry Members (*e.g.*, membership fees and registration and licensing fees) are intended to assist the SROs’ regulatory obligation to surveil the market.⁶⁴ As self-regulatory organizations, the Participants have an obligation to be so organized and have the capacity to be able to carry out the purposes of the Exchange Act, and to enforce compliance by their members with the Exchange Act and their rules.⁶⁵ As the Commission has explained, “[t]he Participants, as SROs, have traditionally recovered their regulatory costs through the collection of fees from their members, and such fees are specifically contemplated by the Exchange Act.”⁶⁶ Accordingly, Rule 613 and the CAT NMS Plan specifically contemplate Industry Members contributing to the funding of the CAT, and specifically permits the Industry Members to be charged a CAT-specific fee.⁶⁷ Moreover, as a practical matter, existing regulatory fees are not designed to address the substantial additional costs related to CAT.

SEC Rule 613 specifically contemplates broker-dealers contributing to the funding of the CAT. SEC Rule 613 requires the Participants to discuss “[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.”⁶⁸ In discussing the adoption of this requirement in SEC Rule 613, the SEC stated that the Participants “may seek to recover some or all of these costs from their members,” and “[i]f the plan sponsors seek to recover costs from their members, the Commission believes that it is important to understand the plan sponsors’ plans to allocate costs between themselves and their members, to help inform the Commission’s decision regarding the possible economic or competitive impact of the NMS plan.”⁶⁹ Accordingly, in adopting SEC Rule 613, the SEC expected that funding would involve both Participant and Industry Member contributions.

Furthermore, the CAT NMS Plan specifically contemplates CAT fees to be paid by both Industry Members and Participants. Section 11.1(b) states that “the Operating Committee shall

⁶³ Proposing Release at 33234.

⁶⁴ Virtu Letter at 2-3.

⁶⁵ 15 U.S.C. 78f(b)(1); 15 U.S.C. 78o-3(b)(2).

⁶⁶ CAT NMS Plan Approval Order at 84794.

⁶⁷ See Rule 613 Adopting Release at 45795; *see also* CAT NMS Plan Approval Order at 84794.

⁶⁸ Rule 613 Adopting Release at 45794.

⁶⁹ *Id.* at 45795.

have discretion to establish funding for the Company,⁷⁰ including: (i) establishing fees that the Participants shall pay; and (ii) establishing fees for Industry Members that shall be implemented by the Participants.”⁷¹ 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.⁷²

In its recent amendments to the CAT NMS Plan, 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.⁷³

In addition, as noted by the SEC, the CAT “substantially enhance[s] the ability of the SROs and the Commission to oversee today’s securities markets,”⁷⁴ thereby benefitting all market participants. As such, both Participants and Industry Members should contribute to covering the cost of the CAT.

Moreover, by adopting a CAT-specific fee, CAT LLC will be fully transparent regarding the costs of the CAT. Charging a general regulatory fee, which would be used to cover CAT costs as well as other regulatory costs, would be less transparent than the proposed approach of charging a fee designated to cover CAT costs only.

F. Fee Pass-Through

Commenters have also noted issues with passing CAT fees through from Participants to their members, and from Industry Members to investors. For example, one commenter noted that, if CAT costs imposed on Industry Members are ultimately passed on to the investing public, it would make it more expensive for investors to access the capital markets.⁷⁵ Another commenter would prohibit Participants from directly or indirectly passing through their share of

⁷⁰ As defined in the CAT NMS Plan, the Company is the Consolidated Audit Trail, LLC.

⁷¹ See also Sections 11.1(c), 11.2(c), and 11.3(a) and (b) of the CAT NMS Plan.

⁷² CAT NMS Plan Approval Order at 84794.

⁷³ Securities Exchange Act Rel. No. 88890 (May 15, 2020), 85 Fed. Reg. 31322, 31329 (May 22, 2020).

⁷⁴ Securities Exchange Act Rel. No. 67457 (July 18, 2012), 77 Fed. Reg. 45722, 45726 (August 1, 2012).

⁷⁵ Virtu Letter at 4.

CAT fees.⁷⁶ CAT LLC continues to support the concept of pass-through fees for various reasons.

First, the SEC specifically contemplated and accepted the concept of cost pass-throughs from Participants to their members when it adopted Rule 613:

There also would be costs associated with establishing and operating the central repository that will be jointly owned by the plan sponsors. The Commission believes it is important to understand how the plan sponsors plan to allocate such costs among themselves to help inform the Commission's decision regarding the possible economic or competitive impact of the NMS plan amongst the SROs. In addition, although the plan sponsors likely would initially incur the costs to establish and fund the central repository directly, they may seek to recover some or all of these costs from their members. If the plan sponsors seek to recover costs from their members, the Commission believes that it is important to understand the plan sponsors' plans to allocate costs between themselves and their members, to help inform the Commission's decision regarding the possible economic or competitive impact of the NMS plan.⁷⁷

Second, CAT LLC does not take a position on whether Industry Members, in turn, should pass CAT fees on to their clients. However, in adopting the CAT NMS Plan, the Commission specifically contemplated and accepted that "broker-dealers may seek to pass on to investors their costs to build and maintain the CAT, which may include their own costs and any costs passed on to them by Participants," noting that the "extent to which these costs are passed on to investors depends on the materiality of the costs and the ease with which investors can substitute away from any given broker-dealer."⁷⁸

Third, CAT LLC notes that the use of pass-through fees is a commonly accepted practice that has been approved by the SEC in the securities markets in some cases. For example, the practice of passing through fees to broker-dealers and their customers is used in the context of Section 31 fees. Section 31 of the Exchange Act places obligations only on national securities exchanges, national securities associations, and the Commission. National securities exchanges and national securities associations must pay certain fees and assessments to the Commission. The Commission is required by Section 31 to collect such fees and assessments. Section 31, however, does not address the manner or extent to which covered SROs may seek to recover the costs of their Section 31 obligations from their members. Nor does Section 31 address the manner or extent to which members of covered SROs may seek to pass any such charges on to their customers. However, as the SEC noted, "[i]n practice, the covered SROs obtain the funds for these fees and assessments by assessing charges on their members, and the members in turn

⁷⁶ MMI Letter at 2.

