

June 29, 2017

Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: File No. SR-BatsBYX-2017-11; File No. SR-BatsBZX-2017-38; File No. SRBatsEDGA-2017-13; File No. SR-BatsEDGX-2017-22; File No. SR-BOX-2017-16; File No. SR-C2-2017-017; File No. SR-CBOE-2017-040; File No. SR-CHX-2017-08; File No. SR-IEX-2017-16; File No. SR-MIAX-2017-18; File No. SR-PEARL-2017-20; File No. SR-BX-2017-023; File No. SR-GEMX-2017-17; File No. SR-ISE-2017-45; File No. SR-MRX-2017-04; File No. SR-PHLX-2017-37; File No. SR-NASDAQ-2017-046; File No. SR-NYSE-2017-22; File No. SR-NYSEARCA-2017-52; File No. SR-NYSEMKT2017-26; File No. SR-FINRA-2017-011; Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Changes to Adopt a Fee Schedule to Establish the Fees for Industry Members Related to the National Market System Plan Governing the Consolidated Audit Trail

Dear Mr. Fields:

Each of the parties to the National Market System Plan Governing the Consolidated Audit Trail (“Plan”) – Bats BYX Exchange, Inc., Bats BZX Exchange, Inc., Bats EDGA Exchange, Inc., Bats EDGX Exchange, Inc., BOX Options Exchange LLC, C2 Options Exchange, Incorporated, Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., Financial Industry Regulatory Authority, Inc., Investors’ Exchange LLC, Miami International Securities Exchange LLC, MIAX PEARL, LLC, NASDAQ BX, Inc., Nasdaq GEMX, LLC, Nasdaq ISE, LLC, Nasdaq MRX, LLC, NASDAQ PHLX LLC, The NASDAQ Stock Market LLC, New York Stock Exchange LLC, NYSE Arca, Inc., NYSE MKT LLC, and NYSE National, Inc. (collectively, the “Participants”) – filed the above-referenced proposed rule changes to adopt rules governing fees to be charged to their members required to report data to the Consolidated Audit Trail (“the CAT Fee Filings”).¹ The Participants collectively received five comment letters in response to the CAT Fee Filings.² The Participants submit this letter to respond to the issues raised in these comment letters. The Participants note 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.

¹ Capitalized terms are defined as set forth in the CAT Fee Filings or the Plan unless otherwise indicated.

² Letter from Joanna Mallers, Secretary, FIA Principal Traders Group, to Brent J. Fields, Secretary, SEC (June 22, 2017) (“FIA PTG Letter”); Letter from Daniel Zinn, General Counsel, OTC Markets Group Inc., to Brent J. Fields, Secretary, SEC (June 13, 2017) (“OTC Markets Letter”); Letter from Patricia L. Cerny and Steve O’Mally, Compliance Consultants, to Brent J. Fields, Secretary, SEC (June 12, 2017) (“Compliance Consultants Letter”); Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, SIFMA, to Brent J. Fields, Secretary, SEC (June 6, 2017) (attaching Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, and Ellen Greene, Managing Director, Financial Services Operations, SIFMA, to Brent J. Fields, Secretary, SEC (July 18, 2016) (“SIFMA Letter I”) (“SIFMA Letter II”); Letter from Cristina Crouch, Smart ltd (June 5, 2017).

This letter is divided into four sections. Section I addresses comments related to the process for developing the CAT Fee Filings. Section II discusses comments regarding the funding model, which were previously raised and discussed in the context of the proposal and adoption of the CAT NMS Plan (the “Plan”). Section III discusses new issues raised regarding the CAT Fee Filings, including comments related to the number of tiers for CAT fees and the level of the fees for certain market participants. Section IV addresses comments related to the CAT generally, rather than specific aspects of the CAT Fee Filings, including the overall appropriateness of the CAT and the tax-exempt status of CAT NMS LLC.

I. FEE DEVELOPMENT PROCESS

One commenter expresses concern that “the Plan Participants developed the proposed fee schedules without incorporating any substantive input from the Industry Members,” and objected to the filing of the CAT Fee Filings for immediate effectiveness under the Exchange Act without soliciting public comment on the model.”³ Another commenter agrees and notes that “the CAT funding model should have been the result of a collaborative exercise that included all of the impacted industry participants.”⁴ The Participants disagree with the assertion that the CAT Fee Filings were created without industry input. On the contrary, broker-dealers and other market participants had ample opportunity to provide input into the CAT funding model, including during the development of the Plan and upon the Plan’s publication for comment, and into the fees themselves through the present comment process for the CAT Fee Filings. Moreover, the SEC had an opportunity to consider and react to comments on the funding model during its consideration of the proposal of the Plan.

As the Participants noted in their response to comments on the proposed Plan (“Plan Response Letter”)⁵, the Participants discussed the funding model with the Development Advisory Group (“DAG”), the advisory group formed to assist in the development of the Plan, during its original development. The Participants noted the following in the Plan Response Letter:

As described in the Plan, the Participants “discussed the potential approaches to funding, including the principles articulated in Article XI and an illustrative funding model, with the DAG multiple times.”⁶ The DAG includes representatives from various broker-dealers, as well as associations of broker-dealers.⁷ In addition, the Participants developed the proposed funding model taking into consideration the input of the DAG members. For example, the DAG

³ SIFMA Letter II at 2; *see also* SIFMA Letter I at 13.

⁴ FIA PTG Letter at 2.

⁵ Letter from the Participants to Brent J. Fields, Secretary, SEC (Sept. 23, 2016) (“Plan Response Letter”).

⁶ Plan, Appendix C, Section B.7(b)(v) at Appendix C-86.

⁷ For a list of the DAG members, *see* SROs Announce Members of CAT Development Advisory Group, Consolidated Audit Trail (May 2, 2014), <http://www.catnmsplan.com/Source/pastevents/p497794.pdf>; SROs Announce Members of CAT Development Advisory Group, Consolidated Audit Trail (Mar. 25, 2013), <http://www.catnmsplan.com/news-page/sros-invite-new-members-to-the-cat-development-advisory-group/>

members recommended a fixed fee to provide billing certainty to the CAT Reporters.⁸

Furthermore, broker-dealers had the opportunity to comment on the funding model during the comment process for the proposed Plan. Indeed, 24 comment letters were submitted, including 12 from broker-dealers or their representatives. The proposed Plan described significant aspects of the CAT Fee Filings, including the fixed fee approach, the bifurcated funding model, the allocation of costs among broker-dealers and Participants, the range of permissible fee tiers, the reliance of market share and message traffic for the calculation, and other aspects of the model. After considering the extensive comments provided on the funding model, including those discussed in Section II of this letter, the SEC approved the funding model set forth in Plan. In doing so, the SEC stated that “the Commission believes that the funding model set forth in the CAT NMS Plan is reasonable.”⁹ The Commission further noted that “the Exchange Act rule filing process will provide sufficient transparency into the fees charged by the Participants that are associated with the CAT.”¹⁰ In this regard, because the CAT Fee Filings represent SRO fees, it was appropriate to file them for immediate effectiveness pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act and subparagraph (f)(2) of Rule 19b-4.¹¹

