

February 27, 2015

**VIA EMAIL AND COURIER**

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

Re: National Market System Plan Governing the Consolidated Audit Trail Pursuant to Rule 613 of Regulation NMS under the Securities Exchange Act of 1934

Dear Mr. Fields:

The parties to the National Market System Plan Governing the Consolidated Audit Trail (“Plan”) – BATS Exchange, Inc. (“BATS”); BATS Y-Exchange, Inc. (“BYX”); BOX Options Exchange LLC (“BOX”); C2 Options Exchange, Incorporated (“C2”); Chicago Board Options Exchange, Incorporated (“CBOE”); Chicago Stock Exchange, Inc. (“CHX”); EDGA Exchange, Inc. (“EDGA”); EDGX Exchange, Inc. (“EDGX”); Financial Industry Regulatory Authority, Inc. (“FINRA”); International Securities Exchange, LLC (“ISE”); ISE Gemini, LLC (“ISE Gemini”); Miami International Securities Exchange LLC (“MIAX”); NASDAQ OMX BX, Inc. (“BX”); NASDAQ OMX PHLX LLC (“PHLX”); The NASDAQ Stock Market LLC (“NASDAQ”); National Stock Exchange, Inc. (“NSX”); New York Stock Exchange LLC (“NYSE”); NYSE MKT LLC (“NYSE MKT”); and NYSE Arca, Inc. (“NYSE Arca”) (collectively, the “Participants”)<sup>1</sup> – respectfully file with the Securities and Exchange Commission (the “Commission” or “SEC”) for approval pursuant to Rule 608 of Regulation NMS (“Rule 608”) under the Securities Exchange Act of 1934 (“Exchange Act”) an amendment to and replacement of the Plan as filed with the Commission on September 30, 2014 (“Initial Plan”).<sup>2</sup> This filing amends and replaces the Initial Plan, as set forth in the September 30<sup>th</sup> filing, in its entirety.

Rule 608 authorizes self-regulatory organizations “to act jointly in ... [p]reparing and filing a national market system plan or any amendment thereto.”<sup>3</sup> For purposes of Regulation

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<sup>1</sup> Capitalized terms have the same meaning as set forth in Section 1.1 of the Plan.

<sup>2</sup> Letter from Participants to Brent J. Fields, Secretary, SEC, re: National Market System Plan Governing the Consolidated Audit Trail Pursuant to Rule 613 of Regulation NMS under the Securities Exchange Act of 1934, dated Sept. 30, 2014. Rule 613(a)(1) requires that the Participants jointly file the Plan on or before April 28, 2013. Securities Exchange Act Release No. 67457 (July 18, 2012), 77 Fed. Reg. 45722, 45789 (Aug. 1, 2012) (“Adopting Release”). In recognition of the complexity of the project to create the Plan to govern the creation, maintenance and implementation of the CAT and Central Repository, the SEC provided the Participants with two extensions of this deadline. The Commission first extended the deadline to December 6, 2013. *See* Securities Exchange Act Release No. 69060 (Mar. 7, 2013), 78 Fed. Reg. 15771 (Mar. 12, 2013); *see also* Letter from Robert L.D. Colby, Executive Vice President and Chief Legal Officer, FINRA, to Elizabeth M. Murphy, Secretary, SEC, dated Feb. 7, 2013. The Commission then again extended the deadline to September 30, 2014. *See* Securities Exchange Act Release No. 71018 (Dec. 6, 2013), 78 Fed. Reg. 75669 (Dec. 12, 2013); *see also* Letter from Robert L.D. Colby, Executive Vice President and Chief Legal Officer, FINRA to Elizabeth Murphy, Secretary, SEC, dated Nov. 8, 2013.

<sup>3</sup> 17 C.F.R. § 242.608(a)(3)(ii).

NMS, a “national market system plan” includes “any joint self-regulatory organization plan in connection with ... [t]he development and implementation of procedures ... designed to achieve compliance by self-regulatory organizations and their members with any section of this Regulation NMS.”<sup>4</sup> Rule 613 of Regulation NMS (“Rule 613”) requires the Participants to jointly file a national market system plan to govern the creation, implementation, and maintenance of a consolidated audit trail and central repository.<sup>5</sup> The Plan being submitted by the Participants for approval governs the creation, implementation, and maintenance of a consolidated audit trail (“CAT”) and central repository (“Central Repository”). In addition, in accordance with the guidance of the SEC staff, the Plan, as filed, incorporates the exemptive relief as set forth in the Exemptive Request Letter, as discussed in more detail below.<sup>6</sup> The Participants respectfully request that the Commission approve the Plan.

## **Background**

On July 11, 2012, the Commission adopted Rule 613<sup>7</sup> to require the national securities exchanges and national securities association to jointly submit a national market system plan to create, implement, and maintain a consolidated audit trail and central repository.<sup>8</sup> Rule 613 outlines a broad framework for the creation, implementation, and maintenance of the consolidated audit trail, including the minimum elements the Commission believes are necessary for an effective consolidated audit trail.<sup>9</sup>

Since the adoption of Rule 613, the Participants have worked to formulate an effective Plan. To this end, the Participants have, among other things, developed a plan for selecting the Plan Processor, solicited and evaluated Bids, and engaged diverse industry participants in the development of the Plan. Throughout, the Participants have sought to implement a process that is fair, transparent, and consistent with the standards and considerations in Rule 613.

### *The Request for Proposal and Selection Plan*

On February 26, 2013, the Participants published a request for proposal (“RFP”) soliciting Bids from parties interested in serving as the plan processor.<sup>10</sup> The Participants concluded that publication of an RFP was necessary to ensure that potential alternative solutions to creating the Plan and the CAT could be presented and considered, and that a detailed and meaningful cost-benefit analysis could be performed. The Participants asked any potential

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<sup>4</sup> 17 C.F.R. § 242.600(b)(43).

<sup>5</sup> 17 C.F.R. § 242.613(a).

<sup>6</sup> Letter from the Participants to Brent J. Fields, Secretary, SEC, re: Request for Exemptive Relief from Certain Provisions of SEC Rule 613 of Regulation NMS under the Securities Exchange Act of 1934, dated Jan. 30, 2015 (available at <http://catnmsplan.com/web/groups/catnms/@catnms/documents/appsupportdocs/p602383.pdf>) (“Exemptive Request Letter”).

<sup>7</sup> 17 C.F.R. § 242.613.

<sup>8</sup> 17 C.F.R. § 242.613(a)(1).

<sup>9</sup> See Adopting Release, 77 Fed. Reg. at 45743.

<sup>10</sup> See Appendix A for the Consolidated Audit Trail National Market System Plan Request for Proposal (issued Feb. 26, 2013, version 3.0 updated Mar. 4, 2014). Other materials related to the RFP are available at <http://catnmsplan.com/process/>.

bidders to notify the Participants of their intent to bid by March 5, 2013. Initially, 31 firms submitted intentions to bid, four of which were Participants or affiliates of Participants. In the following weeks and months, the Participants engaged with potential bidders with respect to, among other things, the selection process, selection criteria, and potential bidders' questions and concerns.<sup>11</sup>

On September 4, 2013, the Participants filed with the Commission a national market system plan to govern the process for Participant review of the Bids submitted in response to the RFP, the procedure for evaluating the Bids, and, ultimately, selection of the Plan Processor (the "Selection Plan").<sup>12</sup> The Commission approved the Selection Plan as filed on February 21, 2014.<sup>13</sup> On March 21, 2014, the Participants received ten Bids in response to the RFP.

