

VIA EMAIL (rule-comments@sec.gov)

December 18, 2025

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

Re: File Number 4-698
Notice of Filing of Amendment to the National Market System Plan Governing the Consolidated Audit Trail regarding CAT Funding Model – Response to Comments

Dear Ms. Countryman:

On September 5, 2025, the Consolidated Audit Trail, LLC (“CAT LLC”), on behalf of the Participants¹ in the National Market System Plan Governing the Consolidated Audit Trail² (the “CAT NMS Plan” or “Plan”), filed with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed amendment to the CAT NMS Plan pursuant to Rule 608 of Regulation NMS under the Securities Exchange Act of 1934 (“Exchange Act”)³ to implement a revised funding model (the “Funding Proposal”) for the consolidated audit trail (the “CAT”) and to establish a fee schedule for Participant CAT fees in accordance with the Funding Proposal.⁴ The Proposed Amendment was published for comment in the Federal Register on September 17, 2025.⁵ On November 21, 2025, the Commission instituted proceedings to determine whether to approve or disapprove the Proposed Amendment.⁶

To date, commenters have submitted seven comment letters in response to the Proposed Amendment. CAT LLC submits this letter to respond to issues raised in those comment letters

¹ The twenty-seven Participants of the CAT NMS Plan are: 24X National Exchange LLC, BOX Exchange LLC, Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe Exchange, Inc., Financial Industry Regulatory Authority, Inc. (“FINRA”), Investors Exchange LLC, Long-Term Stock Exchange, Inc., MEMX LLC, Miami International Securities Exchange LLC, MIAX Emerald, LLC, MIAX PEARL, LLC, MIAX Sapphire, LLC, Nasdaq BX, Inc., Nasdaq GEMX, LLC, Nasdaq ISE, LLC, Nasdaq MRX, LLC, Nasdaq PHLX LLC, The NASDAQ Stock Market LLC, New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE National, Inc., and NYSE Texas, Inc.

² The CAT NMS Plan is a national market system plan approved by the Commission pursuant to Section 11A of the Exchange Act and the rules and regulations thereunder. See Securities Exchange Act Rel. No. 79318 (Nov. 15, 2016), 81 Fed. Reg. 84696 (Nov. 23, 2016) (“CAT NMS Plan Approval Order”). The full text of the CAT NMS Plan is available at www.catnmsplan.com. Unless otherwise defined herein, capitalized terms are defined as set forth in the CAT NMS Plan or the Proposed Amendment, as applicable.

³ 17 C.F.R. § 242.608.

⁴ Letter from Robert Walley, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission (Sept. 5, 2025) (“Proposed Amendment”). See also Securities Exchange Act Rel. No. 98290 (Sept. 6, 2023), 88 Fed. Reg. 62628 (Sept. 12, 2023) (“Executed Share Model Approval Order”).

⁵ Securities Exchange Act Rel. No. 103960 (Sept. 12, 2025), 90 Fed. Reg. 44910 (Sept. 17, 2025).

⁶ Securities Exchange Act Rel. No. 104234 (Nov. 21, 2025), 90 Fed. Reg. 54438 (Nov. 26, 2025) (“OIP”).

and in the OIP that are directed to CAT LLC.⁷ This letter is divided into four sections. Section I discusses comments related to the allocation of CAT fees among Participants and Industry Members under the Funding Proposal; Section II discusses comments related to the Funding Proposal's use of executed equivalent share volumes to calculate CAT fees; Section III addresses comments related to the pass-through prohibition described in the Proposed Amendment; and Section IV addresses various other issues raised by commenters. 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.

The Funding Proposal directly addresses concerns discussed in the decision of the U.S. Court of Appeals for the Eleventh Circuit ("Eleventh Circuit")⁸ regarding the possibility for 100% pass-through of Participant CAT costs under the 2023 funding order without the SEC considering the effects of that choice, and would provide reasonable fees that are equitably allocated, not unfairly discriminatory, and do not impose an undue burden on competition. CAT LLC believes that the Funding Proposal is consistent with the Exchange Act and should be approved by the Commission.

I. Allocation of Fees Among Participants and Industry Members

Commenters make several arguments related to the decision in the Funding Proposal to allocate one-third of CAT costs to Participants and two-thirds of CAT costs to Industry Members.⁹ These commenters made the same arguments with respect to the allocation of CAT costs between Participants and Industry Members under the Executed Shares Model when it was originally proposed, and CAT LLC addressed those comments in detail in its prior comment letters

⁷ See Letter from Steffen N. Johnson, Wilson Sonsini Goodrich & Rosati Professional Corporation on behalf of FINRA, to Vanessa Countryman, Secretary, Commission (Oct. 17, 2025) ("FINRA Letter"); Letter from Gentry Collins, CEO, The American Free Enterprise Chamber of Commerce, to Vanessa Countryman, Secretary, Commission (Oct. 17, 2025) ("Amfree Chamber Letter"); Letter from Stephen John Berger, Managing Director, Global Head of Government and Regulatory Policy, Citadel Securities, to Vanessa Countryman, Secretary, Commission (Oct. 17, 2025) ("Citadel Letter"); Letter from Joseph P. Corcoran, Managing Director and Associate General Counsel, and Katie Kolchin CFA, Managing Director, Head of Equity & Options Market Structure, Securities Industry and Financial Markets Association, to Vanessa Countryman, Secretary, Commission (Oct. 21, 2025) ("SIFMA Letter"); Letter from Patrick Sexton, EVP, General Counsel & Corporate Secretary, Cboe, to Vanessa Countryman, Secretary, Commission (Oct. 31, 2025) ("Cboe Letter"); and Letter from Christopher A. Iacovella, President & CEO, American Securities Association, to Vanessa Countryman, Secretary, Commission (Oct. 31, 2025) ("ASA Letter"); Letter from Joanna Mallers, Secretary, PTG, to Vanessa Countryman, Secretary, Commission (Nov. 24, 2025) ("PTG Letter").

⁸ *Am. Sec. Ass'n, Citadel Sec. LLC v. U.S. Sec. & Exch. Comm'n*, No. 23-13396, 2025 WL 2092054 (11th Cir. July 25, 2025) ("Eleventh Circuit Opinion").