II. FUNDING MODEL

A. CAT Fees for Broker-Dealers

One commenter requests further justification for imposing any fee on broker-dealers to fund the CAT, especially in light of the Participants’ existing regulatory revenue (*e.g.*, membership fees, registration and licensing fees, dedicated regulatory fees, options regulatory fees, and monetary fines).¹² Another commenter made a similar point, noting that market participants currently pay various membership and regulatory fees to the Participants.¹³

The Participants previously responded to this same comment in their Plan Response Letter.¹⁴ As the Participants previously noted, SEC Rule 613 specifically contemplates broker-dealers contributing to the funding of the CAT. SEC Rule 613 requires that the Participants 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.”¹⁵ In discussing the adoption of this requirement in SEC Rule 613, the SEC stated that the Participants

⁸ Plan Response Letter at 18.

⁹ Securities Exchange Act Rel. No. 79318 (Nov. 15, 2016), 81 Fed. Reg. 84696 (Nov. 23, 2016) (“Plan Adopting Release”) at 84796.

¹⁰ *Id.* at 84797.

¹¹ *See, e.g.*, Securities Exchange Act Rel. No. 80809 (May 30, 2017), 82 Fed. Reg. 25837, 25855 (June 5, 2017) (“BATS BYX CAT Fee Filing”).

¹² SIFMA Letter II at 2; SIFMA Letter I at 14.

¹³ FIA PTG Letter at 2.

¹⁴ Plan Response Letter at 9.

¹⁵ Securities Exchange Act Rel. No. 67457 (Jul 18, 2012), 77 Fed. Reg. 45722, 45794 (Aug. 1, 2012) (“Rule 613 Adopting Release”).

“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.”¹⁶ Accordingly, in adopting SEC Rule 613, the SEC expected that funding would involve both Participant and Industry Member contributions.

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,”¹⁷ thereby benefitting all market participants. Therefore, the Participants believe that it is equitable for both Participants and broker-dealers to contribute to funding the cost of the CAT. Moreover, by adopting a CAT-specific fee, the Participants 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.

After considering this comment as well as the Participants’ response when considering whether to approve the Plan,¹⁸ the SEC stated that

[t]he 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.¹⁹

Accordingly, the Participants continue to believe that it is appropriate that broker-dealers contribute to the funding of the CAT.

B. Allocation of Costs between Participants and Broker-Dealers

Two commenters express concerns that the proposed allocation of CAT costs between Participants and broker-dealers is inequitable, with the broker-dealers shouldering the weight of the cost burden.²⁰ One of the commenters objects to broker-dealers paying for 88% of the total costs of building and operating the CAT.²¹

The Participants previously responded to similar comments in the Plan Response Letter.²² The Participants believe that the proposed allocation of costs between broker-dealers and the Participants is appropriate, and that the concerns expressed by commenters fail to consider

¹⁶ *Id.* at 45795.

¹⁷ *Id.* at 45726.

¹⁸ Plan Adopting Release 84793-94.

¹⁹ Plan Adopting Release at 84794.

²⁰ SIFMA Letter II at 3; SIFMA Letter I at 16-17; FIA PTG Letter at 3.

²¹ SIFMA Letter II at 3.

²² Plan Response Letter at 10.

several critical aspects regarding the SEC's data. First, the funding model is designed to provide a framework for the recovery of the costs associated with creating, implementing, and operating the CAT, as contemplated by SEC Rule 613.²³ The funding model is not designed to address the broker-dealers' (or the Participants') cost of compliance with the reporting requirements of the CAT. The SEC's estimates that are quoted by the commenters, however, refer to costs incurred directly by broker-dealers for compliance with SEC Rule 613, such as the purchase of new systems, or the hiring of personnel, associated with the reporting requirements; these estimates do not refer to the CAT fees to be imposed pursuant to the Plan. Indeed, the broker-dealers' compliance costs would be incurred regardless of the funding model. Second, the Participants note that the 88% cost figure refers to the percentage of costs that will be borne by all CAT Reporter broker-dealers in the aggregate. The Participants note that there are almost 75 times more Industry Members expected to report to the CAT than Participants (*i.e.*, 1630 broker-dealer CAT Reporters versus 21 Participants).

When approving the Plan, the SEC considered the commenters' concerns regarding the allocation of costs between Participants and broker-dealers as well as the Participants' response.²⁴ The SEC stated that "[t]he Commission believes that the proposed funding model is reasonably designed to allocate the costs of the CAT between the Participants and Industry Members," while noting that the funding model does not set forth any particular percentage allocation of the costs related to the CAT.²⁵ The Participants continue to believe that the allocation of CAT costs between Participants and Industry Members is appropriate. The actual percentage allocations are discussed in more detail in Section III.

C. CAT Fees: Message Traffic vs. Market Share

One commenter objects to the funding model charging broker-dealers based on message traffic while it charges Execution Venues based on market share, when one of the most significant cost drivers for the CAT is message traffic.²⁶ Another commenter generally agrees with this position and believes that Participants should be subject to CAT fees that are based on message traffic.²⁷

The Participants previously responded to this comment in the Plan Response Letter.²⁸ The Participants noted that, in designing a funding model, the Participants have sought to ensure an equitable allocation of fees such that large broker-dealers or broker-dealer complexes and large Participants or Participant complexes pay more than small broker-dealers and small exchanges. Specifically, the Plan states that, in establishing the funding of the CAT NMS LLC, the Operating Committee shall seek "to establish a tiered fee structure in which the fees charged to . . . the CAT Reporters with the most CAT-related activity (measured by market share and/or

²³ SEC Rule 613(a)(1)(vii)(D) (requesting how plan sponsors propose to fund the creation, implementation, and maintenance of the CAT).

²⁴ Plan Adopting Release at 84795.

²⁵ *Id.*

²⁶ SIFMA Letter II at 4; SIFMA Letter I at 16-17.

²⁷ FIA PTG Letter at 3.

²⁸ Plan Response Letter at 11-13.

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).”²⁹ The Participants continue to believe that this bifurcated funding model is appropriate for several reasons.