The Selection Plan divides the review and evaluation of Bids, and the selection of the Plan Processor, into various stages, certain of which have been completed to date.<sup>14</sup> Specifically, pursuant to the Selection Plan, the Selection Committee reviewed all Bids and determined which Bids contained sufficient information to allow the Participants to meaningfully assess and evaluate the Bids. The ten submitted Bids were deemed "Qualified Bids,"<sup>15</sup> and so passed to the next stage, in which each Bidder presented its Bids in person to the Participants on a confidential basis. On July 1, 2014, after conducting careful analysis and comparison of the Bids, the Selection Committee voted and selected six Shortlisted Bidders, thus eliminating four Bidders from continuing in the process.<sup>16</sup> The Selection Committee, subject to applicable recusal provisions in the Selection Plan, will determine whether Shortlisted Bidders will be provided the opportunity to revise their Bids. After the Selection Committee further assesses and evaluates the Shortlisted Bids, including any permitted revisions to the Bids, the Selection Committee will select the Plan Processor via two rounds of voting by the Senior Voting Officers as specified in the Plan.<sup>17</sup>

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<sup>11</sup> In an effort to ensure Bidders were aware of all information provided in response to Bidders' questions related to the RFP, the Participants published answers to questions received from Bidders at <http://catnmsplan.com/process/>.

<sup>12</sup> See Securities Exchange Act Release No. 70892 (Nov. 15, 2013), 78 Fed. Reg. 69910 (Nov. 21, 2013).

<sup>13</sup> See Securities Exchange Act Release No. 71596 (Feb. 21, 2014), 79 Fed. Reg. 11152 (Feb. 27, 2014) (the "Selection Plan Approval Order").

<sup>14</sup> See, e.g., *id.* at 11154.

<sup>15</sup> A list of Qualified Bidders is available at

<http://catnmsplan.com/web/groups/catnms/@catnms/documents/appsupportdocs/p493591.pdf>.

<sup>16</sup> The announcement and list of the Shortlisted Bidders is available at:

<http://catnmsplan.com/web/groups/catnms/@catnms/documents/appsupportdocs/p542077.pdf>.

<sup>17</sup> See Selection Plan Approval Order, 79 Fed. Reg. at 11154. The SEC has published a notice of an amendment to the Selection Plan, which proposes to amend the Selection Plan in two ways. First, the Participants propose to provide opportunities to accept revised Bids prior to approval of the CAT NMS Plan, and second, to allow the list of Shortlisted Bids to be narrowed prior to Commission approval of the CAT NMS Plan. Securities Exchange Act Release No. 74223 (Feb. 6, 2015), 80 Fed. Reg. 7654 (Feb. 11, 2015). In addition, the Participants plan to file a second amendment to the Selection Plan, which would require the recusal of a Bidding Participant in a vote in any round by the Selection Committee to select the Plan Processor from among the Shortlisted Bidders if such Bidding Participant's Bid, a Bid submitted by an Affiliate of such Bidding Participant, or a Bid including such Bidding Participant or its Affiliate is also considered in that round. The current Selection Plan requires recusal of a Bidding Participant under such circumstances in the vote in only the *second* round by the Selection Committee to select the Plan Processor from among the Shortlisted Bidders.

### *Selection Plan Governance and Operations*

The Selection Plan established an Operating Committee responsible for formulating, drafting, and filing with the Commission the Plan and for ensuring that the Participants' joint obligations under Rule 613 were met in a timely and efficient manner.<sup>18</sup> Each Participant selected one individual and one substitute to serve on the Operating Committee, with other representatives of each Participant permitted to attend Operating Committee meetings.<sup>19</sup> In formulating the Plan, the Participants also engaged multiple persons across a wide range of roles and expertise, engaged the consulting firm Deloitte & Touche LLP as a project manager, and engaged the law firm Wilmer Cutler Pickering Hale and Dorr LLP to serve as legal counsel in drafting the Plan. Within this structure, the Participants focused on, among other things, comparative analyses of the proposed technologies and operating models, development of funding models to support the building and operation of the CAT, and detailed review of governance considerations. Since July 2012, the Participants have held approximately 608 meetings related to the CAT.<sup>20</sup> These governance and organizational structures will continue to be in effect until the Commission's final approval of the Plan.<sup>21</sup>

### *Engagement with Industry Participants*

Throughout the process of developing the Plan, the Participants consistently have been engaged in meaningful dialogue with industry participants with respect to the development of the CAT. From the outset of this process, the Participants have recognized that industry input is a critical component in the creation of the Plan. To this end, the Participants created a website<sup>22</sup> to update the public on the progress of the Plan, published requests for comment on multiple issues related to the Plan, held multiple public events to inform the industry of the progress of the CAT and to address inquiries, and formed, and later expanded, a Development Advisory Group (the "DAG") to solicit more input from a representative industry group.

The DAG conducted 43 meetings<sup>23</sup> to discuss, among other things, technical and operational aspects the Participants were considering for the Plan. The Participants twice issued press releases soliciting participants for the DAG, and a wide spectrum of firms was deliberately chosen to provide insight from various industry segments affected by the CAT.<sup>24</sup> The DAG currently consists of the Participants, and 27 diverse firms and organizations (including broker-dealers of varying sizes, the Options Clearing Corporation, a service bureau and three industry trade associations) with a variety of subject matter expertise.<sup>25</sup> The DAG meetings have included discussions of topics such as option market maker quote reporting, requirements for

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<sup>18</sup>

*Id.*

<sup>19</sup>

*Id.*

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Additional information regarding these meetings can be found at <http://catnmsplan.com/>.

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Selection Plan Approval Order, 79 Fed. Reg. at 11155.

<sup>22</sup>

The website is <http://catnmsplan.com/>.

<sup>23</sup>

In addition to these meetings, DAG subcommittee meetings also were held.

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For a list of DAG members, *see* Summary of the Consolidated Audit Trail Initiative at 13 (Jan. 2015), available at <http://catnmsplan.com/web/groups/catnms/@catnms/documents/appsupportdocs/p571933.pdf>.

<sup>25</sup>

The list of current DAG members is available at <http://catnmsplan.com/PastEvents/>.

capturing Customer-IDs, timestamps and clock synchronization, reporting requirements for order handling scenarios, cost and funding, error handling and corrections, and potential elimination of Rules made redundant by the CAT.<sup>26</sup>

In addition, the CAT website includes a variety of resources for the public with respect to the development of the CAT. The site contains an overview of the process, an expression of the guiding principles behind the Plan development, links to relevant regulatory actions, gap analyses comparing the requirements of Rule 613 with current reporting systems, the CAT implementation timeline, a summary of the RFP process, a set of frequently-asked questions (updated on an ongoing basis), questions for comment from the industry, industry feedback on the development of the Plan, and announcements and notices of upcoming events. This website, along with the requests for comments and many public events (announced on the site), have been a venue for public communication with respect to the development of the Plan.

#### *Request for Exemption from Certain Requirements under Rule 613*

Following multiple discussions between the Participants and both the DAG and the Bidders, as well as among the Participants themselves, the Participants recognized that some provisions of Rule 613 would not permit certain solutions to be included in the Plan that the Participants determined advisable to effectuate the most efficient and cost-effective CAT. Consequently, on January 30, 2015, the Participants submitted to the Commission a request for exemptive relief from certain provisions of Rule 613 regarding: (1) options market maker quotes; (2) Customer-IDs; (3) CAT-Reporter-IDs; (4) linking of executions to specific subaccount allocations on allocation reports; and (5) timestamp granularity for manual order events.<sup>27</sup> Specifically, the Participants requested that the Commission grant an exemption from:

- Rule 613(c)(7)(ii) and (iv) for options market makers with regard to their options quotes;
- Rule 613(c)(7)(i)(A), (c)(7)(iv)(F), (c)(7)(viii)(B) and (c)(8) which relate to the requirements for Customer-IDs;
- Rule 613(c)(7)(i)(C), (c)(7)(ii)(D), (c)(7)(ii)(E), (c)(7)(iii)(D), (c)(7)(iii)(E), (c)(7)(iv)(F), (c)(7)(v)(F), (c)(7)(vi)(B) and (c)(8) which relate to the requirements for CAT-Reporter-IDs;
- Rule 613(c)(7)(vi)(A), which requires CAT Reporters to record and report the account number of any subaccounts to which the execution is allocated; and
- The millisecond timestamp granularity requirement in Rule 613(d)(3) for certain manual order events subject to timestamp reporting under Rules 613(c)(7)(i)(E), 613(c)(7)(ii)(C), 613(c)(7)(iii)(C), and 613(c)(7)(iv)(C).