⁹ See Citadel Letter at 6-8; FINRA Letter at 4.

concerning the Executed Shares Model, as well as when it originally proposed the Executed Shares Model.¹⁰

II. Executed Equivalent Shares

One commenter makes several arguments stating that the Proposed Amendment does not adequately explain why it is equitable to use executed equivalent share volume as the basis for calculating CAT fees rather than message traffic.¹¹ This commenter made the same arguments with respect to the use of executed equivalent share volume to calculate CAT fees under the Executed Shares Model when it was originally proposed, and CAT LLC addressed those comments in its May 2023 Response to Comments.¹² CAT LLC also addressed this issue in its original filing proposing the Executed Shares Model.¹³

Another commenter raised several objections to the proposed allocation of CAT costs to FINRA under the Funding Proposal.¹⁴ This commenter raised the same objections with respect to the Executed Shares Model when it was originally proposed, and CAT LLC addressed those objections in its July 2023 Response to Comments.¹⁵ CAT LLC also addressed these issues when it originally proposed the Executed Shares Model.¹⁶

III. Pass-Through Prohibition

Commenters incorrectly assert that the Funding Proposal attempts to circumvent the Eleventh Circuit’s opinion, and therefore should be disapproved.¹⁷

The Eleventh Circuit found that the Commission’s order approving the Executed Shares Model violated the Administrative Procedures Act as a result of (1) the Commission allowing for the possibility for “self-regulatory organizations to pass through 100% of their fees to broker-dealers—without considering the effects of that choice” or providing a “reasoned justification or explanation” of that policy change; and (2) the Commission failing to “conduct a new economic

¹⁰ CAT LLC incorporates by reference its prior letters concerning the Executed Shares Model. *See* Letter from Brandon Becker, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission at 5-14 (July 28, 2023) (“July 2023 Response to Comments”); Letter from Brandon Becker, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission at 6-9 (May 18, 2023) (“May 2023 Response to Comments”); Letter from Brandon Becker, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission at 43-47 (Mar. 13, 2023) (“Executed Shares Model Proposal”). Prior to the 2023 Executed Shares Model Proposal, the Executed Share Model was subject to substantial public review and comment via the proposed amendment to the CAT NMS Plan published by the SEC on May 25, 2022 (the “2022 Funding Proposal”), the subsequent order instituting proceedings related to the 2022 Funding Proposal, and two partial amendments regarding the 2022 Funding Proposal.

¹¹ *See* Citadel Letter at 6-7. *See also*, FINRA Letter at 4 n.11 (incorporating prior FINRA comment letters by reference).

¹² *See* May 2023 Response to Comments at 3-4 (May 18, 2023).

¹³ *See* Executed Shares Model Proposal at 31-36, 39-42.

¹⁴ *See* FINRA Letter at 4 n.11.

¹⁵ *See* July 2023 Response to Comments at 34-35.

¹⁶ *See* Executed Shares Model Proposal at 51-53.

¹⁷ *See* SIFMA Letter at 2-3. *See also* Citadel Letter at 9-10; FINRA Letter at 2, 10-11; PTG Letter at 2.

analysis or revise its previous economic analysis”.¹⁸ The Funding Proposal directly addresses the Eleventh Circuit’s core concern regarding the possibility of 100% pass-through costs under the 2023 funding order without the SEC considering the effects of that choice, and CAT LLC will continue to work collaboratively with the Commission to inform its new economic analysis.

First, commenters argue that amending the CAT NMS Plan to prevent each Participant from filing a rule change to establish a “new fee” to pass-through their share of CAT costs would circumvent the Eleventh Circuit’s decision, because it “raise[s] the specter of adding CAT costs to existing fees the SROs already charge their members to recoup their CAT costs, thus doing indirectly what they cannot do directly.”¹⁹

These commenters incorrectly read the Eleventh Circuit’s decision. For one, the Eleventh Circuit disapproved the Executed Shares Model Approval Order only insofar as it permitted “self-regulatory organizations to pass through 100% of their fees to broker-dealers—without considering the effects of that choice” or satisfactorily explaining that policy change. The Court did not hold that SROs could never pass through 100% of their CAT-related fees, but rather that in considering a pass-through the SEC must weigh the effects of and explain its decision.

For another, the Eleventh Circuit’s decision narrowly focused on a footnote in the Executed Shares Model Approval Order explaining that if the SROs “passed their CAT costs to broker dealers ‘in full,’ the broker-dealers would ‘effectively bear 100% of the CAT allocation (ignoring what they would pass to investors).” The Court did not provide support for objecting to any and every existing SRO fee as “indirectly” related to CAT. Rather, the Court specifically cited the CAT cost recovery fees implemented by FINRA to directly pass-through to its members 100% of the CAT fees allocated to FINRA as a Participant in the CAT NMS Plan under the Executed Shares Model,²⁰ which were “designed to permit FINRA to recoup its designated portion of the reasonably budgeted CAT costs of the [CAT NMS Plan].”²¹ The Court expressly “acknowledge[d] that no self-regulatory organization other than FINRA has asked for 100% pass-through approval so far,”²² and, in response to the Court’s decision, FINRA has withdrawn its CAT cost recovery fees.²³ Accordingly, the Proposed Amendment directly addresses the Eleventh Circuit’s core concern by precluding any Participant from establishing a new fee for passing through to its members the CAT fee charged to such Participant.

¹⁸ Eleventh Circuit Opinion at 16-17, 20, 24.

¹⁹ See SIFMA Letter at 2. See also, PTG Letter at 2.

²⁰ See Eleventh Circuit Opinion at 15-16, n.1.

²¹ See, e.g., Securities Exchange Act Rel. No. 103373 (July 2, 2025), 90 Fed. Reg. 30171 (July 8, 2025).

²² Eleventh Circuit Opinion at 26.

²³ See Withdrawal of Proposed Rule Change, Proposed Rule Change to Amend FINRA Rule 6897 (Consolidated Audit Trail Funding Fees) to Implement Prospective CAT Cost Recovery Fee 2025-2, File No. SR-FINRA-2025-010, available at <https://www.finra.org/rules-guidance/rule-filings/sr-finra-2025-010>; Withdrawal of Proposed Rule Change, Proposed Rule Change to Adopt FINRA Rule 6897(b) (CAT Cost Recovery Fees) to Implement a Historical Consolidated Audit Trail Recovery Assessment, File No. SR-FINRA-2024-003, available at <https://www.finra.org/rules-guidance/rule-filings/sr-finra-2024-003#:~:text=Financial%20Industry%20Regulatory%20Authority%2C%20Inc,This%20filing%20has%20been%20withdrawn.>

Second, two commenters argue that the formulation that “[e]ach Participant agrees not to file with the SEC a proposed rule change . . . that would establish a new fee for passing through to its members the CAT fee charged to such Participant in accordance with Section 11.3(a)” is factually incorrect because they voted against the Proposed Amendment.²⁴ This provision was intended impose an obligation on all Participants, not to suggest that all Participants voted to approve the Proposed Amendment. As required by the CAT NMS Plan, a supermajority of Participants voted in favor of the Proposed Amendment, but there was not unanimity. To better reflect that the Proposed Amendment was approved under the Plan and avoid statements suggesting that all Participants voted for the proposal, CAT LLC is amending the Proposed Amendment to state that “[n]o Participant will file” instead of “[e]ach Participant agrees not to file”. With this change, proposed Section 11.3(e) would state as follows:

Participant Pass-Through Fees. No Participant will file with the SEC a proposed rule change pursuant to Section 19(b) and Rule 19b-4 thereunder that would establish a new fee for passing through to its members the CAT fee charged to such Participant in accordance with Section 11.3(a).

Exhibit A to this letter sets forth the cumulative changes proposed to be made to the existing CAT NMS Plan under the Proposed Amendment. Exhibit B to this letter sets forth the proposed additional revisions to new Section 11.3(e) against the Proposed Amendment.