⁷⁷ Rule 613 Adopting Release at 45795 (emphasis added).

⁷⁸ CAT NMS Plan Approval Order at 84992.

pass these charges to their customers.”⁷⁹ Likewise, adopting the CAT NMS Plan, the Commission explained that under Section 31, “Participants are required to pay transaction fees and assessments to the Commission,” that “Participants, in turn, may collect their Section 31 fees and assessments from their broker-dealer members,” and, that “broker-dealers may pass on regulatory charges that support Participant supervision, such as with respect to Section 31 fees.”⁸⁰

Indeed, the language of certain exchange rules regarding Section 31 specifically describe the pass-through process related to Section 31 fees.⁸¹ For example, NYSE Arca Rule 2.18 states the following:

Pursuant to Rule 2.18, the Exchange makes an assessment on ETP Holders that the Exchange uses to pay fees owing to the SEC in accordance with Section 31 of the Exchange Act (“the Rule 2.18 assessment”). The Section 31 fees payable by the Exchange to the SEC is determined based on the aggregate dollar amount of “covered sales,” as defined by SEC Rule 31, effected on the Exchange by or through any ETP Holder. ETP Holders, in some cases, have passed along the Rule 2.18 assessment on a trade-by-trade basis to their customers or correspondent firms.”

The pass-through concept also is applied in the context of other SRO regulatory fees applicable to the SROs’ members. For example, “it is regular practice among some clearing and trading firms to ‘pass through’ the TAF to the underlying firm executing the trade. Further, FINRA understands that the executing firms commonly pass the TAF directly on to their customers. Typically, TAF fees are reflected on the confirmation statement received by customers.”⁸² Similarly, the pass-through process is used for ORFs as well. ORFs are collected indirectly from members through their clearing firms by OCC on behalf of the respective options exchange. As noted in rule filings related to ORFs, “[t]he Exchange expects that [members] will 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.”⁸³

⁷⁹ Securities Exchange Act Rel. No. 49928 (June 28, 2004), 69 Fed. Reg. 41060, 41072 (July 7, 2004). *See also* SEC, Section 31 Transaction Fees, Fast Answers (available at <https://www.sec.gov/fast-answers/answerssec31htm.html>) (noting that the “[t]he SROs have adopted rules that require their broker-dealer members to pay a share of these fees. Broker-dealers, in turn, impose fees on their customers that provide the funds to pay the fees owed to their SROs.”)

⁸⁰ CAT NMS Plan Approval Order at 84992.

⁸¹ *See, e.g.*, NYSE American Rule 393.01; and NYSE Rule 440H.03.

⁸² Securities Exchange Act Rel. No. 90176 (Oct. 14, 2020), 85 Fed. Reg. 66592, 66603 (Oct. 20, 2020).

⁸³ Securities Exchange Act. Rel. No. 67596 (Aug. 6, 2012), 77 Fed. Reg. 47902, 47903 (Aug. 10, 2012). *See also* Securities Exchange Act Rel. No. 61133 (Dec. 9, 2009), 74 Fed. Reg. 66715, 66716 (Dec. 16, 2009) (noting that “[t]he Exchange expects that member firms will pass-through the ORF to their customers in the same manner that firms pass-through to their customers the fees charged by SROs to help the SROs meet their obligation under Section 31 of the Exchange Act”); Securities Exchange Act Rel. No. 83878 (Aug. 17, 2018), 83 Fed. Reg. 42715, 42717 (Aug. 23, 2018) (noting that “by collecting the ORF in this manner Members and non-Members could more easily pass-through the ORF to their customers”).

Third, in contrast to the two commenters on this proposal, commenters on prior CAT funding proposals have commented in favor of a model similar to the Section 31 fees in which the fee could be passed through to Industry Members and ultimate customers.⁸⁴ For example, one commenter noted the benefits of a model similar to the Section 31 fees, arguing that “[i]t would also provide transparency into the fees which seek to recoup costs and a vehicle to pass-thru fees to the ultimate beneficiary of each trade.”⁸⁵ Another commenter similarly advocated for a Section 31-type model, noting that “SROs already have a well-established model for recouping their Section 31 fees by passing them through to their members.”⁸⁶

Finally, the proposed pass-through process for CAT fees, like the pass-through process for other regulatory fees, recognizes the reality that regulatory costs incurred to maintain and enhance the quality of the markets will necessarily increase costs for all market participants, including the ultimate investor. Even if such pass throughs were limited or prohibited, CAT costs would be distributed in other ways. One commenter, a member of the Advisory Committee for the CAT and the former Chief Economist of the Commission, emphasized that “[b]ecause the markets for exchange, dealing, and brokerage services are all highly competitive in the long run, any fees imposed on any of these groups will ultimately pass through to the retail and institutional traders who use the markets.”⁸⁷ This commenter reasoned that:

In highly competitive markets, prices reflect the costs of doing business in the long run. If those costs rise, they ultimately pass through to the customers. For example, if the Participants (primarily exchanges) were required to fund CAT NMS fully, they will raise their fees (or fail to lower them when costs are falling) to recover their funding costs. And if brokers’ business models require that they pay exchange fees on behalf of their clients, the brokers will raise their commission rates to the customers. And if their business models require zero commissions, brokers will provide fewer services or charge more for non-transaction services to cover their increased costs.⁸⁸

G. Billing Details

1. Detailed Billing and Collection Policies and Procedures

One commenter recommends that CAT LLC establish a detailed description of the calculation method for the CAT fees.⁸⁹ CAT LLC will comply with Section 11.1(d) of the CAT

⁸⁴ See, e.g., Letter from Michael Blaugrund, Chief Operating Officer, NYSE, to Vanessa Countryman, Secretary, SEC (May 10, 2021) at 3; Letter from Andrew Stevens, General Counsel, IMC Chicago, LLC, to Vanessa Countryman, Secretary, SEC (May 20, 2021) at 3.

⁸⁵ Letter from James Toes, President and CEO, and Andre D’Amore, Chairman of the Board, Securities Trader Association, to Vanessa Countryman, Secretary, SEC (June 10, 2021) at 4.

⁸⁶ Letter from Joanna Mallers, Secretary, FIA Principal Traders Group, to Vanessa Countryman, Secretary, SEC (May 12, 2021) at 4.