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<sup>26</sup> See, e.g., Summary of the Consolidated Audit Trail Initiative at 14.  
<sup>27</sup> Exemptive Request Letter.

The Participants believe that the requested relief is critical to the development of a cost-effective approach to the CAT.

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

### **A. Description of Plan**

Rule 613 requires the Participants to “jointly file ... a national market system plan to govern the creation, implementation, and maintenance of a consolidated audit trail and central repository.”<sup>28</sup> The purpose of the Plan, and the creation, implementation and maintenance of a comprehensive audit trail for the U.S. securities market described therein, is to “substantially enhance the ability of the SROs and the Commission to oversee today’s securities markets and fulfill their responsibilities under the federal securities laws.”<sup>29</sup> It “will allow for the prompt and accurate recording of material information about all orders in NMS securities, including the identity of customers, as these orders are generated and then routed throughout the U.S. markets until execution, cancellation, or modification. This information will be consolidated and made readily available to regulators in a uniform electronic format.”<sup>30</sup> The following summarizes various provisions of the Plan, which is set forth in full as an exhibit to this letter.

#### **1. LLC Agreement**

The Participants propose to conduct the activities related to the CAT in a Delaware limited liability company pursuant to a limited liability company agreement, entitled the Limited Liability Company Agreement of CAT NMS, LLC (“Company”). The Participants will jointly own on an equal basis the Company. The Company will create, implement and maintain the CAT. The limited liability company agreement (“LLC Agreement”) itself, including its appendices, is the proposed Plan, which would be a national market system plan as defined in Rule 600(b)(43) of Regulation NMS.

#### **2. Participants**

Each national securities exchange and national securities association currently registered with the Commission would be a Participant in the Plan. The names and addresses of each Participant are set forth in Exhibit A to the Plan. Article III of the Plan provides that any entity approved by the Commission as a national securities exchange or national securities association under the Exchange Act after the Effective Date may become a Participant by submitting to the Company a completed application in the form provided by the Company and satisfying each of the following requirements: (1) executing a counterpart of the LLC Agreement as then in effect; and (2) paying a fee to the Company in an amount determined by a Majority Vote of the Operating Committee as fairly and reasonably compensating the Company and the Participants

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<sup>28</sup> 17 C.F.R. § 242.613(a)(1).

<sup>29</sup> Adopting Release, 77 Fed. Reg. at 45726.

<sup>30</sup> *Id.* Note that the Plan also includes certain recording and reporting obligations for OTC Equity Securities.

for costs incurred in creating, implementing and maintaining the CAT (including such costs incurred in evaluating and selecting the Initial Plan Processor and any subsequent Plan Processor) and for costs the Company incurs in providing for the prospective Participant's participation in the Company, including after consideration of certain factors identified in Section 3.3(b) of the Agreement ("Participation Fee"). The amendment of the Plan reflecting the admission of a new Participant will be effective only when: (1) it is approved by the SEC in accordance with Rule 608 or otherwise becomes effective pursuant to Rule 608; and (2) the prospective Participant pays the Participation Fee.

A number of factors are relevant to the determination of a Participation Fee. Such factors include: (1) the portion of costs previously paid by the Company for the development, expansion and maintenance of the CAT which, under GAAP, would have been treated as capital expenditures and would have been amortized over the five years preceding the admission of the prospective Participant; (2) an assessment of costs incurred and to be incurred by the Company for modifying the CAT or any part thereof to accommodate the prospective Participant, which costs are not otherwise required to be paid or reimbursed by the prospective Participant; (3) Participation Fees paid by other Participants admitted as such after the Effective Date; (4) elapsed time from the Effective Date to the anticipated date of admittance of the prospective Participant; and (5) such other factors, if any, as may be determined to be appropriate by the Operating Committee and approved by the Commission. In the event that the Company and a prospective Participant do not agree on the amount of the Participation Fee, such amount will be subject to review by the SEC pursuant to Section 11A(b)(5) of the Exchange Act.

An applicant for participation in the Company may apply for limited access to the CAT System for planning and testing purposes pending its admission as a Participant by submitting to the Company a completed Application for Limited Access to the CAT System in a form provided by the Company, accompanied by payment of a deposit in the amount established by the Company, which will be applied or refunded as described in such application. To be eligible to apply for such limited access, the applicant must have been approved by the SEC as a national securities exchange or national securities association under the Exchange Act but the applicant has not yet become a Participant of the Plan, or the SEC must have published such applicant's Form 1 Application or Form X-15AA-1 Application to become a national securities exchange or a national securities association, respectively.

All Company Interests will have the same rights, powers, preferences and privileges and be subject to the same restrictions, qualifications and limitations. Once admitted, each Participant will be entitled to one vote on any matter presented to Participants for their consideration and to participate equally in any distribution made by the Company (other than a distribution made pursuant to Section 10.2 of the Plan). Each Participant will have a Company Interest equal to that of each other Participant.

Article III also describes a Participant's ability to Transfer a Company Interest. A Participant may only Transfer any Company Interest to a national securities exchange or national

securities association that succeeds to the business of such Participant as a result of a merger or consolidation with such Participant or the Transfer of all or substantially all of the assets or equity of such Participant (“Permitted Transferee”). A Participant may not Transfer any Company Interest to a Permitted Transferee unless: (1) such Permitted Transferee executes a counterpart of the Plan; and (2) the amendment to the Plan reflecting the Transfer is approved by the SEC in accordance with Rule 608 or otherwise becomes effective pursuant to Rule 608.

In addition, Article III addresses the voluntary resignation and termination of participation in the Plan. Any Participant may voluntarily resign from the Company, and thereby withdraw from and terminate its right to any Company Interest, only if: (1) a Permitted Legal Basis for such action exists; and (2) such Participant provides to the Company and each other Participant no less than thirty days prior to the effective date of such action written notice specifying such Permitted Legal Basis, including appropriate documentation evidencing the existence of such Permitted Legal Basis, and, to the extent applicable, evidence reasonably satisfactory to the Company and other Participants that any orders or approvals required from the SEC in connection with such action have been obtained. A validly withdrawing Participant will have the rights and obligations discussed below with regard to termination of participation.

A Participant’s participation in the Company, and its right to any Company Interest, will terminate as of the earliest of: (1) the effective date specified in a valid resignation notice; (2) such time as such Participant is no longer registered as a national securities exchange or national securities association; or (3) the date of termination for failure to pay fees. With regard to the payment of fees, each Participant is required to pay all fees or other amounts required to be paid under the Plan within thirty days after receipt of an invoice or other notice indicating payment is due (unless a longer payment period is otherwise indicated) (the “Payment Date”). If a Participant fails to make such a required payment by the Payment Date, any balance in the Participant’s Capital Account will be applied to the outstanding balance. If a balance still remains with respect to any such required payment, the Participant will pay interest on the outstanding balance from the Payment Date until such fee or amount is paid at a per annum rate equal to the lesser of: (1) the Prime Rate plus 300 basis points; or (2) the maximum rate permitted by applicable law. If any such remaining outstanding balance is not paid within thirty days after the Payment Date, the Participants will file an amendment to the Plan requesting the termination of the participation in the Company of such Participant, and its right to any Company Interest, with the SEC. Such amendment will be effective only when it is approved by the SEC in accordance with Rule 608 or otherwise becomes effective pursuant to Rule 608.