Third, these commenters further argue that it is unlawful for the CAT NMS Plan to prevent individual Participants from passing their CAT fees through to Industry Members. These commenters contend that Rule 608(a)(5)(ii), which requires that NMS plans include a description of fees “collected on behalf of all of the sponsors and/or participants,” does not authorize the CAT NMS Plan to impose restrictions on individual SRO fees. However, Rule 608(a)(4)(ii) more broadly requires NMS plans to include “[a] detailed description of the manner in which the . . . amendment . . . will be implemented” and “[a] description of any written understandings or agreements between or among plan sponsors or participants relating to interpretation of the plan or conditions for becoming a sponsor or participant in the plan.” The Proposed Amendment falls squarely within this broad authority because it embodies a written understanding relating to the interpretation of the CAT NMS Plan—*i.e.*, that no Participant shall establish a new fee for passing through to its members the CAT fee charged to such Participant. In addition, the Eleventh Circuit’s decision is premised on the notion that the 2023 funding order was a “shift from a mandate that both self-regulatory organizations and broker-dealers fund the CAT to an allowance for self-regulatory organizations to pass through 100% of their CAT costs” without the SEC considering the effects of that choice,²⁵ which necessarily implies the Court’s view that prior to 2023 the CAT NMS Plan did not contemplate 100% pass-throughs via individual SRO fees.²⁶ Finally, the CAT NMS Plan currently includes provisions that prevent the Participants from collecting Post-

²⁴ See FINRA Letter at 10; Cboe Letter at 2.

²⁵ Eleventh Circuit Opinion at 16.

²⁶ The Eleventh Circuit’s decision did not cite to any specific provision of the CAT NMS Plan prohibiting 100% pass-throughs via individual SRO fees but, instead, stated that “[a]ll prior Commission CAT promulgations stated that self-regulatory organizations would be responsible for some ‘allocation of the costs’” of CAT, citing to the SEC’s 2016 order approving the CAT NMS Plan.

Amendment Industry Member Fees.²⁷ Accordingly, the CAT NMS Plan already imposes restrictions on individual SRO fees. For these reasons, CAT LLC disagrees that approval of the Proposed Amendment would exceed the Commission’s statutory authority.

IV. Other Comments

Commenters separately raised nine additional topics related to the Funding Proposal for the Commission’s consideration, which CAT LLC responds to, in turn, in the sections below.

A. Lack of Industry Input

First, certain commenters incorrectly state that the Proposed Amendment lacks input from the industry.²⁸ On the contrary, as discussed in detail in CAT LLC’s May 2023 Response to Comments and July 2023 Response to Comments, CAT LLC has engaged with the industry—including the CAT Advisory Committee, industry associations, as well as individual Industry Members—extensively and in good faith since 2016 as it has explored different approaches to CAT funding and considered various CAT funding issues.²⁹ CAT LLC remains committed to working constructively with the industry on issues related to CAT funding.

B. Rule 613 and the CAT NMS Plan

Second, certain commenters reassert that “the CAT itself is unlawful.”³⁰ Although this argument was raised in the Eleventh Circuit litigation, the Court clearly chose not to address it in resolving this matter and instead focused narrowly on the potential for 100% pass-through costs under the 2023 funding order without the SEC considering the effects of that choice and the Commission’s economic analysis.³¹ CAT LLC believes that arguments challenging the legality of the CAT are directed primarily at the Commission. However, CAT LLC notes that certain of these commenters previously acknowledged the Commission’s authority to adopt the CAT. In a 2020 comment letter, Citadel wrote that it “greatly appreciates the continued efforts of the [Commission] to ensure that the consolidated audit trail (‘CAT’) is effectively implemented” and

²⁷ See, e.g., CAT NMS Plan at Section 11.3(a)(iii) (“No Participant will make a filing with the SEC pursuant to Section 19(b) of the Exchange Act regarding any CAT Fee related to Prospective CAT Costs until the Financial Accountability Milestone related to Period 4 described in Section 11.6 has been satisfied.”); Section 11.3(a)(ii)(B)(III) (“No Participant will make a filing with the SEC pursuant to Section 19(b) of the Exchange Act regarding any Historical CAT Assessment until any applicable Financial Accountability Milestone described in Section 11.6 has been satisfied.”); Section 11.6(a)(ii)-(iii) (providing that the amount of Post-Amendment Industry Member Fees that the Participants are entitled to collect for Periods 1, 2, 3, and 4 will be reduced if the Participants miss the deadline set forth for that period).

²⁸ See SIFMA Letter at 3.

²⁹ See July 2023 Response to Comments at 26-28; May 2023 Response to Comments at 12.

³⁰ Citadel Letter at 2. See also ASA Letter at 2; Amfree Chamber Letter at 1.

³¹ *Am. Sec. Ass’n, Citadel Sec. LLC v. U.S. Sec. & Exch. Comm’n* at 4 (“We do not need to reach the argument as to whether the CAT itself is unlawful [. . .].”).

that it “fully support[s] the need for a robust CAT.”³² In a 2019 comment letter, the ASA wrote that it “appreciates the work of the SEC to bring the CAT online” and reaffirmed its support for “a market-wide surveillance system that allows the SEC to properly oversee markets, take action against wrongdoers, and protect investors.”³³

A commenter argues that to read the Proposed Amendment, “one would think that the 11th Circuit’s decision never happened,” and that “neither Rule 613 nor the national market system (NMS) plan adopted for the CAT in 2016 authorizes a single dollar of [CAT] expenses to be paid by broker-dealers.”³⁴ This is an incorrect reading of the Eleventh Circuit’s decision, which is premised on the Court’s conclusion that Rule 613 and the CAT NMS Plan “required both the self-regulatory organizations and the broker-dealers to bear the costs of the CAT.” Contrary to this commenter’s contention, the Eleventh Circuit did not hold that broker-dealers cannot be required to share in the costs of the CAT.

C. Economic Analysis

Third, commenters argue that the Funding Proposal does not adequately address the Eleventh Circuit’s opinion because the Participants ask the SEC to perform a new or updated economic analysis of the Funding Proposal without providing updated data to support a new or updated economic analysis.³⁵

CAT LLC understands that the SEC staff is currently working on a new or updated economic analysis of the Funding Proposal consistent with the Eleventh Circuit’s opinion. The Commission and its staff are authorized to access CAT data directly for a variety of purposes, including in connection with rulemaking proceedings.³⁶ In addition, CAT LLC recently published a revised 2025 Financial and Operating Budget on the CAT website, which provides up-to-date information about current CAT costs.³⁷ CAT LLC also has recently filed a proposed amendment to the CAT NMS Plan proposing certain cost savings initiatives, which provides detailed information about current CAT costs.³⁸ The SEC’s recent exemptive order aimed at reducing CAT

³² See Letter from Stephen John Berger, Managing Director, Global Head of Government and Regulatory Policy, Citadel Securities, to Vanessa Countryman, Secretary, Commission (June 1, 2020), <https://www.sec.gov/comments/s7-10-20/s71020-8077418-225995.pdf>. See also Letter from Stephen John Berger, Managing Director, Global Head of Government and Regulatory Policy, Citadel Securities, to Vanessa Countryman, Secretary, Commission (Nov. 30, 2020), (“Citadel Securities has consistently supported the Commission’s efforts to address the need for a robust and secure CAT.”).

