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

May 19, 2021

Via Email to rule-comments@sec.gov

Re: Joint Industry Plan; Notice of Filing of Amendment to the Consolidated Audit Trail NMS Plan to Implement a Revised Funding Model (Release No. 34-91555; File No. 4-698)

Dear Ms. Countryman:

Long-Term Stock Exchange ("LTSE")[1] appreciates the opportunity to comment on the proposed funding model for the Consolidated Audit Trail ("CAT") filed with the Securities and Exchange Commission ("SEC" or "Commission").[2] LTSE believes that adequate funding for the CAT is essential, but that the proposal does not meet the Securities Exchange Act's requirements that the proposed funding of the CAT be equitable, not unfairly

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[1] LTSE is a SEC-registered securities exchange for companies and investors who share a long-term vision. By design, LTSE supports companies that aim to innovate consistently, partner with mission-aligned investors, minimize pressures to hit short-term targets, and run their businesses with the stewardship that stakeholders and society demand.
[2] Securities Exchange Act Release No. 91555 (Apr. 14, 2021), 86 FR 21050 (April 21, 2021) [hereinafter, the Proposal].

discriminatory, and not an unnecessary burden on competition. LTSE believes the proposal's shortcomings can be traced to the unwillingness of the majority of Participants[3] to base their fees on message traffic.[4]

For the reasons discussed further below, LTSE suggests that the proposal be withdrawn and resubmitted. LTSE also offers specific comments on various aspects of the proposal's Minimum Participant Fee, allocation between equity and options exchanges, and market share caps and reallocation, which are arbitrary and unfairly discriminatory, and should be revised.

I. The Proposed Funding Model's Participant Fees Should be Based on Message Traffic

The primary driver of CAT costs is message traffic. It is on this basis that Participant fees should, in the first instance, be assessed. Using this basic unit of measurement would avoid much of the subjectivity and distortions present in the proposed model.

With respect to the Participants' fees, the proposal rationalizes its reliance on the use of market share because that was discussed in the National Market System Plan Governing the Consolidated Audit Trail (the "Plan") and the approval order.[5] While true, this ignores the fact that when the Plan was proposed and approved, there was no message traffic on which to base fees nor was there any understanding of the cost structure of the CAT. Today, such information is readily available.

One of the reasons offered by the proposal as to why message traffic is not appropriate is that it is "largely derivative of quotations and orders received from Industry Members that they are *required to display*."[6] The

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[3] Participants include the parties to the National Market System Governing the Consolidated Audit Trail. See id. at 21050. While LTSE is a Participant, it voted against this proposed funding model.
[4] This comment letter focuses solely on how the Participants' Fees are allocated. LTSE is not addressing the allocation of fees between Participants and Industry Members at this time.
[5] See Securities Exchange Act Release No. 79318 (November 15, 2016), 81 FR 84696 (November 23, 2016).
[6] See Proposal at 21060 (emphasis added).

proposal does not offer any metrics in support of this statement, or what percentage of CAT message traffic relates to quotes or orders that are required to be displayed, versus the CAT message traffic which is not displayed, such as pegged and reserve orders. LTSE believes that the Commission should be encouraging more displayed liquidity, and not subsidizing the regulatory costs that flow from an exchange's non-displayed activity.

As the Commission is aware, many of the Participants operate complex market structures, with myriad order types, many of which are non-displayed orders. Thus, the argument that Participant message traffic is derivative of regulatory requirements tells only part of the story. What is missing is how these Participants have, for business reasons, structured their markets. LTSE supports innovation, but also believes as a general matter that where a particular market model imposes higher costs on the industry, such costs should be borne by the responsible market participant(s). This market discipline is critical to creating the necessary incentives to constrain the message traffic flowing into CAT, which as noted above, is the primary driver of costs.

LTSE believes that the funding model should start with the principle that each Participant should bear the costs imposed by the message traffic it creates. Managing CAT costs is a collective responsibility, but a system that does not cause Participants to bear the costs they impose, or even worse, allows them to be shifted to competitors, reduces incentives to manage costs.

In other words, adjustments to the funding model could be considered only if the straight application of the model leads to market distortions or a decrease in market quality that cannot otherwise be addressed. Yet, as proposed, these adjustments would appear from the outset and the proposal does not describe the costs of these adjustments nor how Participants can or cannot choose to modify their behavior to avoid them.