The Participants contend that charging broker-dealers based on message traffic is the most equitable means for establishing fees for broker-dealer CAT Reporters. Broker-dealers generally will create larger volumes of message traffic as their businesses grow. Accordingly, because there is a strong correlation between message traffic and the size of a broker-dealer and because message traffic is a key component of the costs of operating the CAT, message traffic is an appropriate criterion for placing broker-dealers in a particular fee tier.

In contrast, the Participants believe that equity exchanges produce similar volumes of message traffic regardless of their size, and similarly, that options exchanges produce similar volumes of message traffic regardless of their size. Therefore, if exchange Execution Venues were charged based on message traffic, large and small exchanges would pay comparable fees, thus making the fee structure inequitable. While ATSS have varying levels of message traffic, ATSS operate in a manner similar to exchanges and therefore are classified as Execution Venues based on their business models. Accordingly, the Participants determined to treat Execution Venues and broker-dealers differently in the funding model.

Moreover, the proposed bifurcated funding model was designed to ensure an equitable allocation of fees such that large broker-dealers or broker-dealer complexes and large Participants or Participant complexes pay more than small broker-dealers and small exchanges. In addition, the proposed funding model establishes aggregate fees for Participant complexes that are comparable to those of large broker-dealers. Indeed, the proposed funding model estimates total fees for associated Participant complexes that are in several cases nearly two to three times larger than the single largest broker-dealer complex.

In approving the Plan, the SEC considered the Participants’ response to this comment about the use of the market share versus message traffic.³⁰ The SEC stated that “[t]he Participants have offered a credible justification for using different criteria to charge Execution Venues (market share) and Industry Members (message traffic).”³¹ The Participants continue to believe that the bifurcated funding model is appropriate.

D. CAT Fees: ATSS vs. Exchanges

One commenter questions why the funding model would treat ATSS and exchanges in the same way.³² As the Participants stated in the Plan Response Letter, the Participants determined

²⁹ Plan, Section 11.2(c) at 67.
³⁰ Plan Adopting Release 847995-96.
³¹ Plan Adopting Release 847996.
³² SIFMA Letter I at 16-17.

to treat exchanges and ATSS in the same manner under the funding model because their business models and anticipated burden on the CAT are similar.³³

E. Scope of Covered CAT Costs

Two commenters believe that the scope of the CAT fees is too broad. One commenter believes that the CAT fees should only cover costs that the Participants incur as the cost of doing business as SROs, and that the CAT fees should not cover third-party support fees (historical legal fees, consulting fees, and audit fees), operational reserve, and insurance costs.³⁴ Another commenter agrees and explains that “if it is determined that broker-dealers must share in the cost of the CAT, they should not be required to cover any costs or expenses other than the direct costs to build and operate the system itself.”³⁵

The Participants addressed similar comments in the Plan Response Letter.³⁶ As stated in the Plan Response Letter, the Participants believe that the recovery of such costs is not only consistent with SEC Rule 613, but also the policy goals of SEC Rule 613. SEC Rule 613 requires that the Participants discuss “[h]ow the plan sponsors propose to fund the creation, implementation and maintenance of the consolidated audit trail. . .”³⁷ In discussing the adoption of this requirement in Rule 613, the SEC stated that “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. . .”³⁸ Accordingly, the SEC specifically contemplated that the Participants could propose recovering costs incurred in the creation, implementation and maintenance of the Plan, which costs necessarily include the legal fees, consulting fees, and audit fees incurred by the Participants for the creation and implementation of the Plan, and these costs are critical to the implementation of the Plan. Additionally, the operational reserve and insurance costs with respect to the CAT are critical to the implementation and maintenance of the CAT. In addition, as noted by the SEC, the CAT is intended to benefit the market as a whole,³⁹ and, therefore, the Participants believe that it would be consistent for them to determine that both the Participants and the broker-dealers should bear an equitable burden in funding the development of the Plan governing the operation of the CAT.

The SEC considered this comment regarding the scope of the CAT fees and the Participants’ response to the comment when evaluating the proposed Plan,⁴⁰ and stated that “the Commission further believes that the proposed funding model is designed to impose fees

³³ Plan Response Letter at 13.

³⁴ SIFMA Letter II at 3; SIFMA Letter I at 15-18. This commenter also objects to the proposed future fee filing that would recoup the CAT costs incurred prior to November 21, 2016. SIFMA Letter II at 4; SIFMA Letter I at 15. As the CAT Fee Filings do not propose fees related to that time period, the Participants are not addressing this comment in this letter.

³⁵ FIA PTG Letter at 2.

³⁶ Plan Response Letter at 13.

³⁷ SEC Rule 613(a)(1)(vii)(D).

³⁸ Rule 613 Adopting Release at 45795.

³⁹ Rule 613 Adopting Release at 45726 (asserting that the CAT “should substantially enhance the ability of the SROs and the Commission to oversee today’s securities markets”).

⁴⁰ Plan Adopting Release at 84793-94.

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."⁴¹ The Participants believe that the third-party support costs, operational reserve and insurance costs are each critical costs associated with establishing and maintaining the CAT. Accordingly, the Participants continue to believe that such costs should be included in the scope of the CAT fees.

F. CAT Fees: Data Processing vs. Regulatory CAT Use

One commenter expresses the view that the funding approach set forth in the Plan should make a distinction between the costs directly related to data processing and the costs associated with the system components designed to support the regulatory use of the CAT.⁴² Without such a distinction, the commenter states that the funding model could permit the Participants to shift the cost of surveilling the markets from the Participants to the broker-dealers. The Participants addressed this comment in the Plan Response Letter.⁴³

The Participants have discussed the drivers of the estimated costs of building and operating the CAT with the Bidders, including the Plan Processor, on several occasions. The Bidders identified data ingestion and processing as the primary driver of costs reflected in the respective Bids. Based on this analysis, the Participants believe that such data processing provides a reasonable basis for distributing costs to CAT Reporters.

G. Regulatory Usage Fee

One commenter recommends that the Participants commit to charging the Participants and the SEC a usage fee in connection with their use of the CAT for regulatory purposes.⁴⁴ The Participants responded to this comment in the Plan Response Letter,⁴⁵ and the SEC discussed it in the Plan Adopting Release.⁴⁶

In its response, the Participants stated that they agree that there are potential benefits to charging such a regulatory usage fee. Accordingly, the Plan specifically authorizes the imposition of an ancillary fee "based on access and use of the CAT for regulatory and oversight purposes (and not including any reporting obligations)."⁴⁷ Furthermore, the Plan states that "[c]riteria and schedules for ancillary fees that might be collected pursuant to Article XI are also anticipated to be published by the Operating Committee."⁴⁸ The Participants believe, however, that it is premature to establish such a usage fee at this time. The Participants believe that, in order to decide whether to impose such a fee and how to estimate the appropriate level of such a fee, the Participants must gain a better understanding of how the CAT will be used by the

⁴¹ Plan Adopting Release at 84794.