³³ Letter from Christopher A. Iacovella, Chief Executive Officer, American Securities Association to Vanessa Countryman, Secretary, Commission (Oct. 28, 2019), <https://www.sec.gov/comments/s7-13-19/s71319-6381876-197754.pdf>.

³⁴ ASA Letter at 1-2.

³⁵ See SIFMA Letter at 2; Citadel Letter at 4-8; PTG Letter at 2.

³⁶ See Securities Exchange Act Rel. No. 79318 (Nov. 15, 2016), 86 Fed. Reg. 84696, 84817, 84835, 84977 (Nov. 23, 2016).

³⁷ Consolidated Audit Trail, LLC, 2025 Financial Operating Budget (Nov. 7, 2025), available at https://www.catnmsplan.com/sites/default/files/2025-11/11.07.25-CAT-LLC-2025-Finacial_and_Operating-Budget.pdf.

³⁸ See Letter from Robert Walley, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission (Dec. 17, 2025), <https://catnmsplan.com/sites/default/files/2025-12/LLC-Proposed-CAT-NMS-Plan-Amendment-2025-Cost-Savings-Amendment-12.17.25.pdf>.

operating costs provides similarly detailed cost-related information about the CAT.³⁹ Finally, CAT LLC is available to provide information that the SEC staff deems helpful to its updated economic analysis of the Funding Proposal upon request.

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

Fourth, one commenter argues that the Funding Proposal unlawfully circumvents Rule 608 because fee filings related to NMS Plans are governed by Rule 608 and, therefore, Participant fee filings related to CAT cannot be filed as immediately effective under Exchange Act Section 19(b), and Rule 19b-4 thereunder.⁴⁰ In the alternative, this commenter argues that even if Participant fee filings are permitted under Rule 19b-4, the SEC's post hoc review of immediately effective fee filings does not provide Industry Members sufficient protection from unreasonable fees because they are immune from judicial challenge unless the SEC suspends a fee filing.⁴¹ This commenter argues that the Commission must determine whether the actual costs underlying fee filings that will be filed pursuant to the Funding Proposal are reasonable.

As discussed in CAT LLC's July 2023 Response to Comments, CAT LLC believes that the Funding Proposal complies with Rule 608 of Regulation NMS because Section 11.1(b) of the CAT NMS Plan, as approved by the Commission, requires the Participants to file Industry Member CAT fees pursuant to Section 19(b) of the Exchange Act, and Section 19(b) permits fees to become immediately effective upon filing.⁴² Indeed, in approving the Executed Shares Model, the Commission stated that "[t]he filing of Industry Member CAT fees under Rule 19b-4 is consistent with the structure of the CAT."⁴³

Furthermore, CAT LLC believes that the fee filing process under Section 19(b), and Rule 19b-4 thereunder, provides Industry Members protection from potentially unreasonable fees. Indeed, the SEC addressed this issue in approving the Executed Shares Model, noting that immediately effective rule changes are published for public notice and comment as part of the Section 19(b) and Rule 19b-4 process, and that the Commission may temporarily suspend immediately effective rule changes based upon comments received and institute proceedings to determine whether to approve or disapprove the proposed rule change.⁴⁴

E. Alternatives to the Proposed Amendment

Fifth, commenters proposed two alternative funding mechanisms for the CAT, including a time-limited, interim funding solution that would remain in place while the SEC's comprehensive review is ongoing, as well as a suggestion that CAT be funded through Section 31 fees. The Exchange Act does not require CAT LLC to demonstrate that the Funding Proposal is superior to any other potential proposal. Instead, CAT LLC must demonstrate that the Funding Proposal is

³⁹ See Securities Exchange Act Rel. No. 104144 (Sept. 30, 2025), 90 Fed. Reg. 47853 (Oct. 2, 2025).

⁴⁰ See Citadel Letter at 10-11.

⁴¹ See Citadel Letter at 11.

⁴² See July 2023 Response to Comments at 30-31.

⁴³ Executed Shares Model Approval Order at 62674.

⁴⁴ See Executed Shares Model Approval Order at 62636-37.

consistent with the Exchange Act and the rules and regulations thereunder.⁴⁵ For all of the reasons described in this letter, and in the Proposed Amendment, CAT LLC maintains that the Funding Proposal is consistent with the Exchange Act.

i. Proposal to Implement a Temporary Funding Solution

Commenters suggest that the Commission consider implementing a time-limited, interim funding solution while the comprehensive review of CAT is ongoing.⁴⁶ These commenters recommend an alternative proposal whereby each Participant would agree not to make rule filings seeking to pass through their CAT costs only for a specified period (e.g., one year), in contrast to the prohibition in the Proposed Amendment, which would not be time-limited.⁴⁷ In particular, one commenter suggested that the Commission could:

exercise its authority under Rule 608(b)(2) to modify the Funding Proposal so that, by its terms, it would expire after a specified period (e.g., one year) to allow for progress on CAT cost savings efforts and the comprehensive review, which may provide for a funding bridge in addition to CAT LLC's reserve levels.⁴⁸

The commenter also proposed that the Commission could remove the pass-through prohibition of the Funding Proposal and indicated that it would consider filing a proposed rule change stipulating that it would not file a new recovery fee for a specific finite period (e.g., one year). The commenter noted that the Commission could determine if other Participants would similarly agree to file proposed rule changes to support this interim approach.

The proposal to modify the Funding Proposal so that it is limited to one year is in apparent conflict with the commenters' separate contention that it is unlawful for the CAT NMS Plan to prevent individual Participants from passing their CAT fees through to Industry Members.⁴⁹ Similarly, to the extent the proposal is only intended as a voluntary, non-binding agreement and would not actually operate as a prohibition on such pass-throughs, it would not seem to address the Eleventh Circuit's decision. And a decision to file a proposed rule change limiting its ability to file a new recovery fee under Section 19(b) would be at the ongoing discretion of the commenter and each other Participant. More fundamentally, the Eleventh Circuit's decision does not suggest that an interim pause on the possibility of 100% pass-through costs would address the crux of its concerns, absent a new SEC order considering the effects of that choice. Furthermore, a time-limited, interim funding solution would not address the pressing need to implement a stable funding mechanism for the CAT given the CAT System's significant costs and its substantial regulatory value to regulators. Should alternative funding mechanisms develop in the future

⁴⁵ 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.").

⁴⁶ See Cboe Letter at 2; FINRA Letter at 2-3, 13-16.

⁴⁷ See FINRA Letter at 2; Cboe Letter at 2.

⁴⁸ FINRA Letter at 2.