From and after the effective date of termination of a Participant’s participation in the Company, profits and losses of the Company will cease to be allocated to the Capital Account of the Participant. A terminated Participant will be entitled to receive the balance in its Capital Account as of the effective date of termination adjusted for profits and losses through that date, payable within ninety days of the effective date of termination, and will remain liable for its proportionate share of costs and expenses allocated to it for the period during which it was a Participant, for obligations under Section 3.8(c) regarding the return of amounts previously

distributed (if required by a court of competent jurisdiction), for its indemnification obligations pursuant to Section 4.1, and for obligations under Section 9.6 regarding confidentiality, but it will have no other obligations under the Plan following the effective date of termination. The Plan will be amended to reflect any termination of participation in the Company of a Participant, provided that such amendment will be effective only when it is approved by the SEC in accordance with Rule 608 or otherwise becomes effective pursuant to Rule 608.

### **3. Management**

Article IV of the Plan establishes the overall governance structure for the management of the Company. Specifically, the Participants propose that the Company be managed by an Operating Committee.<sup>31</sup>

The Operating Committee will consist of one voting member representing each Participant and one alternate voting member representing each Participant who will have a right to vote only in the absence of the Participant's voting member of the Operating Committee. Each of the voting and alternate voting members of the Operating Committee will be appointed by the Participant that he or she represents, will serve at the will of the Participant appointing such member and will be subject to the confidentiality obligations of the Participant that he or she represents as set forth in Section 9.6. One individual may serve as the voting member of the Operating Committee for multiple Affiliated Participants, and such individual will have the right to vote on behalf of each such Affiliated Participant.

The Operating Committee will elect, by Majority Vote, one of its members to act as Chair for a term of two years. No Person may serve as Chair for more than two successive full terms, and no Person then appointed to the Operating Committee by a Participant that then serves, or whose Affiliate then serves, as the Plan Processor will be eligible to serve as the Chair. The Chair will preside at all meetings of the Operating Committee, designate a Person to act as Secretary, and perform such other duties and possess such other powers as the Operating Committee may from time to time prescribe. The Chair will not be entitled to a tie-breaking vote at any meeting of the Operating Committee.

Each of the members of the Operating Committee, including the Chair, will be authorized to cast one vote for each Participant that he or she represents on all matters voted upon by the Operating Committee. Action of the Operating Committee will be authorized by Majority Vote (except under certain designated circumstances), subject to the approval of the SEC whenever such approval is required under the Exchange Act and the rules thereunder. For example, the Plan specifically notes that a Majority Vote of the Operating Committee is required to: (1) select the Chair; (2) select the members of the Advisory Committee (as described below); (3) interpret the Plan (unless otherwise noted therein); (4) approve any recommendation by the Chief Compliance Officer pursuant to Section 6.2(a)(v)(A); (5) determine to hold an Executive Session

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<sup>31</sup> The Operating Committee will manage the Company except for situations in which the approval of the Participants is required by the Plan or by non-waivable provisions of applicable law.

of the Operating Committee; (6) determine the appropriate funding-related policies, procedures and practices consistent with Article XI; and (7) any other matter specified elsewhere in the Plan (which includes the Appendices to the Plan) as requiring a vote, approval or other action of the Operating Committee (other than those matters expressly requiring a Supermajority Vote or a different vote of the Operating Committee).

Article IV requires a Supermajority Vote of the Operating Committee, subject to the approval of the SEC when required, for the following: (1) selecting a Plan Processor, other than the Initial Plan Processor selected in accordance with Article V of the Plan; (2) terminating the Plan Processor without cause in accordance with Section 6.1(p); (3) approving the Plan Processor's appointment or removal of the Chief Information Security Officer, Chief Compliance Officer, or any Independent Auditor in accordance with Section 6.1(b); (4) entering into, modifying or terminating any Material Contract (if the Material Contract is with a Participant or an Affiliate of a Participant, such Participant and Affiliated Participant will be recused from any vote); (5) making any Material Systems Change; (6) approving the initial Technical Specifications or any Material Amendment to the Technical Specifications proposed by the Plan Processor; (7) amending the Technical Specifications on its own motion; and (8) any other matter specified elsewhere in the Plan (which includes the Appendices to the Plan) as requiring a vote, approval or other action of the Operating Committee by a Supermajority Vote.

A member of the Operating Committee or any Subcommittee thereof (as discussed below) shall recuse himself or herself from voting on any matter under consideration by the Operating Committee or such Subcommittee if such member determines that voting on such matter raises a Conflict of Interest. In addition, if the members of the Operating Committee or any Subcommittee (excluding the member thereof proposed to be recused) determine by Supermajority Vote that any member voting on a matter under consideration by the Operating Committee or such Subcommittee raises a Conflict of Interest, such member shall be recused from voting on such matter. No member of the Operating Committee or any Subcommittee will be automatically recused from voting on any matter except matters involving Material Contracts as discussed in the prior paragraph, as otherwise specified in the Plan, and as follows: (1) if a Participant is a Bidding Participant whose Bid remains under consideration, members appointed to the Operating Committee or any Subcommittee by such Participant or any of its Affiliated Participants will be recused from any vote concerning: (a) whether another Bidder may revise its Bid; (b) the selection of a Bidder; or (c) any contract to which such Participant or any of its Affiliates would be a party in its capacity as Plan Processor; and (2) if a Participant is then serving as Plan Processor, is an Affiliate of the Person then serving as Plan Processor, or is an Affiliate of an entity that is a Material Subcontractor to the Plan Processor, then in each case members appointed to the Operating Committee or any Subcommittee by such Participant or any of its Affiliated Participants shall be recused from any vote concerning: (a) the proposed removal of such Plan Processor; or (b) any contract between the Company and such Plan Processor.

Article IV also addresses meetings of the Operating Committee.<sup>32</sup> Meetings of the Operating Committee may be attended by each Participant's voting Representative and its alternate voting Representative and by a maximum of two nonvoting Representatives of each Participant, by members of the Advisory Committee, by the Chief Compliance Officer, by other Representatives of the Company and the Plan Processor, by Representatives of the SEC and by such other Persons that the Operating Committee may invite to attend. The Operating Committee, however, may, where appropriate, determine to meet in Executive Session during which only voting members of the Operating Committee will be present. The Operating Committee, however, may invite other Representatives of the Participants, of the Company, of the Plan Processor (including the Chief Compliance Officer and the Chief Information Security Officer) or the SEC, or such other Persons that the Operating Committee may invite to attend, to be present during an Executive Session. Any determination of the Operating Committee to meet in an Executive Session will be made upon a Majority Vote and will be reflected in the minutes of the meeting. In addition, any Person that is not a Participant but for which the SEC has published a Form 1 Application or Form X-15AA-1 to become a national securities exchange or national securities association, respectively, will be permitted to appoint one primary Representative and one alternate Representative to attend regularly scheduled Operating Committee meetings in the capacity of a non-voting observer, but will not be permitted to have any Representative attend a special meeting, emergency meeting or meeting held in Executive Session of the Operating Committee.