⁸⁷ Harris Letter at 2.

⁸⁸ *Id.*

⁸⁹ MMI Letter at 3-4.

NMS Plan, which requires the Operating Committee to adopt policies, procedures, and practices regarding the billing and collection of fees.

2. Trades

One commenter stated that the proposal did not describe what trades reported to the CAT would be used to calculate executed share volume for purposes of the Executed Share Model.⁹⁰ Contrary to this comment, the proposed Plan amendment states that “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 (“OCRF”) 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.”⁹¹ Executed share volume would not be calculated based on other trade-related data in the CAT, such as MEOTs. CAT LLC determined that the use of Participant reported trades, rather than MEOTs or other trade data in the CAT reported by Industry Members, is the most efficient and effective source for calculating executed share volume. For example, using tape reported trades submitted to CAT by the SROs (essentially the set of trades that are sent to the SIP) is consistent with the set of transactions that are used as the basis for Section 31 fees. This also helps limit the risk of double counting trades that may be introduced if transactions such as customer fills and allocations are used.

II. CAT Costs

A. Cost Transparency

Several commenters assert that the level of CAT cost transparency is insufficient to permit the SEC and market participants to analyze whether the Executed Share Model satisfies the fair and equitable requirements of the Exchange Act.⁹² CAT LLC strongly disagrees with this assertion. CAT LLC provides substantial cost transparency for CAT costs, including transparency above and beyond what is required, and more than other national market system plans. Additional public cost transparency is not necessary for the SEC to evaluate the proposal under the Exchange Act.

Despite the substantial disclosures about CAT finances, commenters request detailed information about all costs necessary to operate the CAT, which is not necessary to evaluate a fee proposal. For example, one commenter requests further clarification regarding the public relations category on the CAT financials, despite the fact that it is the smallest line item.⁹³ Knowledge of every minute detail about the inner operation of CAT LLC is not necessary to evaluate the proposed fee.

⁹⁰ *Id.* at 3-4.

⁹¹ Proposing Release at 33234.

⁹² SIFMA Letter at 8; Virtu Letter at 4-7.

⁹³ SIFMA Letter at 8.

Moreover, contrary to the suggestions in the comments, Industry Members may comment and provide input on a proposed fee, but they do not determine whether a proposed fee satisfies the Exchange Act. The SEC is tasked with that role. The SEC has the authority to request additional financial information about CAT LLC to the extent necessary to understand the CAT's finances for purposes of analyzing a fee proposal or otherwise acting in its oversight role with regard to the CAT NMS Plan.

CAT LLC already provides substantial financial information regarding the operation of the CAT as required by the CAT NMS Plan. For example, CAT LLC currently makes detailed financial information about the CAT publicly available. Section 9.2(a) of the CAT NMS Plan requires CAT LLC 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.⁹⁴ 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 web page on the CAT NMS Plan website that consolidates its annual financial statements in a public and readily accessible place.⁹⁵ The Company's annual financial statements from inception in 2017 through 2021 are available on the CAT website.

Further, as required by the CAT NMS Plan, both the SEC and the Advisory Committee, are required to be included in Operating Committee meetings and to receive the materials provided to the Operating Committee.⁹⁶ Financial matters regarding the CAT are discussed in Operating Committee meetings and covered in materials provided to the Operating Committee.

In addition to providing financial information required under the CAT NMS Plan and otherwise, CAT LLC also has voluntarily chosen to provide more financial transparency to the public regarding its costs. For example, 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 web page on the CAT NMS Plan website to make it readily accessible to the public, like the CAT financial statements. CAT LLC also has held webinars providing additional detail about CAT costs and about

⁹⁴ The Participants, in fact, recommended eliminating the discretion of the Operating Committee to provide financials only if it deems advisable and instead to require that the Company's audited annual balance sheet, income statement, and statement of cash flows be audited by an independent public accounting firm and made publicly available. See CAT NMS Plan Approval Order at 84736.

⁹⁵ See CAT Audited Financial Statements, [https:// www.catnmsplan.com/audited-financialstatements](https://www.catnmsplan.com/audited-financialstatements).

⁹⁶ See Section 4.4(a) and 4.13(e) of the CAT NMS Plan.

potential alternative funding models for the CAT, and commenters submitted questions and comments on the webinars.⁹⁷

1. Changes to Projected Costs

A commenter raised the issue as to how CAT Reporters will budget for potentially significant changes to projected CAT costs.⁹⁸ CAT LLC recognizes the need for CAT Reporters to plan for changes in CAT fees. Accordingly, CAT LLC is providing budget updates on its website to keep CAT Reporters and investors informed of changes in the budget.

2. Disclosure of Related-Party Transactions

One commenter urged CAT LLC to provide disclosures regarding how much revenue and profit is generated by Participants from services they provide to the CAT. In short, the commenter argued that the proposal lacks customary related-party transaction disclosures.⁹⁹ As discussed in detail this response, CAT LLC believes that it has provided and continues to provide substantial disclosures about CAT costs.

In addition, CAT LLC is set up as a business league to mitigate concerns that CAT LLC's earnings could be used to benefit individual Participants. 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." 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." 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.¹⁰⁰

Furthermore, FINRA owns FINRA CAT, the Plan Processor. Expenses related to FINRA CAT are included in the CAT costs disclosed on the public financial and budgets for the CAT.

⁹⁷ See, e.g., CAT LLC Webinar CAT Costs (Sept. 21, 2021), <https://www.catnmsplan.com/events/catcosts-september-21-2021>; CAT LLC Webinar, CAT Funding (Sept. 22, 2021), <https://www.catnmsplan.com/events/cat-fundingseptember-22-2021>; and CAT LLC Webinar, CAT Funding (Apr. 6, 2022).

⁹⁸ Virtu Letter at 5.

⁹⁹ *Id.* at 6, 7.

¹⁰⁰ See CAT NMS Plan Approval Order at 84793, n.1712 ("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.' 26 U.S.C. 501(c)(6).").