⁴⁹ See *supra*, Section III, at 5.

following the implementation of the Funding Proposal, CAT LLC will consider them in the normal course for consistency with the Exchange Act and, to the extent that they offer material benefits over the Funding Proposal, CAT LLC will propose them as amendments to the CAT NMS Plan.

ii. Proposal to Fund CAT through Section 31 Fees

Commenters argue that the CAT should be funded through Section 31 fees, arguing that the SEC should fund the CAT through its standard budget process as it does with other tools and technologies that it uses, which would subject CAT costs to Congressional review and oversight.⁵⁰ Commenters suggest that including CAT in the SEC's budget would (1) align incentives by creating an incentive for the SEC to control CAT costs; (2) improve governance by giving the SEC greater oversight over the CAT;⁵¹ and (3) increase transparency by making CAT a line item in the SEC's budget, which is subject to Congressional review as part of the appropriations process.⁵²

These comments are focused on Congressional oversight of the Commission and its budget and, as such, they are more appropriately directed to the Commission—not CAT LLC. In submitting the Proposed Amendment, CAT LLC has followed the requirements of Rule 608 of the Exchange Act which allows a proposed NMS Plan amendment to become effective upon a determination by the Commission that it is consistent with the Exchange Act and the rules and regulations thereunder.

F. Financial Accountability Milestones

Sixth, one commenter argues that the SEC must independently confirm that the Financial Accountability Milestones ("FAMs") have been satisfied before the Participants may start collecting CAT fees.⁵³ Pursuant to Section 11.3(a)(iii)(C) of the CAT NMS Plan,

[n]o Participant may make a filing with the SEC under Section 19(b) of the Exchange Act regarding any CAT Fee related to Prospective CAT Costs until the

⁵⁰ See Citadel Letter at 2-3; SIFMA Letter at 3-5; PTG Letter at 3. Commenters note that the Section 31 fee collection process would need to be updated to allow the SEC to adjust fees based on transaction volumes and to continue funding the CAT when Congress has not funded the government through "regular appropriation." See SIFMA Letter at 4.

⁵¹ Commenters suggest that greater oversight is necessary because Participant fee filings are immediately effective upon filing under Exchange Act Section 19(b), and Rule 19b-4 thereunder, and are not subject to judicial review unless the SEC suspends the filings. See SIFMA Letter at 4; Citadel Letter at 10-11. This comment is based on precedent in the D.C. Circuit stating that the SEC's decision not to reject or suspend a fee filing is not subject to judicial review. See *NetCoalition v. U.S. Sec. & Exch. Comm'n*, 615 F.3d 525 (D.C. Cir. 2010). CAT LLC agrees with the Commission's determination when it adopted the Executed Shares Model that the fee filing process under Section 19(b) of the Exchange Act, and Rule 19b-4 thereunder, provides sufficient protection from unreasonable fees because all immediately effective rule changes are published for public notice and comment, and the Commission may temporarily suspend immediately effective rule changes based upon comments received and institute proceedings to determine whether to approve or disapprove the proposed rule change. See Executed Shares Model Approval Order at 62636-37.

⁵² See SIFMA Letter at 1. See also, Citadel Letter at 2-3.

⁵³ See Citadel Letter at 11-13.

Financial Accountability Milestone related to Period 4 described in Section 11.6 [of the CAT NMS Plan] has been satisfied.⁵⁴

The Financial Accountability Milestone related to Period 4 described in Section 11.6 of the CAT NMS Plan is “Full Implementation of CAT NMS Plan Requirements,” which is defined, in relevant part, to “be considered complete as of the date identified in a Quarterly Progress Report meeting the requirements of Section 6.6(c)” of the CAT NMS Plan.⁵⁵ In a Quarterly Progress Report dated July 29, 2024, the Participants identified July 15, 2024, as the date on which the “Full Implementation of CAT NMS Plan Requirements” milestone was satisfied.⁵⁶ The Participants subsequently filed fee filings implementing CAT Fee 2024-1 to cover Prospective CAT Costs for the period beginning on July 16, 2024, and ending on December 31, 2024.⁵⁷ Those fee filings became effective immediately upon filing and were neither rejected nor suspended by the Commission.

In addition, this commenter argues that the FAMs have not been satisfied because CAT LLC currently relies on SEC exemptive relief from certain CAT NMS Plan requirements.⁵⁸ This commenter made the same argument in connection with Participant fee filings implementing Historical CAT Assessment 1. As discussed in detail in CAT LLC’s response to comments related to Historical CAT Assessment 1, dated June 13, 2024,⁵⁹ CAT LLC’s reliance on SEC exemptive relief does not affect the conclusion that each of the FAMs has been satisfied.

G. Comprehensive Review of the CAT

Seventh, commenters present several arguments related to the SEC’s ongoing comprehensive review of CAT and CAT-related costs, suggesting that a CAT funding mechanism should not be implemented until the SEC has completed its comprehensive review of CAT.⁶⁰ In particular, commenters argue that the SEC should do a full audit of all CAT costs as part of its comprehensive review of CAT, including the reasonableness of costs paid to vendors, and produce a report detailing its findings.⁶¹ Commenters also suggest that the Commission should require CAT LLC to engage an independent technology firm to evaluate the CAT’s scope and system

⁵⁴ CAT NMS Plan, Section 11.3(a)(iii)(C).

⁵⁵ CAT NMS Plan, Section 1.1 (defining “Full Implementation of CAT NMS Plan Requirements”).

⁵⁶ See Q2 & Q3 2024 Quarterly Progress Report (July 29, 2024).

⁵⁷ See, e.g., Securities Exchange Act Rel. No. 100828 (Aug. 27, 2024), [https://www.nyse.com/publicdocs/nyse/markets/nyse/rule-filings/sec-approvals/2024/\(SR-NYSE-2024-46\)_34-100828.pdf](https://www.nyse.com/publicdocs/nyse/markets/nyse/rule-filings/sec-approvals/2024/(SR-NYSE-2024-46)_34-100828.pdf).

⁵⁸ See Citadel Letter at 12.

⁵⁹ See Letter from Brandon Becker, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission, at 32-36 (June 13, 2024).

⁶⁰ See Citadel Letter at 8; ASA Letter at 2; FINRA Letter at 2-3, 13-16; Cboe Letter at 2; PTG Letter at 2-3. Alternatively, as described in Section IV.E.i, some commenters propose implementing a temporary, interim funding mechanism that would remain in place until after the SEC has completed its comprehensive review. See Cboe Letter at 2; FINRA Letter at 2-3, 13-16.