The Operating Committee may, by Majority Vote, designate by resolution one or more Subcommittees it deems necessary or desirable in furtherance of the management of the business and affairs of the Company. For any Subcommittee, any member of the Operating Committee who wants to serve thereon may so serve. If Affiliated Participants have collectively appointed one member to the Operating Committee to represent them, then such Affiliated Participants may have only that member serve on the Subcommittee or may decide not to have only that collectively appointed member serve on the Subcommittee. Such member may designate an individual other than himself or herself who is also an employee of the Participant or Affiliated Participants that appointed such member to serve on a Subcommittee in lieu of the particular member. Subject to the requirements of the Plan and non-waivable provisions of Delaware law, a Subcommittee may exercise all the powers and authority of the Operating Committee in the management of the business and affairs of the Company as so specified in the resolution of the Operating Committee designating such Subcommittee.

Article IV requires that the Operating Committee maintain a Compliance Subcommittee for the purpose of aiding the Chief Compliance Officer as necessary, including with respect to issues involving: (1) the maintenance of the confidentiality of information submitted to the Plan Processor or Central Repository pursuant to Rule 613, applicable law, or the Plan by Participants and Industry Members; (2) the timeliness, accuracy, and completeness of information submitted

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<sup>32</sup> Article IV also addresses, among other things, different types of Operating Committee meetings (regular, special and emergency), frequency of such meeting, how to call such meetings, the location of the meetings, the role of the Chair, and notice regarding such meetings.

pursuant to Rule 613, applicable law or the Plan by Participants and Industry Members; and (3) the manner and extent to which each Participant is meeting its obligations under Rule 613, Section 3.11, and as set forth elsewhere in the Plan and ensuring the consistency of the Plan's enforcement as to all Participants.

Article IV also sets forth the requirements for the formation and functioning of an Advisory Committee, which will advise the Participants on the implementation, operation and administration of the Central Repository, including possible expansion of the Central Repository to other securities and other types of transactions.

Article IV describes the composition of the Advisory Committee. No member of the Advisory Committee may be employed by or affiliated with any Participant or any of its Affiliates or facilities. The Operating Committee will select one member from representatives of each of the following categories to serve on the Advisory Committee on behalf of himself or herself individually and not on behalf of the entity for which the individual is then currently employed: (1) a broker-dealer with no more than 150 Registered Persons; (2) a broker-dealer with at least 151 and no more than 499 Registered Persons; (3) a broker-dealer with 500 or more Registered Persons; (4) a broker-dealer with a substantial wholesale customer base; (5) a broker-dealer that is approved by a national securities exchange: (a) to effect transactions on an exchange as a specialist, market maker or floor broker; or (b) to act as an institutional broker on an exchange; (6) a proprietary-trading broker-dealer; (7) a clearing firm; (8) an individual who maintains a securities account with a registered broker or dealer but who otherwise has no material business relationship with a broker or dealer or with a Participant; (9) a member of academia with expertise in the securities industry or any other industry relevant to the operation of the CAT System; (10) an institutional investor trading on behalf of a public entity or entities; (11) an institutional investor trading on behalf of a private entity or entities; and (12) an individual with significant and reputable regulatory expertise. The members selected to represent categories (1) through (12) above must include, in the aggregate, representatives of no fewer than three broker-dealers that are active in the options business and representatives of no fewer than three broker-dealers that are active in the equities business. In addition, upon a change in employment of any such selected member, a Majority Vote of the Operating Committee will be required for such member to be eligible to continue to serve on the Advisory Committee. Furthermore, the SEC's Chief Technology Officer (or the individual then currently employed in a comparable position providing equivalent services) will serve as an observer of the Advisory Committee (but not be a member). The members of the Advisory Committee will have a term of three years.<sup>33</sup>

Members of the Advisory Committee will have the right to attend meetings of the Operating Committee or any Subcommittee, to receive information concerning the operation of the Central Repository, and to submit their views to the Operating Committee or any Subcommittee on matters pursuant to the Plan prior to a decision by the Operating Committee on

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<sup>33</sup> Four of the initial twelve members of the Advisory Committee will have an initial term of one year, and another four of the initial twelve members of the Advisory Committee will have an initial term of two years.

such matters. A member of the Advisory Committee will not have a right to vote on any matter considered by the Operating Committee or any Subcommittee. In addition, the Operating Committee or any Subcommittee may meet in Executive Session if the Operating Committee or Subcommittee determines by Majority Vote that such an Executive Session is advisable.<sup>34</sup> Although members of the Advisory Committee will have the right to receive information concerning the operation of the Central Repository, the Operating Committee retains the authority to determine the scope and content of information supplied to the Advisory Committee, which will be limited to that information that is necessary and appropriate for the Advisory Committee to fulfill its functions. Any information received by members of the Advisory Committee will remain confidential unless otherwise specified by the Operating Committee.

Article IV also describes the appointment of Officers for the Company. Specifically, the Chief Compliance Officer and the Chief Information Security Officer, each of whom will be employed solely by the Plan Processor and neither of whom will be deemed or construed in any way to be an employee of the Company, will be Officers of the Company. Neither such Officer will receive or be entitled to any compensation from the Company or any Participant by virtue of his or her service in such capacity (other than if a Participant is then serving as the Plan Processor, compensation paid to such Officer as an employee of such Participant). Each such Officer will report directly to the Operating Committee. The Chief Compliance Officer will work on a regular and frequent basis with the Compliance Subcommittee and/or other Subcommittees as may be determined by the Operating Committee. Except to the extent otherwise provided in the Plan, including Section 6.2, each such Officer will have such fiduciary and other duties with regard to the Plan Processor as imposed by the Plan Processor on such individual by virtue of his or her employment by the Plan Processor.

In addition, the Plan Processor will inform the Operating Committee of the individual who has direct management responsibility for the Plan Processor's performance of its obligations with respect to the CAT. Subject to approval by the Operating Committee of such individual, the Operating Committee will appoint such individual as an Officer. In addition, the Operating Committee by Supermajority Vote may appoint other Officers as it shall from time to time deem necessary. Any Officer appointed pursuant to Section 4.6(b) will have only such duties and responsibilities as set forth in the Plan, or as the Operating Committee shall from time to time expressly determine. No such Officer shall have any authority to bind the Company (which authority is vested solely in the Operating Committee) or be an employee of the Company, unless in each case the Operating Committee, by Supermajority Vote, expressly determines otherwise. No person subject to a "statutory disqualification" (as defined in Section 3(a)(39) of the Exchange Act) may serve as an Officer. It is the intent of the Participants that the Company have no employees.

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<sup>34</sup> The Operating Committee may solicit and consider views on the operation of the Central Repository in addition to those of the Advisory Committee.

#### 4. Initial Plan Processor Selection

Article V of the Plan sets forth the process for the Participants' evaluation of Bids and the selection process for narrowing down the Bids and choosing the Initial Plan Processor. The initial steps in the evaluation and selection process were and will be performed pursuant to the Selection Plan; the final two rounds of evaluation and voting, as well as the final selection of the Initial Plan Processor, will be performed pursuant to the Plan.<sup>35</sup>

As discussed above, the Selection Committee has selected the Shortlisted Bids pursuant to the Selection Plan. After reviewing the Shortlisted Bids, the Participants have identified the optimal proposed solutions for the CAT and, to the extent possible, included such solutions in the Plan.<sup>36</sup> The Selection Committee will determine, by majority vote, whether Shortlisted Bidders will have the opportunity to revise their Bids. To reduce potential conflicts of interest, no Bidding Participant may vote on whether a Shortlisted Bidder will be permitted to revise its Bid if a Bid submitted by or including the Participant or an Affiliate of the Participant is a Shortlisted Bid. The Selection Committee will review and evaluate all Shortlisted Bids, including any permitted revisions submitted by Shortlisted Bidders. In performing this review and evaluation, the Selection Committee may consult with the Advisory Committee and such other Persons as the Selection Committee deems appropriate, which may include the DAG until the Advisory Committee is formed.