3. Public Budget Review

One commenter recommended that the CAT operating budget should be subject to a public review process overseen by the Commission as the regulator of the Participants and as a beneficiary of the CAT, similar to the manner in which the Commission's budget is overseen.¹⁰¹ CAT LLC does not believe that such an approval process is necessary or appropriate. First, as a preliminary matter, unlike the Commission, CAT LLC is not a governmental entity, with a responsibility to the taxpaying public. It is a private entity subject to the regulatory requirements of the Exchange Act. Second, such a budget review process is unnecessary as any CAT fees proposed to be established pursuant to the CAT NMS Plan are already subject to the existing, well-established review practices under Rule 608 of Regulation NMS and Section 19(b) of the Exchange Act and Rule 19b-4 thereunder. Under those provisions, CAT fees must be filed with the SEC, thereby providing transparency and an opportunity for comment by the public, and may only be implemented if they satisfy the requirements of the Exchange Act. Third, the SEC has the ability to request budget and financial information from CAT LLC to the extent that it believes that such additional information is necessary for it to evaluate any CAT fee proposals.

4. Reconciliation Process

One commenter stated that it is critical for CAT LLC to describe in detail the process it will engage in to address scenarios in which they over or under-collect CAT fees in a given year.¹⁰² This commenter further recommended that this reconciliation process include a refund mechanism to the extent that an over-collection in a given year exceeds a certain threshold, such as one percent above the projected CAT operating budget.¹⁰³ CAT LLC has outlined the measures it would take in the event of an over or under collection of CAT fees. In particular, CAT LLC would be required to recalculate the fee rate each year based upon the budget for the upcoming year, which would necessarily include any excess fee collection.

As a preliminary matter, in the event of CAT fees collected in excess of costs, CAT LLC would not have the option of refunding the CAT fees to Industry Members or Participants. 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. 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." Furthermore, as discussed above, CAT LLC is set up as a business league to mitigate concerns that CAT LLC's earnings could be used to benefit individual Participants.

If CAT LLC collects fees in excess of the expenses of the CAT, CAT LLC has several methods to address CAT fees collected in excess of the CAT's expenses. The proposal for the

¹⁰¹ SIFMA Letter at 8-9.

¹⁰² SIFMA Letter at 9.

¹⁰³ *Id.*

Executed Share Model contemplates the need to coordinate the amount of fees collected with the expenses of the CAT, thereby mitigating concerns about excessive fee collection. As proposed, CAT LLC would be required to recalculate the fee rate each year based upon the budget for the upcoming year. The budget for each year would include any excess fees collected during the prior year. There is also a process for a mid-year review of the fee rate to determine if an adjustment down (or up) would be appropriate. Accordingly, these periodic reviews of the fee rate would take into consideration any excess fees collected from the prior period.

CAT LLC has several methods to address a shortfall in CAT fees. The CAT fees would be based on the budget, which includes an operational reserve. This operational reserve could be used in the event of a shortfall. In addition, under the proposal and as noted above, CAT LLC 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. Furthermore, as proposed, CAT LLC would be required to recalculate the fee rate each year based upon the budget for the upcoming year. The budget for each year would reflect any shortfall in fees collected during the prior year. Accordingly, the calculation of the fee rate for the next year would reflect any shortfall in fees collected from the prior year.

CAT LLC notes that over and under-collection of fees is not an uncommon occurrence. For example, with any over or under-collection with other fees, such as Section 31-related fees, the fee rate would be adjusted going forward. There are no refunds or back-billing for over or under-collection of fees.

B. Past CAT Costs

1. Industry Member Contribution for Past CAT Costs

One commenter objects to Industry Members contributing to any historical costs, that is, any cost incurred to date, particularly given that the commenter's view that Industry Members have no decision making authority with regard to the implementation and operation of CAT.¹⁰⁴ As discussed above, it is clear that Industry Members are expected to contribute to the cost of the CAT, which includes historical costs incurred prior to the implementation of the Executed Share Model.

¹⁰⁴ Virtu Letter at 4.

2. Additional Detail for Past CAT Costs

A commenter requested additional details related to the fee filings related to Past CAT Costs.¹⁰⁵ For example, a commenter requested information regarding how quickly the Participants might seek to recoup a portion of such costs.¹⁰⁶ The Participants have funded 100% of the build, operation and other costs related to CAT to date. Accordingly, Participants would not pay a CAT fee related to Past CAT Costs, as they have already funded those costs. Participants, however, would remain responsible for one-third of Past CAT Costs, as well as 100% of Excluded Costs and certain costs related to the conclusion of the relationship with the Initial Plan Processor. Only Industry Members would pay a CAT fee related to two thirds of those Past CAT Costs. The details regarding those proposed fees, including the period over which the costs would be recouped would be set forth in the Participants' fee filings pursuant to Section 19 of the Exchange Act and Rule 19b-4 thereunder. Nevertheless, in the interest of transparency, CAT LLC is providing additional detail regarding the Past CAT Costs in this response.

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 CAT LLC 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 \$14,749,362 of 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. The actual costs for prior to 2022 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.¹⁰⁷

The following table breaks out the Past CAT Costs into six periods. Four of the six periods are the Financial Accountability Milestones ("FAM") periods set forth in Section 11.6 of the CAT NMS Plan. Section 11.6 of the CAT NMS Plan establishes target deadlines for four implementation milestones (1) July 31, 2020 - Initial Industry Member Core Equity and Option Reporting; (2) December 31, 2020 - Full Implementation of Core Equity Reporting Requirements; (3) December 31, 2021 - Full Availability and Regulatory Utilization of

¹⁰⁵ 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 \$14,749,362 of 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.

¹⁰⁶ SIFMA Letter at 6, 7 and 9.

¹⁰⁷ The audited financial statements for CAT NMS, LLC and Consolidated Audit Trail, LLC are available at <https://www.catnmsplan.com/audited-financial-statements>.

Transactional Database Functionality; and (4) December 31, 2022 - Full Implementation of CAT NMS Plan Requirements. The Past CAT Costs would include costs related to the FAM periods as well as costs from prior to the first FAM period, and potentially costs after the FAM periods depending upon the effectiveness of the CAT fees pursuant to the Executed Share Model.