II. The Proposal's Minimum Participant Fee is Arbitrary and Unfairly Discriminatory

While LTSE believes that the proposal should be withdrawn and resubmitted in accordance with the principle noted above, we offer the following specific comments on various aspects of the proposal. First, LTSE believes that the proposed Minimum Participant Fee is arbitrary and unfairly discriminatory.

The term, Minimum Participant Fee, as used in the proposal, is not a minimum fee as the term is commonly understood. This is a base fee that is paid by each Participant irrespective of its market share calculation.[7] LTSE does not believe the CAT Plan provides for, in effect, a medallion fee.

The proposal states on the one hand that market share is a fair method of allocation, yet apportioning an arbitrary fixed percentage of the Participants' aggregate costs as a minimum fee is inconsistent with that rationale.[8] It is noteworthy that the Minimum Participant Fee distorts the role that market share plays in setting a Participant's fees. And it does so in a subtle and perverse way – as the number of Participants increases, the funding model moves even further away from a market share basis.[9] Similarly, in basing the fee on the aggregate Participant costs, the Minimum Participant Fee can grow dramatically as the Participants' fees grow in aggregate (whether a function of total costs or a change in the 25/75 allocation), even if a Participant is not imposing additional costs on the CAT. For example, if certain Participants engage in activity on their markets that causes overall CAT message traffic to increase, why should that lead to a higher Minimum

[7] By contrast, the Minimum Industry Member Fee is imposed only for firms whose message traffic calculations do not cross a certain threshold, i.e., $125 per quarter. Id. at 21058. It is not imposed as a base fee upon which additional fees are added. However, the Minimum Industry Member Fee would receive a pro-rata reallocation of any excess fees from any Industry Member whose message traffic exceeds 8% of the total message traffic for all Industry Members. Id. at 21059. A similar reallocation from a portion of FINRA's market share is applied to the Participant fees as discussed below.
[8] The Participants could have established a minimum market percentage, e.g., assigning a market share minimum of 0.25%, and remained faithful to the stated rationale. As noted above, LTSE does not support a market share model, which does not properly account for the costs imposed by market participants.
[9] It is also noteworthy that a Participant operating an options and equities venue is only assessed one Minimum Participant Fee.

Participant Fee for other Participants if none of this increase relates to their markets?

III. The Proposal's Allocation Between Equity and Options Exchanges is Arbitrary and Unfairly Discriminatory

Second, LTSE believes that the allocation of 60% of the Participants' aggregate costs to equity exchanges is arbitrary and unfairly discriminatory. LTSE cannot find any rationale for this allocation. LTSE has seen no data supporting the proposed 60/40 split. The proposal seems to suggest that the 60/40 allocation is justified because it "has been the subject of negotiations among the Participants."[10] This is not a basis for approval under the Securities Exchange Act. Moreover, the Commission is well aware that the Participants that operate options and equity venues, or options venues only, represent 21 of the 25 votes under the CAT Plan.

IV. The Proposal's Market Share Caps and Reallocation is Arbitrary and Unfairly Discriminatory

Finally, LTSE believes that the reallocation of FINRA's market share to the other equities exchanges is arbitrary and unfairly discriminatory. When more than 20% of the market share (or the largest market share of a national securities exchange + 5%, whichever is greater) occurs off-exchange, the portion above 20% (or the largest exchange market share + 5%, whichever is greater) is reallocated among all other equities exchanges.[11] This reallocation is on top of a Participant's Minimum Participant Fee and market share fee. The proposal does not adequately explain why LTSE or any other Participant should be allocated "market share" costs for activity that does not occur on their market. The stated rationale that this is necessary for the FINRA fees to be "fair and reasonable"[12] is subjective, unsupported by any data, and further highlights the inherent shortcomings of a fee model based on market share.

[10] Id. at 21061.
[11] Id.
[12] Id. at 21062.

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LTSE thanks the Commission for considering our comments. Should you have any questions, please contact the undersigned.

Sincerely,

Gary Goldsholle

Gary Goldsholle
Chief Regulatory Officer and General Counsel

cc: Christian Sabella, Acting Director, Division of Trading and Markets
David S. Shillman, Associate Director, Division of Trading and Markets