⁴² SIFMA Letter I at 17.

⁴³ Plan Response Letter at 14.

⁴⁴ SIFMA Letter I at 15, 18.

⁴⁵ Plan Response Letter at 15.

⁴⁶ Plan Adopting Release at 84797.

⁴⁷ Plan, Section 11.3(c)(iii) at 69.

⁴⁸ Plan, Appendix C, Section B.7(b)(iv)(C) at Appendix C-86.

regulators and how such usage will impact the operational costs of the CAT. Accordingly, the Participants plan to evaluate the potential implementation of such usage fees within a year after the Participants commence using the CAT for regulatory purposes to better understand regulatory use of the system and whether usage fees would be practical or effective.

In response to this comment, the SEC noted that “nothing in the Plan prohibits such fees from being charged and, if the Participants determine such fees to be appropriate, they may file a proposed rule change that would be subject to public comment and Commission review.”⁴⁹

H. Centralized Fee Collection

One commenter recommends that the Plan require any fees imposed on broker-dealers to be collected centrally by the CAT, and not try to allocate each broker-dealer’s CAT fees across the Participants.⁵⁰ In the Plan Response Letter, the Participants responded to this comment, stating that “[e]ach broker-dealer will receive one invoice for its applicable fees, not separate invoices from each Participant of which it is a member.”⁵¹

The CAT Fee Filings implement this centralized approach to billing. Specifically, the CAT Fee Filings state that the CAT NMS LLC will provide each Industry Member with one invoice each quarter for its CAT Fees, regardless of whether the Industry Member is a member of multiple self-regulatory organizations. The CAT Fee Filings further state that each Industry Member will pay its CAT Fees to the CAT NMS LLC via the centralized system for the collection of CAT Fees established by the CAT NMS LLC in the manner prescribed by the CAT NMS LLC. Each of the SROs will provide Industry Members with details regarding the manner of payment of CAT Fees by regulatory circular or similar method.⁵²

I. Cost Savings

One commenter suggests that the CAT be funded, at least in part, by cost savings realized by the Participants as a result of moving surveillance operations from existing systems to the CAT.⁵³ The Participants addressed this comment in the Plan Response Letter, and the SEC discussed it in the Plan Adopting Release. Specifically, the SEC noted that “the Participants acknowledged that cost savings from retiring existing systems will partially offset their expenses associated with the CAT, but declined to make any specific funding commitments.”⁵⁴ The SEC did not require any changes in the Plan funding model as a result of this comment. Each Participant also has filed proposed rule filings to eliminate duplicate systems as required by the Plan. As discussed in Section II(L), below, once the Participants have more experience with the CAT and have revised their surveillance methods accordingly, each Participant will evaluate its fee structures and determine how its existing fees should be revised, if at all. While the legacy

⁴⁹ Plan Adopting Release at 84797.

⁵⁰ SIFMA Letter I at 15.

⁵¹ Plan Response Letter at 15.

⁵² See, e.g., BATS BYX CAT Fee Filing at 25854.

⁵³ SIFMA Letter I at 17-18.

⁵⁴ Plan Adopting Release at 84794. See also Plan Response Letter at 16.

systems and their related surveillance methods remain in place, it would be premature to eliminate fees.

J. Effect on Market Behavior

Two commenters raise concerns that the imposition of a fee based on message traffic would discourage the display of quotes, a practice that is generally considered a positive force for price discovery.⁵⁵ The Participants addressed this in the Plan Response Letter,⁵⁶ and the SEC considered it when approving the Plan.⁵⁷

As a preliminary matter, the Participants agree that the funding model for the CAT, as stated in the Plan, should “avoid any disincentives such as placing an inappropriate burden on competition and a reduction in market quality.”⁵⁸ Accordingly, the Participants actively considered the market quality concerns in devising the proposed funding model. Indeed, one of the reasons⁵⁹ for proposing a tiered, fixed fee funding model was to limit the disincentives to providing liquidity to the market. In particular, the Participants believed that strictly variable or metered funding models based on message volume were far more likely to affect market behavior. For example, the Participants expect that a firm that has a large volume of quotes would likely be categorized in one of the upper tiers, and would not be assessed a fee for this traffic directly as they would under a more directly metered model.

The SEC considered this issue when approving the Plan. The SEC stated that “[t]he Participants also have offered a reasonable basis for establishing a funding model based on broad tiers, in that it may be easier to implement and less likely to have an incremental deterrent effect on liquidity provision.”⁶⁰ The Participants continue to believe that a tiered, fixed fee funding model is designed to limit disincentives to providing liquidity to the market.

K. Conflicts of Interest

One commenter expresses concern regarding the potential conflicts of interest raised by the Participants allocating fees between the Participants and broker-dealers.⁶¹ The commenter is concerned that the fees would be structured to favor the Participants’ commercial interests over the broker-dealers. To address this conflict, one commenter recommends engaging an independent third-party “to prevent the Plan Participants from constructing a payment mechanism that is intended to benefit their own bottom line at the expense of their

⁵⁵ FIA PTG Letter at 3; SIFMA Letter I at 17.

⁵⁶ Plan Response Letter at 16.

⁵⁷ Plan Adopting Release at 84796.

⁵⁸ Plan, Section 11.2(e) at 69.

⁵⁹ See Plan, Appendix C, Section B.7(b)(v)(B) at Appendix C-87 -88 for a discussion of other benefits of the proposed funding model.

⁶⁰ Plan Adopting Release at 84796.

⁶¹ SIFMA Letter II at 2-3; SIFMA Letter I at 14.

competitors.”⁶² The Participants responded to this concern in their Plan Response Letter,⁶³ and the SEC discussed these issues in the Plan Adopting Release.⁶⁴

The Plan, as approved by the SEC, adopts various measures to protect against the potential conflicts issues raised by the Participants’ fee-setting authority. Accordingly, the Participants do not believe that it is necessary to employ an independent third party to evaluate an appropriate CAT fee. The Plan establishes a funding method that operates the CAT NMS LLC on a break-even basis – that is, the fees imposed and collected would be intended to cover CAT costs and an appropriate reserve for CAT costs.⁶⁵ Any surpluses would be treated as an operational reserve to offset fees in future payment.