Dates Cost Incurred	Period	Total CAT Costs*	Proposed 1/3 Allocation to CBBs*****	Proposed 1/3 Allocation to CBSs*****	Proposed 1/3 Allocation to Participants (and Previously Paid)*****
Prior to June 22, 2020	N/A	\$143,919,521**	\$47,973,174	\$47,973,174	\$47,973,174
June 22, 2020 – July 31, 2020	FAM Period 1	\$6,377,343	\$2,125,781	\$2,125,781	\$2,125,781
Aug. 1, 2020 – Dec. 31, 2020	FAM Period 2	\$42,976,478	\$14,325,493	\$14,325,493	\$14,325,493
Jan. 1, 2021 – Dec. 31, 2021	FAM Period 3	\$144,415,268	\$48,238,423	\$48,238,423	\$48,238,423
Jan. 1, 2022 – Dec. 31, 2022	FAM Period 4	Budgeted \$174,766,871***	TBD	TBD	TBD
Post Dec. 31, 2022	TBD****	TBD****	TBD***	TBD***	TBD***

*These costs exclude costs of \$14,749,362 related to the conclusion of the relationship with the Initial Plan Processor.

**These costs exclude \$48,874,937 of Excluded Costs.

***As 2022 remains in progress, these costs are budgeted costs, not actual. Past CAT Costs, however, would be based on actual costs, and the costs included would depend on the effective date of any CAT fees.

****Depending on the effective date of any CAT fees, costs from the period after December 31, 2022 may also be included in Past CAT Costs.

*****Total of proposed allocated costs may not agree to total CAT Costs due to rounding.

a. Costs Incurred Prior to June 22, 2020

Past CAT Costs include costs incurred by CAT prior to June 22, 2020 and already funded by the Participants. As noted above, the Past CAT Costs for the period prior to June 22, 2020 are \$143,919,521. Participants would remain responsible for one-third of this cost (which they have previously paid), and Industry Members would be responsible for the remaining two-thirds, with CBBs paying one-third (\$47,973,174) and CBSs paying one-third (\$47,973,174). The following provides additional detail about the costs from this period.

- In accordance with Section 11.1(c) of the CAT NMS Plan, the Past CAT Costs include “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.” Specifically, Past CAT Costs include costs incurred from 2012 through November 20, 2016 related to the development of the National Market System Plan Governing the Process of Selecting a Plan Processor and Developing a Plan for the Consolidated Audit Trail (“Selection Plan”) and the CAT NMS Plan as well as the Plan Processor selection process pursuant to the Selection Plan. The Past CAT Costs incurred during this period are \$13,842,881. Participants would remain responsible for one-third of this cost (which they have previously paid) (\$4,614,294), and Industry Members would be responsible for the remaining two-thirds, with CBBs paying one-third (\$4,614,294) and CBSs paying one-third (\$4,614,294).

- The Past CAT Costs for this period include costs incurred after the formation of the CAT NMS Plan and prior to the selection of the Initial Plan Processor for the CAT, which covers the period from November 21, 2016 through April 5, 2017. The Past CAT Costs for this period are \$2,933,869. Participants would remain responsible for one-third of this cost (which they have previously paid) (\$977,956), and Industry Members would be responsible for the remaining two-thirds, with CBBs paying one-third (\$977,956) and CBSs paying one-third (\$977,956).
- The Past CAT Costs include a subset of the total costs incurred during the period in which Initial Plan Processor for the CAT was operating, which was April 6, 2017 through March 28, 2019. The total costs for this period are \$106,256,258. The Participants, however, have determined to exclude from the Past CAT Costs all costs incurred from November 15, 2017 through November 15, 2018 (“Excluded Costs”) due to the delay in the start of reporting to the CAT. The Excluded Costs are \$48,874,937. Accordingly, the Past CAT Costs for this period are \$57,381,321.¹⁰⁸ Participants would remain responsible for Excluded Costs as well as one-third of these Past CAT Costs (both of which they have previously paid) (\$16,291,646), and Industry Members would be responsible for the remaining two-thirds, with CBBs paying one-third (\$16,291,646) and CBSs paying one-third (\$16,291,646).
- The Past CAT Costs include the costs incurred from the date of FINRA CAT’s selection as the Plan Processor on March 29, 2019 through June 21, 2020. The Past CAT Costs for this period are \$69,761,450. These costs are net of costs related to the conclusions of the relationship with the Initial Plan Processor of \$7,337,345. Participants would remain responsible for costs related to the conclusion of the relationship with the Initial Plan Processor as well as one-third of these Past CAT Costs (both of which they have previously paid) (\$23,253,817), and Industry Members would be responsible for the remaining two-thirds, with CBBs paying one-third (\$23,253,817) and CBSs paying one-third (\$23,253,817).

¹⁰⁸

Section II(B)(3) below provides further discussion of costs related to the Initial Plan Processor.

The following table breaks down the Past CAT Costs for the period prior to June 22, 2020 into the categories set forth in the audited financial statements for the Company:

Operating Expense	Total Past CAT Costs for Period Prior to June 22, 2020
Technology Costs*	\$105,044,520
Legal	\$19,674,463
Consulting	\$17,013,414
Insurance	\$880,419
Professional and administration	\$1,082,036
Public relations	\$224,669

* Capitalized developed technology costs are already included in “Technology Costs” and therefore the non-cash amortization of these capitalized developed technology costs of \$2,115,545 incurred during the period prior to June 22, 2020 have been appropriately excluded from “Operating Expense.”

b. CAT Costs incurred in Period 1

Past CAT Costs include costs incurred by CAT and already funded by Participants during FAM Period 1, which covers the period from June 22, 2020 – July 31, 2020. The Past CAT Costs for Period 1 are \$6,377,343. Participants would remain responsible for one-third of this cost (which they have previously paid) (\$2,125,781), and Industry Members would be responsible for the remaining two-thirds, with CBBs paying one-third (\$2,125,781) and CBSs paying one-third (\$2,125,781). The following table breaks down the Past CAT Costs for Period 1 into the categories set forth in the audited financial statements for the Company:

Operating Expense	Total Past CAT Costs for Period 1
Technology Costs	\$5,681,670*
Legal	\$481,687
Consulting	\$137,209
Insurance	-
Professional and administration	\$69,077
Public relations	\$7,700