After receipt of any permitted revisions, the Selection Committee will select the Initial Plan Processor from the Shortlisted Bids in two rounds of voting where each Participant has one vote via its Voting Senior Officer in each round.<sup>37</sup> No Bidding Participant, however, will be entitled to vote in any round if the Participant's Bid, a Bid submitted by an Affiliate of the Participant, or a Bid including the Participant or an Affiliate of the Participant is considered in such round.<sup>38</sup> In the first round, each Voting Senior Officer, subject to the recusal provision in Section 5.2(e)(ii), will select a first and second choice, with the first choice receiving two points and the second choice receiving one point. The two Shortlisted Bids receiving the highest cumulative scores in the first round will advance to the second round.<sup>39</sup> In the event of a tie, the tie will be broken by assigning one point per vote to the tied Shortlisted Bids, and the Shortlisted Bid with the most votes will advance. If this procedure fails to break the tie, a revote will be taken on the tied Bids with each vote receiving one point. If the tie persists, the Participants will identify areas for discussion, and revotes will be taken until the tie is broken.

Once two Shortlisted Bids have been chosen, the Voting Senior Officers of the Participants (other than those subject to recusal) will vote for a single Shortlisted Bid from the

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<sup>35</sup> By its terms, the Selection Plan will terminate upon Commission approval of the Plan.

<sup>36</sup> As noted above, the Participants believe certain exemptive relief is necessary to include in the Plan all of the provisions the Participants believe are part of the optimal solution for the CAT.

<sup>37</sup> If the proposed amendment to the Selection Plan is approved, the Selection Committee may determine to narrow the number of Shortlisted Bids prior to the two rounds of voting.

<sup>38</sup> This recusal provision is included in the Plan, as well as in a proposed amendment to the Selection Plan.

<sup>39</sup> Each round of voting throughout the Plan is independent of other rounds.

final two to determine the Initial Plan Processor. If the tie persists, the Participants will identify areas for discussion and, following these discussions, revotes will be taken until the tie is broken. As set forth in Article VI of the Plan, following the selection of the Initial Plan Processor, the Participants will file with the Commission a statement identifying the Initial Plan Processor and including the information required by Rule 608.

## **5. Functions and Activities of CAT System**

### **a. Plan Processor**

Article VI describes the responsibilities of the selected Plan Processor. The Company, under the direction of the Operating Committee, will enter into one or more agreements with the Plan Processor obligating the Plan Processor to perform the functions and duties contemplated by the Plan to be performed by the Plan Processor, as well as such other functions and duties the Operating Committee deems necessary or appropriate.

As set forth in the Plan, the Plan Processor is required to develop and, with the prior approval of the Operating Committee, implement policies, procedures, and control structures related to the CAT System that are consistent with Rule 613(e)(4), Appendix C and Appendix D. The Plan Processor will: (1) comply with applicable provisions of 15 U.S. Code §78u-6 (Securities Whistleblower Incentives and Protection) and the recordkeeping requirements of Rule 613(e)(8); (2) consistent with Appendix D, Central Repository Requirements, ensure the effective management and operation of the Central Repository; (3) consistent with Appendix D, Data Management, ensure the accuracy of the consolidation of the CAT Data reported to the Central Repository; and (4) consistent with Appendix D, Upgrade Process and Development of New Functionality, design and implement appropriate policies and procedures governing the determination to develop new functionality for the CAT including, among other requirements, a mechanism by which changes can be suggested by Advisory Committee members, Participants, or the SEC. Such policies and procedures also shall: (1) provide for the escalation of reviews of proposed technological changes and upgrades to the Operating Committee; and (2) address the handling of surveillance, including coordinated, Rule 17d-2 under the Exchange Act or Regulatory Surveillance Agreement(s) (RSA) surveillance queries and requests for data. Any policy, procedure or standard (and any material modification or amendment thereto) applicable primarily to the performance of the Plan Processor's duties as the Plan Processor (excluding any policies, procedures or standards generally applicable to the Plan Processor's operations and employees) will become effective only upon approval by the Operating Committee. The Plan Processor also will, subject to the prior approval of the Operating Committee, establish appropriate procedures for escalation of matters to the Operating Committee. In addition to other policies, procedures and standards generally applicable to the Plan Processor's employees and contractors, the Plan Processor will have hiring standards and will conduct and enforce background checks (*e.g.*, fingerprint-based) for all of its employees and contractors to ensure the protection, safeguarding and security of the facilities, systems, networks, equipment and data of

the CAT System, and will have an insider and external threat policy to detect, monitor and remedy cyber and other threats.

The Plan Processor will enter into appropriate Service Level Agreements (“SLAs”) governing the performance of the Central Repository, as generally described in Appendix D, Functionality of the CAT System, with the prior approval of the Operating Committee. The Plan Processor in conjunction with the Operating Committee will regularly review and, as necessary, update the SLAs, in accordance with the terms of the SLAs. As further contemplated in Appendix C, System Service Level Agreements (SLAs), and in Appendix D, System SLAs, the Plan Processor may enter into appropriate service level agreements with third parties applicable to the Plan Processor’s functions related to the CAT System (“Other SLAs”), with the prior approval of the Operating Committee. The Chief Compliance Officer and/or the Independent Auditor will, in conjunction with the Plan Processor and as necessary the Operating Committee, regularly review and, as necessary, update the Other SLAs, in accordance with the terms of the applicable Other SLA. In addition, the Plan Processor: (1) will, on an ongoing basis and consistent with any applicable policies and procedures, evaluate and implement potential system changes and upgrades to maintain and improve the normal day-to-day operating function of the CAT System; (2) in consultation with the Operating Committee, will, on an as needed basis and consistent with any applicable operational and escalation policies and procedures, implement such material system changes and upgrades as may be required to ensure effective functioning of the CAT System; and (3) in consultation with the Operating Committee, will, on an as needed basis, implement system changes and upgrades to the CAT System to ensure compliance with applicable laws, regulations or rules (including those promulgated by the SEC or any Participant). Furthermore, the Plan Processor will develop and, with the prior approval of the Operating Committee, implement a securities trading policy, as well as necessary procedures, control structures and tools to enforce this policy.

In addition, the Plan Processor will provide the Operating Committee regular reports on the CAT System’s operation and maintenance. Furthermore, upon request of the Operating Committee or any Subcommittee, the Plan Processor will attend any meetings of the Operating Committee or such Subcommittee.

The Plan Processor may appoint such officers of the Plan Processor as it deems necessary and appropriate to perform its functions under the Plan and Rule 613. The Plan Processor, however, will be required to appoint, at a minimum, the Chief Compliance Officer, the Chief Information Security Officer, and the Independent Auditor. The Operating Committee, by Supermajority Vote, will approve any appointment or removal of the Chief Compliance Officer, Chief Information Security Officer, or the Independent Auditor.

The Plan Processor will designate an employee of the Plan Processor to serve, subject to the approval of the Operating Committee by Supermajority Vote, as the Chief Compliance Officer. The Plan Processor will also designate at least one other employee (in addition to the person then serving as Chief Compliance Officer), which employee the Operating Committee

has previously approved, to serve temporarily as the Chief Compliance Officer if the employee then serving as the Chief Compliance Officer becomes unavailable or unable to serve in such capacity (including by reason of injury or illness). Any person designated to serve as the Chief Compliance Officer (including to serve temporarily) will be appropriately qualified to serve in such capacity based on the duties and responsibilities assigned to the Chief Compliance Officer and will dedicate such person's entire working time to such service (or temporary service) (except for any time required to attend to any incidental administrative matters related to such person's employment with the Plan Processor that do not detract in any material respect from such person's service as the Chief Compliance Officer). Article VI sets forth various responsibilities of the Chief Compliance Officer. With respect to all its duties and responsibilities in such capacity (including those as set forth in the Plan), the Chief Compliance Officer will be directly responsible and will directly report to the Operating Committee, notwithstanding that she or he is employed by the Plan Processor. The Plan Processor, subject to the oversight of the Operating Committee, will ensure that the Chief Compliance Officer has appropriate resources to fulfill his or her obligations under the Plan and Rule 613. The compensation (including base salary and bonus) of the Chief Compliance Officer will be payable by the Plan Processor, but be subject to review and approval by the Operating Committee. The Operating Committee will render the Chief Compliance Officer's annual performance review.