Article VIII of the Plan provides that the CAT NMS LLC intends to operate in a manner such that it qualifies as a tax-exempt “business league” within the meaning of Section 501(c)(6) of the U.S. Internal Revenue Code of 1986, as amended.⁶⁶ Generally, a business league is an association of persons with a common business interest and is not organized for profit and no part of its net earnings of can inure to the benefit of the Participants. The CAT NMS LLC filed its application for such tax-exempt status with the Internal Revenue Service (“IRS”) on May 5, 2017 (the “IRS Application”), and the IRS Application remains pending as of the date of this letter. The Participants believe these restrictions provide sufficient protection that the Participants are not acting in a manner that favors their commercial interests over the broker-dealers and that an independent third party is not necessary. Accordingly, the Plan is designed to avoid providing a profit for any individual Participant.

In addition, as set forth in the Plan⁶⁷ and as required under the Exchange Act, all CAT fees must be filed with the SEC pursuant to Section 19(b) of the Exchange Act and Rule 19b-4 thereunder. Accordingly, broker-dealers and other members of the public will have an opportunity to comment on any such fees when they are published by the SEC. In addition, the SEC will be required to evaluate such fees to determine whether they are consistent with the Exchange Act, including whether the rules governing the CAT fees “provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.”⁶⁸

Furthermore, the Participants believe that, since SEC Rule 613 places the obligation to create, implement and maintain the CAT on the Participants, the Participants, and not a third

⁶² SIFMA Letter II at 3. *See also* SIFMA Letter I at 14.

⁶³ Plan Response Letter at 16, 18.

⁶⁴ Plan Adopting Release at 84797.

⁶⁵ Plan, Appendix C, Section B.7 at Appendix C-84.

⁶⁶ Plan Article VIII at 63.

⁶⁷ Plan, Section 11.1(b) at 66.

⁶⁸ Section 6(b)(4) of the Exchange Act.

party, must have the ability to establish reliable funding for the CAT. Finally, under their rules, some Participants are prohibited from using regulatory fees for commercial purposes.⁶⁹

In considering the conflicts of interest issues in approving the Plan, the SEC declined to require an independent third party to establish CAT fees. Instead, the SEC stated that “the Commission believes that the Exchange Act rule filing process, described above, will provide sufficient transparency into the fees charged by the Participants that are associated with the CAT.”⁷⁰ The Participants agree with this conclusion.

L. Reduction of Existing Fees

One commenter asserts that “there should be no new fee for the CAT until market participants are provided with a complete picture as to how regulatory fees are currently allocated, how the CAT fee fits into the existing regulatory framework and why assessing broker-dealers an additive regulatory fee is necessary to fund the creation and operation of the CAT.”⁷¹ The Participants previously responded to this comment in their Plan Response Letter.⁷²

As the Participants previously noted, the Participants intend to reevaluate each of their existing regulatory fees once the CAT begins operation, and the Participants begin to retire legacy systems. Once the Participants have more experience with the CAT and have revised their surveillance methods accordingly, each Participant will evaluate its fee structures and determine if its existing fees should be revised. While the legacy systems and their related surveillance methods remain in place, it would be premature to eliminate fees. The Participants believe that it is appropriate to impose CAT fees now as the Participants are incurring significant expenses in meeting the mandates of SEC Rule 613.

III. CAT FEES

A. Number of Tiers

One commenter expresses concern regarding the use of two tiers for Execution Venues. Specifically, the commenter notes that the “Plan Participants have established only two tiers for execution venues, claiming that two tiers were sufficient to distinguish between the venues and that additional tiers would have resulted in significantly higher fees for Tier 1 execution venues and diminish comparability between execution venues and Industry Members.”⁷³ Another commenter generally agrees and notes that the proposed tiering methods appear to be inequitable

⁶⁹ See, e.g., Fourth Amended and Restated Bylaws of BATS BZX Exchange, Inc., Art. X, Sec. 4; Third Amended and Restated Limited Liability Company Agreement of International Securities Exchange, LLC, Art. III, Sec. 3.3(ii); Bylaws of NYSE Arca, Inc., Art. II, Sec. 2.06.

⁷⁰ Plan Adopting Release at 84797.

⁷¹ SIFMA Letter II at 2. See also SIFMA Letter I at 14.

⁷² Plan Response Letter at 17.

⁷³ SIFMA Letter II at 4.

and unreasonable; this commenter also believes that the CAT Fee Filings do not explain why it makes sense to charge a single fee across a particular tier.⁷⁴

The Participants continue to believe that the use of two tiers is appropriate for Execution Venues. Under Section 11.3 of the Plan, the Operating Committee is required to establish at least two and not more than five tiers of fixed fees for Execution Venues (for Equity and Options). As discussed in the CAT Fee Filings,⁷⁵ the Operating Committee considered the historical market share of Execution Venues, and the distribution of Execution Venues with similar levels of market share, grouping together Execution Venues with similar levels of market share. Tier 1 would include Execution Venues with market share greater than or equal to 1%, and those Execution Venues with less than 1% market share would be in Tier 2. The Operating Committee determined to establish two tiers for Equity and Options Execution Venues, rather than a larger number of tiers as established for non-Execution Venue Industry Members, because the two tiers were sufficient to distinguish between the smaller number of Equity and Options Execution Venues based on market share. Specifically, unlike with the non-Execution Venue Industry Member data, the data for Equity and Options Execution Venues, respectively, did not suggest a break point(s) for the markets with less than 1% market share that would indicate an appropriate threshold for creating a new tier or tiers.

Furthermore, as noted in the CAT Fee Filings,⁷⁶ the incorporation of additional Equity Execution Venue tiers would result in significantly higher fees for Tier 1 Equity Execution Venues and diminish comparability between Execution Venues and Industry Members. This would occur because of the small number of Execution Venues compared to Industry Members. For both Equity and Options Execution Venues, the Participants also evaluated the potential use of 3, 4 and 5 tiers. In each case, the incorporation of additional tiers resulted in significantly higher fees for both Tiers 1 and 2. For example, if the number of tiers for Equity Execution Venues is increased from 2 to 3, then the Tier 1 fees would increase by 95% and the Tier 2 fees would increase by 64%. Similarly, if the number of tiers for Options Execution Venues was increased from 2 to 3, then the Tier 1 fees would increase by 50% and the Tier 2 fees would increase by 12%.

These fee increases are even more pronounced if the number of tiers is increased to 4 or 5. If the number of tiers for Equity Execution Venues is increased from 2 to 4, then the Tier 1 fees would increase by 160% and the Tier 2 fees would increase by 96%. Similarly, if the number of tiers for Options Execution Venues is increased from 2 to 4, then the Tier 1 fees would increase by 150% and the Tier 2 fees would increase by 113%. The result is similar if the number of tiers is increased from 2 to 5. If the number of tiers for Equity Execution Venues is increased from 2 to 5, then the Tier 1 fees would increase by 160% and the Tier 2 fees would increase by 109%. Similarly, if the number of tiers for Options Execution Venues is increased

⁷⁴ FIA PTG Letter at 3. This commenter also notes that the proposed fixed fee approach may potentially impact market liquidity. *See id.*

⁷⁵ *See, e.g.,* BAT BYX CAT Fee Filing at 25844.