⁶¹ See ASA Letter at 3. See also, Citadel Letter at 4-8. In addition, one commenter argues that the SEC should analyze the legality of CAT as part of its comprehensive review. See ASA Letter at 2-3. This comment is addressed above in Section IV.B.

design to identify cost savings opportunities, and should retire duplicative and costly legacy reporting systems.⁶²

CAT LLC supports the Commission's announced comprehensive review as well as its broader efforts to ensure that CAT achieves its intended regulatory purposes in a cost-effective manner. Furthermore, CAT LLC recognizes that certain changes to CAT's funding mechanism may come as a result of the comprehensive review but maintains that the comprehensive review should not prevent the Commission from acting to determine whether to approve or disapprove the Funding Proposal. The timing of any comprehensive review and related action by the Commission is not certain, while the need for a funding source to maintain the ongoing viability of CAT is urgent. The Funding Proposal described in the Proposed Amendment provides for a fair and reasonable allocation of CAT-related costs among market participants, is not unfairly discriminatory, does not impose an undue burden on competition and, therefore, is consistent with the Exchange Act and the rules and regulations thereunder. Therefore, the Funding Proposal is neither inconsistent with nor dependent upon the completion of the SEC's comprehensive review of CAT.

H. Previously Collected Fees from Broker-Dealers

Eighth, commenters argue that the SEC should consider ways to reimburse Industry Members for CAT fees that have been paid to CAT LLC to date under the Executed Shares Model because the SEC's order approving the Executed Shares Model has now been vacated by the Eleventh Circuit's opinion.⁶³

Commenters do not cite, nor is CAT LLC aware of, any precedent suggesting that fees paid pursuant to an immediately effective fee filing must be reimbursed if the fee is later invalidated. All CAT fees that have been paid to date by Industry Members were paid pursuant to validly adopted Participant fee filings that became effective immediately upon filing under Section 19(b)(3)(A) of the Exchange Act. CAT LLC further notes that the Participants also paid CAT fees under the Executed Shares Model.

⁶² See PTG Letter at 3; Citadel Letter at 13. CAT LLC does not agree with commenters regarding the need to engage an independent technology firm to identify potential cost savings opportunities. CAT LLC believes that the Participants and the Plan Processor—in consultation with Industry Members—are best situated to identify opportunities to reduce CAT operating costs based on their deep expertise and familiarity with the technical aspects of the CAT System. Indeed, the Participants and the Plan Processor have worked diligently, in close collaboration with the industry, over the past year to reduce the CAT budget from approximately \$249 million at the beginning of 2025 to approximately \$188 million as of November 7, 2025. The Participants and the Plan Processor continue to seek additional opportunities to reduce CAT operating costs, whether by developing proposals to modify CAT NMS Plan requirements where the cost outweighs the regulatory need or by identifying opportunities to implement operational optimizations within the bounds of current CAT NMS Plan requirements. For example, on December 17, 2025, CAT LLC filed a proposed amendment to the CAT NMS Plan with the Commission that, if approved, would further reduce CAT costs by approximately \$70 - \$90 million per year.

⁶³ See ASA Letter at 3-4.

I. FINRA Constitutionality

Ninth, one commenter argues that the Funding Proposal should be denied because it relies on FINRA to collect transaction data and to otherwise operate the CAT.⁶⁴ This comment appears to be based on a misunderstanding regarding the entity that serves as the current Plan Processor. The current Plan Processor is FINRA CAT, LLC, a separate legal entity that is a subsidiary of Financial Industry Regulatory Authority, Inc.

* * *

As a result of the Eleventh Circuit's decision, following the expiration of the Court's stay of its mandate, the CAT's operations must be funded through its limited operational reserve, which is currently estimated to be exhausted in August 2026.⁶⁵ Under the CAT NMS Plan, "no Participant shall be obligated to contribute capital or make loans to the Company."⁶⁶ It should not be assumed that any Participant will voluntarily agree to loan funds to the Company once the operational reserve is exhausted. Accordingly, absent Commission action to approve a viable funding model for the CAT, there is significant uncertainty regarding the continued operation of the CAT and the Company's ability to continue as a going concern.

Thank you very much for your attention to this matter. If you have any questions or comments, please contact me at rwalley@deloitteired.com.

Respectfully Submitted,

/s/ Robert Walley

Robert Walley
CAT NMS Plan Operating Committee Chair

cc. The Hon. Paul S. Atkins, Chair
The Hon. Hester M. Peirce, Commissioner
The Hon. Caroline A. Crenshaw, Commissioner
The Hon. Mark T. Uyeda, Commissioner
Mr. Jamie Selway, Director, Division of Trading and Markets
Mr. David Hsu, Assistant Director, Division of Trading and Markets
Ms. Erika Berg, Special Counsel, Division of Trading and Markets
CAT NMS Plan Participants

⁶⁴ See Amfree Chamber Letter at 4-6.

⁶⁵ The date on which the operational reserve will be exhausted may change based on costs actually incurred by CAT LLC, which depends on transaction volumes, among other things.

⁶⁶ CAT NMS Plan, Section 3.8(a).

EXHIBIT A

Proposed Revisions to CAT NMS Plan

Additions **underlined**; deletions **[bracketed]**

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ARTICLE I

DEFINITIONS

* * * * *

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

* * * * *

[“Execution Venue” means a Participant or an alternative trading system (“ATS”) (as defined in Rule 300 of Regulation ATS) that operates pursuant to Rule 301 of Regulation ATS (excluding any such ATS that does not execute orders).]

* * * * *

ARTICLE XI

FUNDING OF THE COMPANY

Section 11.1. Funding Authority.

(a) On an annual basis the Operating Committee shall approve **[an] a reasonable** operating budget for the Company. The budget shall include the projected costs of the Company, including the costs of developing and operating the CAT for the upcoming year, and the sources of all revenues to cover such costs, as well as the funding of any reserve that the Operating Committee reasonably deems appropriate for prudent operation of the Company.

(i) Without limiting the foregoing, the reasonably budgeted CAT costs shall include technology (including cloud hosting services, operating fees, CAIS operating fees, change request fees and capitalized developed technology costs), legal, consulting, insurance, professional and administration, and public relations costs, a reserve and such other cost categories as reasonably determined by the Operating Committee to be included in the budget.

(ii) For the reserve referenced in paragraph (a)(i) of this Section, the budget will include an amount reasonably necessary to allow the Company to maintain a reserve of not more than 25% of the annual budget. To the extent collected CAT fees exceed CAT costs, including the reserve of 25% of the annual budget, such surplus shall be used to offset future fees. For the avoidance of doubt, the Company will only include an amount for the reserve in the annual budget if the Company does not have a sufficient reserve (which shall be up to but not more than 25% of the annual budget). For the avoidance of doubt, the calculation of the amount of the reserve would exclude the amount of the reserve from the budget.

(b) Subject to **Section 11.1 and** Section 11.2, the Operating Committee shall have discretion to establish funding for the Company, including: (i) establishing fees that the Participants shall pay; and (ii) establishing fees for Industry Members that shall be implemented by Participants. The Participants shall file with the SEC under Section 19(b) of the Exchange Act any such fees on Industry Members that the Operating Committee approves, and such fees shall be labeled as “Consolidated Audit Trail Funding Fees.”