The Plan Processor also will designate an employee of the Plan Processor to serve, subject to the approval of the Operating Committee by Supermajority Vote, as the Chief Information Security Officer. The Plan Processor will also designate at least one other employee (in addition to the person then serving as Chief Information Security Officer), which employee the Operating Committee has previously approved, to serve temporarily as the Chief Information Security Officer if the employee then serving as the Chief Information Security Officer becomes unavailable or unable to serve in such capacity (including by reason of injury or illness). Any person designated to serve as the Chief Information Security Officer (including to serve temporarily) will be appropriately qualified to serve in such capacity based on the duties and responsibilities assigned to the Chief Information Security Officer under the Plan and will dedicate such person's entire working time to such service (or temporary service) (except for any time required to attend to any incidental administrative matters related to such person's employment with the Plan Processor that do not detract in any material respect from such person's service as the Chief Information Security Officer).

The Plan Processor, subject to the oversight of the Operating Committee, will ensure that the Chief Information Security Officer has appropriate resources to fulfill the obligations of the Chief Information Security Officer set forth in Rule 613 and in the Plan, including providing appropriate responses to questions posed by the Participants and the SEC. In performing such obligations, the Chief Information Security Officer will be directly responsible and directly report to the Operating Committee, notwithstanding that he or she is employed by the Plan Processor. The compensation (including base salary and bonus) of the Chief Information Security Officer will be payable by the Plan Processor, but be subject to review and approval by the Operating Committee, and the Operating Committee will render the Chief Information

Security Officer's annual performance review. Consistent with Appendices C and D, the Chief Information Security Officer will be responsible for creating and enforcing appropriate policies, procedures, standards, control structures and real time tools to monitor and address data security issues for the Plan Processor and the Central Repository, as described in the Plan. At regular intervals, to the extent that such information is available to the Company, the Chief Information Security Officer will report to the Operating Committee the activities of the Financial Services Information Sharing and Analysis Center ("FS-ISAC") or comparable bodies to the extent that the Company has joined FS-ISAC or other comparable body.

The Plan Processor will afford to Participants and the Commission such access to the Representatives of the Plan Processor as any Participant or the Commission may reasonably request solely for the purpose of performing such Person's regulatory and oversight responsibilities pursuant to the federal securities laws, rules, and regulations or any contractual obligations. The Plan Processor will direct such Representatives to reasonably cooperate with any inquiry, investigation, or proceeding conducted by or on behalf of any Participant or the Commission related to such purpose.

The Operating Committee will review the Plan Processor's performance under the Plan at least once each year, or more often than once each year upon the request of two Participants that are not Affiliated Participants. The Operating Committee will notify the SEC of any determination made by the Operating Committee concerning the continuing engagement of the Plan Processor as a result of the Operating Committee's review of the Plan Processor and will provide the SEC with a copy of any reports that may be prepared in connection therewith.

The Operating Committee, by Supermajority Vote, may remove the Plan Processor from such position at any time. However, the Operating Committee, by Majority Vote, may remove the Plan Processor from such position at any time if it determines that the Plan Processor has failed to perform its functions in a reasonably acceptable manner in accordance with the provisions of the Plan or that the Plan Processor's expenses have become excessive and are not justified. In making such a determination, the Operating Committee will consider, among other factors: (1) the reasonableness of the Plan Processor's response to requests from Participants or the Company for technological changes or enhancements; (2) results of any assessments performed pursuant to Section 6.6; (3) the timeliness of conducting preventative and corrective information technology system maintenance for reliable and secure operations; (4) compliance with requirements of Appendix D; and (5) such other factors related to experience, technological capability, quality and reliability of service, costs, back-up facilities, failure to meet service level agreement(s) and regulatory considerations as the Operating Committee may determine to be appropriate.

In addition, the Plan Processor may resign upon two year's (or such other shorter period as may be determined by the Operating Committee by Supermajority Vote) prior written notice. The Operating Committee will fill any vacancy in the Plan Processor position by Supermajority Vote, and will establish a Plan Processor Selection Subcommittee to evaluate and review bids

and make a recommendation to the Operating Committee with respect to the selection of the successor Plan Processor.

**b. Central Repository**

The Central Repository, under the oversight of the Plan Processor, and consistent with Appendix D, Central Repository Requirements, will receive, consolidate, and retain all CAT Data. The Central Repository will collect (from a SIP or pursuant to an NMS Plan) and retain on a current and continuing basis, in a format compatible with the Participant Data and Industry Member Data, all data, including the following: (1) information, including the size and quote condition, on quotes, including the National Best Bid and National Best Offer for each NMS Security; (2) Last Sale Reports and transaction reports reported pursuant to an effective transaction reporting plan filed with the SEC pursuant to, and meeting the requirements of, Rules 601 and 608; (3) trading halts, LULD price bands and LULD indicators; and (4) summary data.

Consistent with Appendix D, Data Retention Requirements, the Central Repository will retain the information collected pursuant to paragraphs (c)(7) and (e)(7) of Rule 613 in a convenient and usable standard electronic data format that is directly available and searchable electronically without any manual intervention by the Plan Processor for a period of not less than six years. Such data when available to the Participant regulatory staff and the SEC will be linked. In addition, the Plan Processor will implement and comply with the records retention policy contemplated by Section 6.1(d)(i).

Consistent with Appendix D, Data Access, the Plan Processor will provide Participants and the SEC access to the Central Repository (including all systems operated by the Central Repository), and access to and use of the CAT Data stored in the Central Repository, solely for the purpose of performing their respective regulatory and oversight responsibilities pursuant to the federal securities laws, rules and regulations or any contractual obligations. The Plan Processor will create and maintain a method of access to the CAT Data stored in the Central Repository that includes the ability to run searches and generate reports. The method in which the CAT Data is stored in the Central Repository will allow the ability to return results of queries that are complex in nature including market reconstruction and the status of order books at varying time intervals. The Plan Processor will, at least annually and at such earlier time promptly following a request by the Operating Committee, certify to the Operating Committee that only the Participants and the SEC have access to the Central Repository (other than access provided to any Industry Member for the purpose of correcting CAT Data previously reported to the Central Repository by such Industry Member).<sup>40</sup>

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<sup>40</sup> Appendix C, The Security and Confidentiality of Information Reported to the Central Repository, and Appendix D, Data Security, describe the security and confidentiality of the CAT Data, including how access to the Central Repository is controlled.

The Operating Committee will set and periodically review a maximum Error Rate for data reported to the Central Repository. The initial maximum Error Rate shall be set to 5%.<sup>41</sup> Furthermore, consistent with Appendix D, Reporting and Linkage Requirements and Data Security, the Operating Committee will adopt policies and procedures, including standards, requiring CAT Data reported to the Central Repository be timely, accurate, and complete and ensuring the integrity of such CAT Data (*e.g.*, that such CAT Data has not been altered and remains reliable). The Plan Processor will be responsible for implementing such policies and procedures. Appendix D, Receipt of Data from Reporters, describes the mechanisms and protocols for Participant Data and Industry Member Data submission for all key phases, including file transmission and receipt validation, validation of CAT Data, and validation of linkages. Appendix D, Receipt of Data from Reporters, also describes the mechanisms and protocols for managing and handling corrections of CAT Data. The Plan Processor will require an audit trail for corrected CAT Data in accordance with mechanisms and protocols approved by the Operating Committee.