⁷⁶ *Id.*

from 2 to 5, then the Tier 1 fees would increase by 150% and the Tier 2 fees would increase by 113%.

By increasing the number of tiers to 3, 4 or 5, the fees would no longer satisfy the requirement set forth in Section 11.2(c) of the Plan that “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).” The substantial increases in the Tier 1 fees caused by the increase in the number of tiers would make the Tier 1 fees for Execution Venues much higher than Tier 1 fees for non-Execution Venue Industry Members in violation of the Plan requirements. Accordingly, the Operating Committee determined that two tiers for both Equity Execution Venues and Options Execution Venues was appropriate.

With respect to charging a single amount across a given tier, the CAT Fee Filings provide that fees assessed within each tier are calculated so as to recoup a proportion of costs appropriate to the message traffic or market share (as applicable) from CAT Reporters within each tier.⁷⁷ The Operating Committee believes that the proposed approach helps ensure that fees are equitably allocated among similarly situated CAT Reporters, thereby lessening the impact of CAT fees on smaller firms.⁷⁸ This fixed fee approach also permits CAT Reporters to reasonably predict their payment obligations since it provides greater transparency, ease of calculation, ease of billing and predictability as compared to a variable fee model.⁷⁹ The Participants do not believe that the proposed fixed fee approach would significantly impact market liquidity, for instance, by CAT Reporters limiting their activity to avoid being placed in a higher tier, since the proposed approach relies on predefined fixed percentages, rather than fixed volume thresholds, to place a CAT Reporter into a particular tier. This provides elasticity within the model to take into account potential changes in message traffic.

B. 75/25 Allocation Percentages

Three commenters object to allocating 75% of total CAT costs to broker-dealers.⁸⁰ In addition, one commenter states that “The only justification provided by the Plan Participants is that the 75%/25% division was chosen to maintain ‘comparability’ across the funding model,” but stated that “comparability’ only means providing that the maximum amount that any SRO will be required to pay is comparable to the maximum amount any single broker-dealer will be required to pay. Even so, the proposed fees are not comparable at the highest tiers. The Tier 1 fee for a broker-dealer (\$404,016) would be substantially higher than the Tier 1 execution venue fee for the Participants (\$253,500 for equities and \$230,460 for options).”⁸¹

⁷⁷ See, e.g., *id.* at 25855.

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ Compliance Consultants Letter at 2; FIA PTG Letter at 2; SIFMA Letter II at 3.

⁸¹ SIFMA Letter II at 3.

As discussed in the CAT Fee Filings,⁸² in determining the cost allocation between Industry Members (other than Execution Venue ATSS) and Execution Venues, the Operating Committee analyzed a range of possible splits for revenue recovered from such Industry Members and Execution Venues. Based on this analysis, the Operating Committee determined that 75% of total costs recovered would be allocated to Industry Members (other than Execution Venue ATSS) and 25% would be allocated to Execution Venues. The Operating Committee determined that this 75/25 division maintained the greatest level of comparability across the funding model, keeping in view that comparability should consider affiliations among or between CAT Reporters (*e.g.*, firms with multiple Industry Members and/or exchange licenses). As noted in the CAT Fee Filings, while the fees for Tier 1 and Tier 2 Industry Members are relatively higher than those of Tier 1 and Tier 2 Execution Venues, Execution Venue complex fees are relatively higher than those of Industry Member complexes largely due to affiliations between Execution Venues.⁸³ In addition, an Execution Venue that is in Tier 1 for both equities and options would pay a combined fee in excess of that paid by a Tier 1 Industry Member. When analyzing alternative allocations, other possible allocations led to much higher fees for larger Industry Members than for larger Execution Venues or vice versa, and/or led to much higher fees for Industry Member complexes than Execution Venue complexes or vice versa.

Furthermore, the allocation of total CAT costs recovered recognizes the difference in the number of CAT Reporters that are Industry Members versus CAT Reporters that are Execution Venues. Specifically, the cost allocation takes into consideration that there are approximately 24 times more Industry Members expected to report to the CAT than Execution Venues (*e.g.*, an estimated 1,630 Industry Members versus 68 Execution Venues⁸⁴ as of January 2017).

C. Small ATSS

Two commenters express concern that the CAT fee for ATSS would create a significant burden on smaller ATSS and a substantial barrier to entry for new ATSS.⁸⁵ Specifically, one commenter states that “[b]y classifying ATSS as ‘Execution Venues,’ the Plan Participants impose significant annual costs (\$155,200) on even the smallest ATSS, particularly in comparison to the amount of reports it sends to the CAT. In contrast, the exchanges that are Tier 2 Execution Venues will create significantly more CAT messages than the Tier 2 ATSS, especially the Tier 2 options exchanges.”⁸⁶ Another states that the treatment of Execution Venues for smaller ATSS in the CAT Fee Filings is unfair and anti-competitive, and recommends the creation of a separate tier for Execution Venues that represent less than one percent of the market for NMS securities. The commenter recommends that this new tier should be allocated costs that appropriately reflect their small impact on the operation of the CAT.⁸⁷

⁸² See, *e.g.*, BATS BYX CAT Fee Filing at 25846.

⁸³ *Id.* at 25852.

⁸⁴ The total of 68 Execution Venues includes 14 equity exchanges, 15 options exchanges and 39 equity ATSS.

⁸⁵ SIFMA Letter II at 4; OTC Markets Letter at 1-2.

⁸⁶ SIFMA Letter II at 4.

⁸⁷ OTC Markets Letter at 1-2.

As discussed in detail in Section III(A), above, in choosing the appropriate number of tiers for the Execution Venues, two tiers were selected, rather than 3, 4 or 5 tiers, because the incorporation of additional Equity Execution Venue tiers would compromise the comparability of fees between Execution Venues and Industry Members with the most CAT-related activity. Such comparability is set forth in the Plan as a requirement for the CAT funding model.⁸⁸ Specifically, creating additional tiers could have unintended consequences on the funding model such as creating greater discrepancies between the tiers.⁸⁹ For example, Tier 1 fees would increase by 95% and 50% for Equity Execution Venues and Options Execution Venues respectively if the tiers are increased from 2 to 3, as suggested by the commenters. Similarly, the Tier 2 fees would increase by 64% and 12% for Equity Execution Venues and Options Execution Venues respectively if the tiers are increased from 2 to 3. With the use of two tiers, small ATSS, along with small exchanges, would be required to pay the fees set forth in the second tier of fees.