* Capitalized developed technology costs are already included in “Technology Costs” and therefore the non-cash amortization of these capitalized developed technology costs of \$362,121 incurred during Period 1 have been appropriately excluded from “Operating Expense.”

c. CAT Costs incurred in Period 2

Past CAT Costs include costs incurred by CAT and already funded by Participants during FAM Period 2, which covers the period from August 1, 2020 – December 31, 2020. Participants would remain responsible for one-third of this cost (which they have previously paid)

(\$14,325,493), and Industry Members would be responsible for the remaining two-thirds, with CBBs paying one-third (\$14,325,492.70) and CBSs paying one-third (\$14,325,492.70). The Past CAT Costs for Period 2 are \$42,976,478. The following table breaks down the Past CAT Costs for Period 2 into the categories set forth in the audited financial statements for the Company:

Operating Expense	Total Past CAT Costs for Period 2
Technology Costs*	\$38,221,127
Legal	\$2,766,644
Consulting	\$532,146
Insurance	\$976,098
Professional and administration	\$438,523
Public relations	\$41,940

* Capitalized developed technology costs are already included in “Technology Costs” and therefore the non-cash amortization of these capitalized developed technology costs of \$1,892,505 incurred during Period 2 have been appropriately excluded from “Operating Expense.”

d. CAT Costs incurred in Period 3

Past CAT Costs include costs incurred by CAT and already funded by Participants during FAM Period 3, which covers the period from January 1, 2021 – December 31, 2021. The Past CAT Costs for Period 3 are \$144,415,268. Participants would remain responsible for one-third of this cost (which they have previously paid) (\$48,238,423), and Industry Members would be responsible for the remaining two-thirds, with CBBs paying one-third (\$48,238,423) and CBSs paying one-third (\$48,238,423). The following table breaks down the Past CAT Costs for Period 3 into the categories set forth in the audited financial statements for the Company:

Operating Expense	Total Past CAT Costs for Period 3
Technology Costs	\$134,402,774
Legal	\$6,333,248
Consulting	\$1,408,209
Insurance	\$1,582,714
Professional and administration	\$595,923
Public relations	\$92,400

* Capitalized developed technology costs are already included in “Technology Costs” and therefore the non-cash amortization of these capitalized developed technology costs of \$5,108,044 incurred during Period 3 have been appropriately excluded from “Operating Expense.”

e. CAT Costs incurred in Period 4

Past CAT Costs would include CAT costs incurred by CAT and already funded by Participants (or to be funded by Participants) during FAM Period 4, which covers the period from January 1, 2022 – December 31, 2022 (depending on the completion of the FAM for Period

4), and incurred prior to the implementation of the CAT fees pursuant to the Executed Share Model. Participants would remain responsible for one-third of this cost (which they have previously paid), and Industry Members would be responsible for the remaining two-thirds, with CBBs paying one-third and CBSs paying one-third. Given that 2022 remains in progress, the following table provides budgeted (as opposed to actual) figures for costs for Period 4. The current budgeted CAT costs for Period 4 are \$174,766,871.

Operating Expense	Total Past CAT Costs for Period 4 Through June 2022
Technology Costs	\$163,609,591
Legal	\$7,162,084
Consulting	\$1,400,000
Insurance	\$1,820,122
Professional and administration	\$682,674
Public relations	\$92,400

Budgeted CAT costs for 2022 are \$174,766,871 and currently available on the CAT website;¹⁰⁹ actual CAT costs for 2022 will be available in audited financial statements for the Company after year end.

3. Initial Plan Processor Costs

One commenter objects to Industry Members paying for any costs related to the Initial Plan Processor. This commenter states that “[i]t is extremely problematic for Industry Members to be assessed any charges related to this failed decision over which they had no control and from which the only tangible benefit appears to be the development of reporting specifications.”¹¹⁰

In recognition of the delayed implementation, CAT LLC determined that Participants would remain responsible for 100% of two categories of CAT costs incurred prior to January 1, 2022: (1) Excluded Costs, and (2) certain costs related to the termination of the relationship with the Initial Plan Processor. First, the Participants would remain responsible for 100% of \$48,874,937 of Excluded Costs. Contrary to the assertion by the commenter that no definition of the term “Excluded Costs” was included in the proposed amendment, Excluded Costs were defined in the proposals as “all CAT costs incurred from November 15, 2017 through November 15, 2018.” CAT LLC determined to exclude an entire year of costs from fees charged to Industry Members due to the one-year delay in the start reporting to the CAT.

Second, in addition to excluding a year of CAT costs, the Participants would remain 100% responsible for costs related to the conclusion of the relationship with the Initial Plan Processor. The excluded costs related to the conclusion of the relationship with the Initial Plan

¹⁰⁹ See Consolidated Audit Trail, LLC 2022 Financial and Operating Budget, <https://www.catnmsplan.com/sites/default/files/2022-04/04.06.22-CAT-2022-Budget.pdf>.

¹¹⁰ SIFMA Letter at 7.

Processor total \$14,749,362. CAT LLC determined that such costs could be reasonably identified, and that such costs were more appropriately borne by the Participants.

4. Costs Prior to Plan Effectiveness

Commenters have also raised questions as to whether Industry Members should be responsible for any costs incurred by Participants prior to when the CAT NMS Plan became effective, such as legal and consulting fees incurred by the Participants in connection with creating the CAT NMS Plan that was approved by the Commission in November 2016.¹¹¹ The CAT NMS Plan, as approved by the Commission, specifically authorizes charging Industry Members fees for costs incurred prior to the date of the approval of the CAT NMS Plan by the Commission, including legal and consulting costs. Section 11.1(c) of the CAT NMS Plan states that “[i]n 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 Participants on behalf of the Company prior to the Effective Date in connection with the creation and implementation of the CAT” (emphasis added). Therefore, it is appropriate for the Participants to seek to recover such costs from Industry Members.