(c) To fund the development and implementation of the CAT, the Company shall time the imposition and collection of all fees on Participants and Industry Members in a manner reasonably related to the timing when the Company expects to incur such development and implementation costs. In determining fees on Participants and Industry Members the Operating Committee shall take into account fees, costs and expenses (including legal and consulting fees and expenses) **reasonably** incurred by the Participants on behalf of the Company prior to the Effective Date in connection with the creation and implementation of the CAT, and such fees, costs and expenses shall be fairly and reasonably shared among the Participants and Industry Members. Any surplus of the Company’s revenues over its expenses shall be treated as an operational reserve to offset future fees.

(d) Consistent with this Article XI, the Operating Committee shall adopt policies, procedures, and practices regarding the budget and budgeting process, **[assignment of tiers,]** resolution of disputes, billing and collection of fees, and other related matters. **[For the avoidance of doubt, as part of its regular review of fees for the CAT, the Operating Committee shall have the right to change the tier assigned to any particular Person in accordance with fee schedules previously filed with the Commission that are reasonable, equitable and not unfairly discriminatory and subject to public notice and comment, pursuant to this Article XI. Any such changes will be effective upon reasonable notice to such Person.]**

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

(a) to create transparent, predictable revenue streams for the Company that are aligned with the anticipated costs to build, operate and administer the CAT and the other costs of the Company;

(b) to establish an allocation of the Company's related costs among Participants and Industry Members that is consistent with the Exchange Act, taking into account the timeline for implementation of the CAT **[and distinctions in the securities trading operations of Participants and Industry Members and their relative impact upon Company resources and operations]**;

(c) to establish a **[tiered]** fee structure in which the fees charged to **[:** (i) **Participants and [CAT Reporters that are Execution Venues, including ATs, are based upon the level of market share;** (ii) **Industry Members[' non-ATS activities]** are based upon **the executed equivalent share volume of transactions in Eligible Securities, and the costs of the CAT** **[message traffic; and (iii) the CAT Reporters with the most CAT-related activity (measured by market share and/or message traffic, as applicable) are generally comparable (where, for these comparability purposes, the tiered fee structure takes into consideration affiliations between or among CAT Reporters, whether Execution Venues and/or Industry Members)]**.

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

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

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

Section 11.3. Recovery.

(a) **Prospective CAT Costs.** The Operating Committee will establish **[fixed]** fees **("CAT Fees")** to be payable by **[Execution Venues]** **Participants and Industry Members with regard to CAT costs not previously paid by the Participants ("Prospective CAT Costs")** as **follows** **[provided in this Section 11.3(a)]**:

(i) Fee Rate. The Operating Committee will calculate the Fee Rate for the CAT Fee twice per year, once at the beginning of the year and once during the year as follows.

(A) General.

(I) For the beginning of each year, the Operating Committee will calculate the Fee Rate by dividing the reasonably budgeted CAT costs for the year by the reasonably projected total executed equivalent share volume of all transactions in Eligible Securities for the year. Once the Operating Committee has approved such Fee Rate, the Participants shall be required to file with the SEC pursuant to Section 19(b) of the Exchange Act CAT Fees to be charged to Industry Members calculated using such Fee Rate. Participants and Industry Members will be required to pay CAT Fees calculated using this Fee Rate once such CAT Fees are in effect with regard to Industry Members in accordance with Section 19(b) of the Exchange Act.

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

(III) For the avoidance of doubt, CAT Fees with a Fee Rate calculated as set forth in this paragraph (a)(i) shall remain in effect until the Operating Committee approves a new Fee Rate as described in paragraph (a)(i) and CAT Fees with the new Fee Rate are in effect with regard to Industry Members in accordance with Section 19(b) of the Exchange Act.

(IV) For the avoidance of doubt, the first CAT Fee may commence at the beginning of the year or during the year. If it were to commence during the year, the first CAT Fee

would be calculated as described in paragraph (II) of this Section.

(B) Executed Equivalent Shares. For purposes of calculating CAT Fees, executed equivalent shares in a transaction in Eligible Securities will be reasonably counted as follows:

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

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

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

(C) Budgeted CAT Costs. The budgeted CAT costs for the year shall be comprised of all reasonable fees, costs and expenses reasonably budgeted to be incurred by or for the Company in connection with the development, implementation and operation of the CAT as set forth in the annual operating budget approved by the Operating Committee pursuant to Section 11.1(a) of the CAT NMS Plan, or as adjusted during the year by the Operating Committee.

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

(ii) Participant CAT Fees.

(A) CAT Fee Obligation. Each Participant that is a national securities exchange will be required to pay the CAT Fee for each transaction in Eligible Securities executed on the exchange in the prior month based on CAT Data. Each Participant that is a national securities association will be required to pay the CAT Fee for each transaction in Eligible Securities executed otherwise than on an exchange in the prior month based on CAT Data. The CAT Fee for each transaction in Eligible Securities will be calculated by multiplying the number of executed equivalent shares in the

transaction by one-third and by the Fee Rate reasonably determined pursuant to paragraph (a)(i) of this Section 11.3.

(B) Effectiveness. Each Participant will be required to pay the CAT Fee calculated using the Fee Rate reasonably determined pursuant to paragraph (a)(i) of this Section 11.3 and approved by the Operating Committee only if such CAT Fees are in effect with regard to Industry Members in accordance with Section 19(b) of the Exchange Act.

(iii) Industry Member CAT Fees.

(A) CAT Fee Obligation. Each Industry Member that is the CAT Executing Broker for the buyer in a transaction in Eligible Securities ("CAT Executing Broker for the Buyer" or "CEBB") and each Industry Member that is the CAT Executing Broker for the seller in a transaction in Eligible Securities ("CAT Executing Broker for the Seller" or "CEBS") will be required to pay a CAT Fee for each such transaction in Eligible Securities in the prior month based on CAT Data. The CEBB's CAT Fee or CEBS's CAT Fee (as applicable) for each transaction in Eligible Securities will be calculated by multiplying the number of executed equivalent shares in the transaction by one-third and by the Fee Rate reasonably determined pursuant to paragraph (a)(i) of this Section 11.3.

(B) Content of Fee Filings. When the Participants file with the SEC pursuant to Section 19(b) of the Exchange Act CAT Fees to be charged to Industry Members calculated using the Fee Rate that the Operating Committee approved in accordance with paragraph (a) of this Section 11.3, such filings shall set forth (A) the Fee Rate; (B) the budget for the upcoming year (or remainder of the year, as applicable), including a brief description of each line item in the budget, including (1) technology line items of cloud hosting services, operating fees, CAIS operating fees, change request fees and capitalized developed technology costs, (2) legal, (3) consulting, (4) insurance, (5) professional and administration, and (6) public relations costs, a reserve and/or such other categories as reasonably determined by the Operating Committee to be included in the budget, and the reason for changes in each such line item from the prior CAT Fee filing; (C) a discussion of how the budget is reconciled to the collected fees; and (D) the projected total executed equivalent share volume of all transactions in Eligible Securities for the year (or remainder of the year, as applicable), and a description of the calculation of the projection. The information provided in this Section would be provided with sufficient detail to demonstrate that

the budget for the upcoming year, or part of year, as applicable, is reasonable and appropriate.