D. Execution Venues for OTC Equity Securities

One commenter argues that the CAT Fee Filings failed to take into consideration the unique characteristics of the market for OTC Equity Securities, and, accordingly, placed an unfair, anticompetitive burden on the Execution Venues trading OTC Equity Securities, such as OTC Link.⁹⁰ In particular, this commenter states that it was inappropriate to place the “OTC Link ATS in the same tier of CAT fees as the behemoth trading operations represented by NYSE and the Nasdaq Market. . .”⁹¹

In the CAT Fee Filings, the Participants categorized ATSS that trade OTC Equity Securities in accordance with the requirements set forth in the Plan. Section 11.3(a)(i) of the Plan provides for fees for Execution Venues that execute transactions in NMS Stocks or OTC Equity Securities. In addition, Section 11.3(a)(i) also states that “[f]or these purposes, market share for Execution Venues that execute transactions will be calculated by share volume.” As noted above, the Participants considered establishing more than two tiers for Equity Execution Venues but concluded that doing so would result in significantly higher fees for Tier 1 Equity Execution Venues and diminish comparability between Execution Venues and Industry Members in a manner that would be difficult to justify under the funding model. Given the adverse impact of a change in the number of tiers for Equity Execution Venues and the funding model, along with the consistent use of market share to assess fees to all Execution Venues, the Participants do not believe that that the CAT Fee Filings impose an unnecessary or inappropriate anticompetitive burden on Execution Venues that trade OTC Equity Securities. Accordingly, ATSS that trade OTC Equity Securities are appropriately categorized as Equity Execution Venues and their market share is calculated by share volume.

⁸⁸ See Section 11.2(c) of the Plan at 67.

⁸⁹ See, e.g., BAT BYX CAT Fee Filing at 25844.

⁹⁰ See generally OTC Markets Letter.

⁹¹ OTC Markets Letter at 5.

E. Options Market Makers

One commenter expresses concern about the negative impact the proposed CAT funding fees will have on options market makers.⁹² Specifically, the commenter noted that “[a]lthough this category of broker-dealer is relatively small in terms of net worth, due to the characteristics of quoting option classes and the enormous amount of quote traffic generated, many will fall into the top tiers of the pricing model”⁹³ due to the use of message traffic as the metric for calculating fees. As a result, the commenter believes that the proposed CAT fees place an inequitably large burden on options market makers and will have a negative effect on competition.

As discussed in the Plan Adopting Release, Plan Response Letter and the CAT Fee Filings, because message traffic is a key component of the costs of operating the CAT, the Participants believe that message traffic is an appropriate criterion for placing Industry Members in a certain fee tier.⁹⁴ In approving the Plan, the SEC stated that “[t]he Participants have offered a credible justification for using different criteria to charge Execution Venues (market share) and Industry Members (message traffic).”⁹⁵ Accordingly, the Participants continue to believe that message traffic is the appropriate metric for assigning non-Execution Venue Industry Members to the fee tiers for the CAT.⁹⁶

IV. OTHER COMMENTS

A. Development of the CAT

One commenter raised the question of “whether the [CAT] is a worthwhile endeavor.”⁹⁷ The commenter is concerned about the size, scope and cost of the CAT, and believes that the CAT is duplicative of existing electronic audit trails, which, the commenter notes, have made substantial progress with respect to data collection since SEC Rule 613 was initially proposed in 2010.⁹⁸ The Participants understand the commenter’s concern. However, the Participants are obligated to implement the CAT pursuant to SEC Rule 613.

The development of the Plan and the CAT are the result of SEC Rule 613, which was proposed and published in the Federal Register on June 8, 2010 and subject to public comment.⁹⁹

⁹² See generally Compliance Consultants Letter.

⁹³ Compliance Consultants Letter at 1.

⁹⁴ See Plan Adopting Release at 84796; Plan Response Letter at 11; BAT BYX CAT Fee Filing at 25840.

⁹⁵ Plan Adopting Release at 84796.

⁹⁶ Pursuant to an exemption granted at the request of the Participants to facilitate CAT reporting by Options Market Makers, the Plan requires Options Market Makers to submit to the relevant Options Exchange, along with any quotation, or any modification or cancellation thereof, the time it sent such message to the Options Exchange (“Quote Sent Time”), rather than requiring Options Market Makers to report Quote Sent Time directly to the Central Repository. The Options Exchanges will then report the Quote Sent Time received from Options Market Makers, along with the applicable message, to the Central Repository without change. See Section 6.4(d)(iii) of the Plan at 51. While Section 6.4(d)(iii) is intended to facilitate the reporting of Options Market Maker data to the Central Repository, the Participants believe that Options Market Makers will provide a significant amount of message traffic that will be processed by the CAT and, therefore, intend to charge Options Market Makers applicable CAT fees.

⁹⁷ FIA PTG Letter at 2.

⁹⁸ *Id.*

⁹⁹ Consolidated Audit Trail, Securities Exchange Act Rel. No. 34-62174 (May 26, 2010), 75 Fed. Reg. 32556 (June 8, 2010).

The Commission received 64 comment letters from 56 commenters on various aspects of SEC Rule 613 and ultimately adopted the rule on August 1, 2012.¹⁰⁰ Additionally, as previously noted, the Commission also received 24 comment letters in response to the proposed Plan. The Commission ultimately concluded that the Plan “is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act.”¹⁰¹

With respect to duplicative reporting requirements and systems, the Plan sets forth a timeline and process for each Participant to review its existing systems and rules and eliminate any such systems and rules that will be rendered duplicative by the CAT.¹⁰² The Participants have already submitted to the Commission proposals to retire certain duplicative systems and rules.¹⁰³ Separately, the Commission has explained its belief that existing audit trails “vary in scope, required data elements and format,” and that the CAT would address such shortcomings by implementing an audit trail “that would capture customer and order event information for orders in NMS securities, across all markets, from the time of order inception through routing, cancellation, modification, or execution in a single, consolidated data source.”¹⁰⁴ Thus, after it is fully implemented, the CAT will replace current audit trails that it will render duplicative and will provide regulators with a single, comprehensive audit trail that does not currently exist.