C. Financial Accountability Milestones

A question has been raised as to which CAT costs would be included in each of the Financial Accountability Milestones (“FAMs”) as set forth in Section 11.6 of the CAT NMS Plan. The CAT NMS Plan does not require a discussion of the FAMs in the proposed amendment to the CAT NMS Plan regarding the Executed Share Model. Section 11.6(b) of the CAT NMS Plan states:

In all CAT NMS Plan amendments submitted by the Operating Committee to the Commission pursuant to Rule 608(b)(3)(i), and in all filings submitted by the Participants to the Commission under Section 19(b) of the Exchange Act, to establish or implement Post-Amendment Industry Member Fees pursuant to this Article, the Operating Committee or the Participants shall clearly indicate whether such fees are related to Post-Amendment Expenses incurred during Period 1, Period 2, Period 3, or Period 4.

The proposed amendment was not filed pursuant to Rule 608(b)(3)(i) of Regulation NMS under the Exchange Act, as the SEC rescinded paragraph (b)(3)(i) of Rule 608 of Regulation NMS under the Exchange Act in 2020, thereby eliminating the effective-upon-filing exception for proposed NMS plan amendments to establish or change a fee or other charge collected on behalf of all the plan participants in connection with access to, or use of, any facility contemplated by the plan or amendment (including changes in any provision with respect to distribution of any net proceeds from such fees or other charges to the participants).¹¹² Therefore, no discussion of the FAMs was required in the proposed amendment. Instead, such a discussion would be

¹¹¹ *Id.*

¹¹² Securities Exchange Act Rel. No. 89618 (Aug. 19, 2020), 85 Fed. Reg. 65470 (Oct. 15, 2020).

required to be provided in fee filings submitted by the Participants to the Commission under Section 19(b) of the Exchange Act to establish or implement Post-Amendment Industry Member Fees.

Nevertheless, in the interest of transparency, CAT LLC voluntarily discusses below the costs that CAT LLC seeks to recover during the first three periods covered by the FAMs: Period 1, Period 2 and Period 3. Specifically, the Past CAT Costs would be related to “all fees, costs, and expenses (including legal and consulting fees, costs, and expenses) incurred by or for the Company in connection with the development, implementation and operation of the CAT from the effective date of this Section until such time as Full Implementation of CAT NMS Plan Requirements has been achieved” (“Post-Amendment Expenses”) incurred during Period 1, Period 2, Period 3 or Period 4. The fourth period, Period 4, is scheduled to conclude on December 30, 2022, and therefore the costs associated with Period 4 are not discussed. Nevertheless, the budgeted CAT costs for 2022 and amendments thereto, are set forth on the CAT website and are discussed above.

1. Period 1 of the Financial Accountability Milestones

CAT LLC would seek to recover costs that are related to Post-Amendment Expenses incurred during Period 1 from Industry Members. Period 1 began on June 22, 2020, the effective date of Section 11.6 of the CAT NMS Plan, and concluded on July 31, 2020, the date of Initial Industry Member Core Equity and Options Reporting. As indicated by the CAT LLC’s Quarterly Progress Report, the Initial Industry Member Core Equity and Option Reporting was completed on schedule by July 31, 2020. The costs to be recovered would include fees, costs and expenses incurred by or for the Company in connection with the development, implementation and operation of the CAT during the period from June 22, 2020 through July 31, 2020. The total costs for this period, as discussed above, are \$6,377,343. Participants would remain responsible for one third of this cost (which they have previously paid), and Industry Members would be responsible for the remaining two-thirds, with CBBs paying one-third (\$2,125,781) and CBSs paying one-third (\$2,125,781).

2. Period 2 of the Financial Accountability Milestones

CAT LLC would seek to recover costs that are related to Post-Amendment Expenses incurred during Period 2 from Industry Members. Period 2 began on August 1, 2020, and concluded on December 31, 2020, the date of the Full Implementation of Core Equity Reporting. As indicated by CAT LLC’s Quarterly Progress Report, Full Implementation of Core Equity Reporting was completed on schedule by December 31, 2020. As discussed above, the costs to be recovered would include fees, costs and expenses incurred by or for the Company in connection with the development, implementation and operation of the CAT during the period from August 1, 2020 through December 31, 2020. The total costs for this period, as discussed above, are \$42,976,478. Participants would remain responsible for one third of this cost (which they have previously paid), and Industry Members would be responsible for the remaining two-thirds, with CBBs paying one-third (\$14,325,493) and CBSs paying one-third (\$14,325,493).

3. Period 3 of the Financial Accountability Milestones

CAT LLC would seek to recover costs that are related to Post-Amendment Expenses incurred during Period 3. Period 3 began on January 1, 2021, and concluded on December 31, 2021, the date of the Full Implementation of Core Equity Reporting. As indicated by CAT LLC's Quarterly Progress Report, Full Availability and Regulatory Utilization of Transactional Database Functionality was completed on schedule by December 31, 2021. As discussed above, the costs to be recovered would include fees, costs and expenses incurred by or for the Company in connection with the development, implementation and operation of the CAT during the period from January 1, 2021 through December 31, 2021. The total costs for this period, as discussed above, are \$144,415,268. Participants would remain responsible for one third of this cost (which they have previously paid), and Industry Members would be responsible for the remaining two-thirds, with CBBs paying one-third (\$48,138,423) and CBSs paying one-third (\$48,138,423).

III. Development Process for CAT Funding Model

Commenters also have provided comments regarding the development process for the Executed Share Model, including comments regarding industry involvement in the development of the Executed Share Model, industry representation on the Operating Committee, and the Participant voting structure of the Operating Committee. As discussed further below, CAT LLC disagrees with these comments and believes that the current process for developing the CAT funding model appropriately addresses each of these comments. Moreover, the SEC considered each of these comments in the context of its approval of the CAT NMS Plan and determined that the processes in place were reasonable and appropriate for the development of the funding model and fees for the CAT. Accordingly, CAT LLC does not believe that any changes to these processes are necessary for the proposed revisions to the CAT funding model.

A. Industry Input

CAT LLC disagrees with the assertion by certain commenters that Industry Members have not had the opportunity to provide substantive input on the Executed Share Model.¹¹³ On the contrary, Industry Members and other market participants have had and continue to have ample opportunity to provide substantive and meaningful input into the CAT funding model in various ways.