(C) No Participant will make a filing with the SEC pursuant to Section 19(b) of the Exchange Act regarding any CAT Fee related to Prospective CAT Costs until the Financial Accountability Milestone related to Period 4 described in Section 11.6 has been satisfied.

(iv) CAT Fee Details.

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

(B) For each CAT Fee, at a minimum, CAT LLC will make publicly available the aggregate executed equivalent share volume and corresponding aggregate fee by (1) Listed Options, NMS Stocks and OTC Equity Securities, (2) by transactions executed on each exchange and transactions executed otherwise than on an exchange, and (3) by buy-side transactions and sell-side transactions.

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

[(ii) Each Execution Venue that executes transactions in Listed Options will pay a fixed fee depending on the Listed Options market share of that Execution Venue, with the Operating Committee establishing at least two and no more

than five tiers of fixed fees, based on an Execution Venue's Listed Options market share. For these purposes, market share will be calculated by contract volume.]

(b) Past CAT Costs. The Operating Committee will establish [fixed] one or more fees (each a "Historical CAT Assessment") to be payable by Industry Members with regard to CAT costs previously paid by the Participants ("Past CAT Costs") as follows: [, based on the message traffic generated by such Industry Member, with the Operating Committee establishing at least five and no more than nine tiers of fixed fees, based on message traffic. For the avoidance of doubt, the fixed fees payable by Industry Members pursuant to this paragraph shall, in addition to any other applicable message traffic, include message traffic generated by: (i) an ATS that does not execute orders that is sponsored by such Industry Member; and (ii) routing orders to and from any ATS sponsored by such Industry Member.]

(i) Calculation of Historical Fee Rates.

(A) General. The Operating Committee will calculate the Historical Fee Rate for each Historical CAT Assessment by dividing the Historical CAT Costs for each Historical CAT Assessment by the reasonably projected total executed equivalent share volume of all transactions in Eligible Securities for the Historical Recovery Period for each Historical CAT Assessment. Once the Operating Committee has approved such Historical Fee Rate, the Participants shall be required to file with the SEC pursuant to Section 19(b) of the Exchange Act such Historical CAT Assessment to be charged to Industry Members calculated using such Historical Fee Rate. Industry Members will be required to pay such Historical CAT Assessment calculated using such Historical Fee Rate once such Historical CAT Assessment is in effect in accordance with Section 19(b) of the Exchange Act.

(B) Executed Equivalent Shares. For purposes of calculating each Historical CAT Assessment, executed equivalent shares in a transaction in Eligible Securities will be reasonably counted in the same manner as set forth in paragraph (a)(i)(B) of this Section 11.3.

(C) Historical CAT Costs. The Operating Committee will reasonably determine the Historical CAT Costs sought to be recovered by each Historical CAT Assessment, where the Historical CAT Costs will be Past CAT Costs minus Past CAT Costs reasonably excluded from Historical CAT Costs by the Operating Committee. Each Historical CAT Assessment will seek to recover from CAT Executing Brokers two-thirds of Historical CAT Costs incurred during the period covered by the Historical CAT Assessment.

(D) Historical Recovery Period.

(I) The length of the Historical Recovery Period used in calculating each Historical Fee Rate will be reasonably established by the Operating Committee based upon the amount of the Historical CAT Costs to be recovered by the Historical CAT Assessment; provided, however, no Historical Recovery Period used in calculating the Historical Fee Rate shall be less than 24 months or more than five years.

(II) Notwithstanding the length of the Historical Recovery Period used in calculating the Historical Fee Rate, each Historical CAT Assessment calculated using the Historical Fee Rate will remain in effect until all Historical CAT Costs for the Historical CAT Assessment are collected.

(E) Projected Total Executed Equivalent Share Volume of Transactions in Eligible Securities for Historical Recovery Period. The Operating Committee shall reasonably determine the projected total executed equivalent share volume of all transactions in Eligible Securities for each Historical Recovery Period based on the executed equivalent share volume of all transactions in Eligible Securities for the prior twelve months.

(ii) Past CAT Costs and Participants. Because Participants previously have paid Past CAT Costs via loans to the Company, Participants would not be required to pay any Historical CAT Assessment. In lieu of a Historical CAT Assessment, the Participants' one-third share of Historical CAT Costs and such other additional Past CAT Costs as reasonably determined by the Operating Committee will be paid by the cancellation of loans made to the Company on a pro rata basis based on the outstanding loan amounts due under the loans. Historical CAT Assessments are designed to recover two-thirds of the Historical CAT Costs.

(iii) Historical CAT Assessment for Industry Members.

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

(B) Historical CAT Assessment Fee Filings.

(I) Participants will be required to file with the SEC pursuant to Section 19(b) of the Exchange Act a filing for each Historical CAT Assessment.

(II) When the Participants file with the SEC pursuant to Section 19(b) of the Exchange Act a Historical CAT Assessment calculated using the Historical Fee Rate that the Operating Committee approved in accordance with paragraph (b) of this Section 11.3, such filing shall set forth (A) the Historical Fee Rate; (B) a brief description of the amount and type of the Historical CAT Costs, including (1) the technology line items of cloud hosting services, operating fees, CAIS operating fees, change request fees, and capitalized developed technology costs, (2) legal, (3) consulting, (4) insurance, (5) professional and administration and (6) public relations costs; (C) the Historical Recovery Period and the reasons for its length; and (D) the projected total executed equivalent share volume of all transactions in Eligible Securities for the Historical Recovery Period, and a description of the calculation of the projection. The information provided in this Section would be provided with sufficient detail to demonstrate that the Historical CAT Costs are reasonable and appropriate.

(III) No Participant will make a filing with the SEC pursuant to Section 19(b) of the Exchange Act regarding any Historical CAT Assessment until any applicable Financial Accountability Milestone described in Section 11.6 has been satisfied.

(iv) Historical CAT Assessment Details.

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

(B) For each Historical CAT Assessment, at a minimum, CAT LLC will make publicly available the aggregate executed equivalent share volume and corresponding aggregate fee by (1) Listed Options, NMS Stocks and OTC Equity Securities, (2) by transactions executed on each exchange and transactions executed

otherwise than on an exchange, and (3) by buy-side transactions and sell-side transactions.

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

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

(e) Participant Pass-Through Fees. No Participant will file with the SEC a proposed rule change pursuant to Section 19(b) and Rule 19b-4 thereunder that would establish a new fee for passing through to its members the CAT fee charged to such Participant in accordance with Section 11.3(a).

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EXHIBIT B

Proposed Revisions to CAT NMS Plan

Additions **underlined**; deletions **[bracketed]**

* * * * *

ARTICLE XI

FUNDING OF THE COMPANY

* * * * *

Section 11.3. Recovery.

* * * * *

(e) Participant Pass-Through Fees. **[Each] No** Participant **will [agrees not to]** file with the SEC a proposed rule change pursuant to Section 19(b) and Rule 19b-4 thereunder that would establish a new fee for passing through to its members the CAT fee charged to such Participant in accordance with Section 11.3(a).

* * * * *