B. Tax Status

One commenter agrees that the tax-exempt structure of CAT NMS LLC “is an essential component of the CAT NMS Plan.”¹⁰⁵ However, the commenter raises several questions regarding this structure, including the status of CAT NMS LLC’s IRS Application, what would happen if the IRS Application is not approved, and whether overall costs and related allocations amounts would be increased if CAT NMS LLC is not tax-exempt.¹⁰⁶ The commenter also believes that the CAT Fee Filings should include a contingency plan in case the IRS Application is not approved, or state that the CAT fees are not dependent on IRS approval of the IRS Application. As previously described, CAT NMS LLC filed its IRS Application on May 5, 2017, and the application remains pending as of the date of this letter. If the IRS does not approve the IRS Application, CAT NMS LLC will operate in the same manner as set forth in the Plan, but it may be required to pay taxes. The Participants will address any potential tax consequences to the Plan based on the relevant facts at the time and do not believe it is necessary to include a contingency or similar plan in the CAT Fee Filings now to address such scenario.

¹⁰⁰ Consolidated Audit Trail, Securities Exchange Act Rel. No. 34-67457 (July 18, 2012), 77 Fed. Reg. 45722 (Aug. 1, 2012).

¹⁰¹ Plan Adopting Release at 84697.

¹⁰² See Plan, Appendix C, Section C.9 at Appendix C-94.

¹⁰³ See, e.g., FINRA, Notice of Filing of Proposed Rule Change To Eliminate Requirements That Will Be Duplicative of CAT, Securities Exchange Act Rel. No. 34-80783 (May 26, 2017), 82 Fed. Reg. 25423 (June 1, 2017).

¹⁰⁴ Plan Adopting Release at 84698.

¹⁰⁵ FIA PTG Letter at 3.

¹⁰⁶ *Id.*

Brent J. Fields
June 29, 2017
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Sincerely,

CAT NMS Plan Participants

[Participant Signature Pages Follow]

cc (via email): The Hon. Jay Clayton, Chairman
The Hon. Michael S. Piwowar, Commissioner
The Hon. Kara M. Stein, Commissioner
Ms. Heather Seidel, Acting Director, Division of Trading and Markets
Mr. Gary L. Goldsholle, Deputy 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
CAT NMS Plan Participants

PARTICIPANTS:

BATS BZX EXCHANGE, INC.

By: _____

Name: _____

Title: _____

BATS BYX EXCHANGE, INC.

By: _____

Name: _____

Title: _____

BOX OPTIONS EXCHANGE LLC

By: *Cruce M. Goodhue*

Name: *Bruce Goodhue*

Title: *Chief Regulatory Officer*

C2 OPTIONS EXCHANGE, INCORPORATED

By: _____

Name: _____

Title: _____

**CHICAGO BOARD OPTIONS EXCHANGE,
INCORPORATED**

By: _____

Name: _____

Title: _____

CHICAGO STOCK EXCHANGE, INC.

By: *Peter D. Santori* _____

Name: Peter D. Santori

Title: Executive Vice President and Chief Regulatory Officer

BATS EDGA EXCHANGE, INC.

By: _____

Name: _____

Title: _____

BATS EDGX EXCHANGE, INC.

By: _____

Name: _____

Title: _____

**FINANCIAL INDUSTRY REGULATORY AUTHORITY,
INC.**

By: Marcia E. Asquith

Name: Marcia E. Asquith

Title: Executive Vice President

NASDAQ GEMX, LLC

By: _____

Name: _____

Title: _____

NASDAQ MRX, LLC

By: _____

Name: _____

Title: _____

NASDAQ ISE, LLC

By: _____

Name: _____

Title: _____

INVESTORS' EXCHANGE, LLC

By: _____

Name: _____

Title: _____

**FINANCIAL INDUSTRY REGULATORY AUTHORITY,
INC.**

By: _____

Name: _____

Title: _____

NASDAQ GEMX, LLC

By: _____

Name: _____

Title: _____

NASDAQ MRX, LLC

By: _____

Name: _____

Title: _____

NASDAQ ISE, LLC

By: _____

Name: _____

Title: _____

INVESTORS' EXCHANGE, LLC

By: Claudia Crowley

Name: Claudia Crowley

Title: CRO

MIAMI INTERNATIONAL SECURITIES EXCHANGE, LLC

By: Edward Deitzel

Name: Edward Deitzel

Title: EVP, CRO & CCO

MIAX PEARL, LLC

By: Edward Deitzel

Name: Edward Deitzel

Title: EVP, CRO & CCO

NASDAQ BX, INC.

By: _____

Name: _____

Title: _____

NASDAQ PHLX LLC

By: _____

Name: _____

Title: _____

THE NASDAQ STOCK MARKET LLC

By: _____

Name: _____

Title: _____

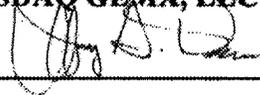
**FINANCIAL INDUSTRY REGULATORY AUTHORITY,
INC.**

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Title: _____

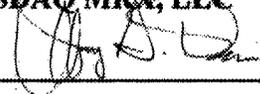
NASDAQ GEMX, LLC

By:  _____

Name: Jeffrey S. Davis

Title: Vice President and Deputy General Counsel

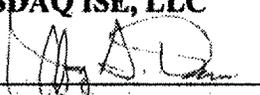
NASDAQ MRX, LLC

By:  _____

Name: Jeffrey S. Davis

Title: Vice President and Deputy General Counsel

NASDAQ ISE, LLC

By:  _____

Name: Jeffrey S. Davis

Title: Vice President and Deputy General Counsel

INVESTORS' EXCHANGE, LLC

By: _____

Name: _____

Title: _____

MIAMI INTERNATIONAL SECURITIES EXCHANGE LLC

By: _____

Name: _____

Title: _____

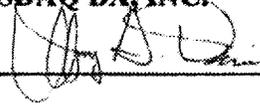
MIAX PEARL, LLC

By: _____

Name: _____

Title: _____

NASDAQ BX, INC.

By:  _____

Name: Jeffrey S. Davis

Title: Vice President and Deputy General Counsel

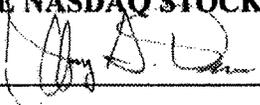
NASDAQ PHLX LLC

By:  _____

Name: Jeffrey S. Davis

Title: Vice President and Deputy General Counsel

THE NASDAQ STOCK MARKET LLC

By:  _____

Name: Jeffrey S. Davis

Title: Vice President and Deputy General Counsel

NYSE NATIONAL, INC.

By: Elizabeth K. King

Name: Elizabeth K. King

Title: General Counsel & Corporate Secretary

NEW YORK STOCK EXCHANGE LLC

By: Elizabeth K. King

Name: Elizabeth K. King

Title: General Counsel & Corporate Secretary

NYSE MKT LLC

By: Elizabeth K. King

Name: Elizabeth K. King

Title: General Counsel & Corporate Secretary

NYSE ARCA, INC.

By: Elizabeth K. King

Name: Elizabeth K. King

Title: General Counsel & Corporate Secretary