The CAT NMS Plan, as approved by the SEC, requires that an Advisory Committee, composed of representatives of broker-dealers, clearing firms, services bureaus, academia, institutional investors and others, attend each Operating Committee meeting, and receive the same materials as the Operating Committee.¹¹⁴ In accordance with this requirement, the Advisory Committee has had the opportunity to participate in Operating Committee meetings in which CAT funding proposals are discussed, and to receive materials related to the CAT funding

¹¹³ FINRA Letter at 8-9; MMI Letter at 2.

¹¹⁴ See Section 4.13 of the CAT NMS Plan for a description of the Advisory Committee.

model proposals, including draft filings. In addition, CAT LLC also has discussed funding model issues outside of Operating Committee meetings.¹¹⁵

In addition, over the past six years, Industry Members and other market participants have had the opportunity to provide comments to the SEC and Participants via the public notice and comment processes provided by Rule 608 of Regulation NMS and Section 19 of the Exchange Act on the proposed Executed Share Model, three other proposed funding model amendments to the CAT NMS Plan and related SRO fee filings,¹¹⁶ and during the notice and comment period for the CAT NMS Plan itself. Indeed, five commenters provided comments on the Executed Share Model, nineteen commenters provided comments on the 2021 funding proposal, six commenters provided comment on the 2017 proposal, twenty-four commenters provided comment on the CAT NMS Plan, including at least nine that addressed funding issues related to the CAT. In each case, the Participants considered the comments and made changes to the funding model proposals in response to the comments where appropriate.

Furthermore, CAT LLC has gone beyond the means required under the Exchange Act and CAT NMS Plan to seek input from the industry. For example, CAT LLC has held public webinars providing additional detail about CAT costs and about potential alternative funding models for the CAT, and requested input on these proposals during the webinars.¹¹⁷ For example, with regard to the three webinars on CAT costs and funding, there were 281 attendees for the first webinar, 212 attendees for the second webinar, and 267 attendees for the third webinar. Market participants that viewed the webinars submitted comments and questions about the webinars. For example, there were seven questions/comments from two submitters for the first webinar, there were four questions/comments from two submitters for the second webinar, and there were fourteen questions/comments from eight submitters for the third webinar.¹¹⁸

B. Industry Representation on the Operating Committee

Commenters have recommended that Industry Members be included on the Operating Committee and given the right to vote, like the Participants.¹¹⁹ The composition of the Operating Committee is outside the scope of this proposed amendment to the CAT NMS Plan regarding the CAT's funding model. Nevertheless, CAT LLC continues to believe that the

¹¹⁵ CAT LLC notes that the Advisory Committee has not indicated support for the Executed Share Model or any other funding model.

¹¹⁶ See CAT Funding Proposal; Securities Exchange Act Rel. No. 82451 (January 5, 2018), 83 Fed. Reg. 1399 (January 11, 2018); and Securities Exchange Act Rel. No. 80930 (June 14, 2017), 82 Fed. Reg. 28180 (June 20, 2017).

¹¹⁷ 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-fundingseptember-22-2021>; and CAT LLC Webinar, CAT Funding (Apr. 6, 2022), <https://www.catnmsplan.com/events/cat-funding>.

¹¹⁸ Commenters' inquiries generally focused on, among other things, requesting additional information about costs, individual Industry Member data and fees, and the proposed operation of and justification for potential fee models.

¹¹⁹ FINRA Letter at 8.

composition of the Operating Committee as set forth in the Plan is consistent with the Exchange Act.¹²⁰

C. Participant Voting Structure of the Operating Committee

A commenter also provided comments about the Participant voting structure of the Operating Committee and its effect on the selection of the proposals for the CAT funding model.¹²¹ FINRA noted that the Plan provides that each Participant is entitled to one vote, and therefore, because FINRA is not affiliated with any other Participant, FINRA is only entitled to one vote out of 25 votes for purposes of determining the funding model for the CAT as well as other decisions regarding the operation of the CAT. FINRA further stated that “[i]n contrast, affiliated exchange groups voting as blocs enjoy substantially greater influence over such decisions.”¹²² FINRA argued that this voting structure led to FINRA’s obligation to pay a disproportionately greater share of the costs of the CAT than any other Participant (and a greater share than any group of affiliated Participants).¹²³ The voting structure of the Operating Committee is outside the scope of this proposed amendment to the CAT NMS Plan regarding the CAT’s funding model.

IV. Filing Process for Participant and Industry Member CAT Fees

A request was made for additional detail regarding the proposed filing process for Participant and Industry Member CAT fees. CAT LLC would be required to establish any fee rate, initial or adjusted, in accordance with the process set forth in the CAT NMS Plan, and any such fee rate must be approved by a majority of the Operating Committee. Once a fee rate is established and approved by the Operating Committee, CAT LLC would announce the fee rate publicly via a CAT Alert prior to the date of its effectiveness. 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. As the process for setting the fee rates would be set forth in the CAT NMS Plan and the Participants are signatories to the CAT NMS Plan, CAT LLC does not plan to submit an amendment to the CAT NMS Plan each time that the fee rate is established or adjusted by the Operating Committee. The Participants would be required to comply with the fee rate established pursuant to the process set forth in the CAT NMS Plan.

In contrast, each of the Participants would file fee filings pursuant to Section 19(b) and Rule 19b-4 thereunder to charge Industry Members CAT fees assessed by CAT LLC. Specifically, each of the Participants would file fee filings to establish the initial fee rate (*e.g.*, the initial fee rate for fees related to Past CAT Costs or going forward costs) and for any changes

¹²⁰ See *The Nasdaq Stock Market LLC, et al v. SEC*, No. 21-1167 (D.C. Cir. 2022) (holding that Section 11A of the Exchange Act does not permit non-SROs to participate in NMS plan governance).

¹²¹ FINRA Letter at 8.

¹²² *Id.*

¹²³ *Id.*

to those initial rates. The fee filings would describe the fee rates as required by Section 19(b) and Rule 19b-4 thereunder.

* * * * *

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Mike Simon". The signature is fluid and cursive, with a distinct dot at the end of the final stroke.

Mike Simon
CAT NMS Plan Operating Committee Chair

cc: The Hon. Gary Gensler, Chair
The Hon. Hester M. Peirce, Commissioner
The Hon. Caroline A. Crenshaw, Commissioner
The Hon. Mark T. Uyeda, Commissioner
The Hon. Jaime Lizárraga, 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