The Plan Processor will, without limiting the obligations imposed on the Participants by the Plan, and in accordance with the framework set forth in Appendix D, Data Security, and Functionality of the CAT System, be responsible for the security and confidentiality of all CAT Data received and reported to the Central Repository. Without limiting the foregoing, the Plan Processor will require all individuals who have access to the Central Repository (including the respective employees and consultants of the Participants and the Plan Processor) to agree: (1) to use appropriate safeguards to ensure the confidentiality of the CAT Data stored in the Central Repository; and (2) not to use the CAT Data stored in the Central Repository for purposes other than surveillance and regulation in accordance with such individual's employment duties; provided that a Participant will be permitted to use the CAT Data it reports to the Central Repository for regulatory, surveillance, commercial or other purposes as permitted by applicable law, rule or regulation. The Plan Processor will require all individuals who have access to the Central Repository (including the respective employees and consultants of the Participants and the Plan Processor) to execute a personal "Safeguard of Information Affidavit" in a form approved by the Operating Committee providing for personal liability for misuse of data. The Plan Processor will develop and maintain a comprehensive information security program with dedicated staff for the Central Repository, consistent with Appendix D, Data Security, that employs state of the art technology. This program will be reviewed regularly by the Chief Compliance Officer and the Chief Information Security Officer. The Plan Processor also will implement and maintain a mechanism to confirm the identity of all individuals permitted to access the CAT Data stored in the Central Repository and maintain a record of all instances where such CAT Data was accessed. Furthermore, the Plan Processor will implement and maintain appropriate policies regarding limitations on trading activities of its employees and independent contractors involved with all CAT Data consistent with Section 6.1(m).

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<sup>41</sup> As CAT Reporters gain experience with their reporting requirements going forward, the Participants intend to seek to lower the maximum Error Rate.

Furthermore, each Participant will adopt and enforce policies and procedures that: (1) implement effective information barriers between such Participant's regulatory and non-regulatory staff with regard to access and use of CAT Data stored in the Central Repository; (2) permit only persons designated by Participants to have access to the CAT Data stored in the Central Repository; and (3) impose penalties for staff non-compliance with any of its or the Plan Processor's policies or procedures with respect to information security. Each Participant and the Commission, as applicable, will report, as promptly as reasonably practicable, and in any event within 24 hours, to the Chief Compliance Officer, in accordance with the guidance provided by the Operating Committee, any instance of which such Participant or the Commission becomes aware of: (1) noncompliance with the policies and procedures adopted by such Participant pursuant to Section 6.5(f)(ii); or (2) a breach of the security of the CAT.

In addition, the Plan Processor will: (1) ensure data confidentiality and security during all communications between CAT Reporters and the Plan Processor, data extractions, manipulation and transformation, loading to and from the Central Repository, and data maintenance by the Central Repository; (2) require the establishment of secure controls for data retrieval and query reports by Participant regulatory staff and the Commission; and (3) otherwise provide appropriate database security for the Central Repository. The Company also will endeavor to join FS-ISAC and comparable bodies as the Operating Committee may determine.

### **c. Data Recording and Reporting by Participants**

The Plan also sets forth the requirements regarding the data recording and reporting by Participants.<sup>42</sup> Each Participant will record and electronically report to the Central Repository the following details for each order and each Reportable Event, as applicable ("Participant Data"; also referred to as "Recorded Industry Member Data", as discussed in the next section):

- for original receipt or origination of an order: (1) Firm Designated ID(s) for each customer; (2) CAT-Order-ID; (3) SRO-Assigned Market Participant Identifier of the Industry Member receiving or originating the order; (4) date of order receipt or origination; (5) time of order receipt or origination (using timestamps pursuant to Section 6.8); (6) the Material Terms of the Order; and (7) other information as may be determined by the Operating Committee;
- for the routing of an order: (1) CAT-Order-ID; (2) date on which the order is routed; (3) time at which the order is routed (using timestamps pursuant to Section 6.8); (4) SRO-Assigned Market Participant Identifier of the Industry Member or Participant routing the order; (5) SRO-Assigned Market Participant Identifier of the Industry Member or Participant to which the order is being routed; (6) if routed internally at the Industry Member, the identity and nature of the department or desk to which the order is routed;

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<sup>42</sup> Participants may, but are not required to, coordinate compliance with the recording and reporting efforts through the use of regulatory services agreements and/or agreements adopted pursuant to Rule 17d-2 under the Exchange Act.

(7) the Material Terms of the Order; and (8) other information as may be determined by the Operating Committee;

- for the receipt of an order that has been routed, the following information: (1) CAT-Order-ID; (2) date on which the order is received; (3) time at which the order is received (using timestamps pursuant to Section 6.8); (4) SRO-Assigned Market Participant Identifier of the Industry Member or Participant receiving the order; (5) SRO-Assigned Market Participant Identifier of the Industry Member or Participant routing the order; (6) the Material Terms of the Order; and (7) other information as may be determined by the Operating Committee;
- if the order is modified or cancelled: (1) CAT-Order-ID; (2) date the modification or cancellation is received or originated; (3) time at which the modification or cancellation is received or originated (using timestamps pursuant to Section 6.8); (4) price and remaining size of the order, if modified; (5) other changes in Material Terms, if modified; (6) whether the modification or cancellation instruction was given by the Customer, or was initiated by the Industry Member or Participant; and (7) other information as may be determined by the Operating Committee;
- if the order is executed, in whole or in part: (1) CAT-Order-ID; (2) date of execution; (3) time of execution (using timestamps pursuant to Section 6.8); (4) execution capacity (principal, agency or riskless principal); (5) execution price and size; (6) the SRO-Assigned Market Participant Identifier of the Participant or Industry Member executing the order; and (7) whether the execution was reported pursuant to an effective transaction reporting plan or the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information; and
- other information or additional events as may be determined by the Operating Committee or otherwise prescribed in Appendix D, Reporting and Linkage Requirements.

As contemplated in Appendix D, Data Types and Sources, each Participant will report Participant Data to the Central Repository for consolidation and storage in a format specified by the Plan Processor, approved by the Operating Committee and compliant with Rule 613. As further described in Appendix D, Reporting and Linkage Requirements, each Participant is required to record the Participant Data contemporaneously with the Reportable Event. In addition, each Participant must report the Participant Data to the Central Repository by 8:00 a.m. Eastern Time on the Trading Day following the day that the Participant recorded the Participant Data. Participants may voluntarily report the Participant Data prior to the 8:00 a.m. Eastern Time deadline.

Each Participant that is a national securities exchange is required to comply with the above recording and reporting requirements for each NMS Security registered or listed for trading on such exchange or admitted to unlisted trading privileges on such exchange. Each

Participant that is a national securities association is required to comply with the above recording and reporting requirements for each Eligible Security for which transaction reports are required to be submitted to the association.

**d. Data Reporting and Recording by Industry Members**

The Plan also sets forth the data reporting and recording requirements for Industry Members. Specifically, subject to Section 6.4(c), and Section 6.4(d)(iii) with respect to Options Market Makers, and consistent with Appendix D, Reporting and Linkage Requirements, each Participant, through its Compliance Rule, will require its Industry Members to record and electronically report to the Central Repository for each order and each Reportable Event the information referred to in Section 6.3(d), as applicable (“Recorded Industry Member Data”) – that is, Participant Data discussed above. In addition, subject to Section 6.4(c), and Section 6.4(d)(iii) with respect to Options Market Makers, and consistent with Appendix D, Reporting and Linkage Requirements, each Participant, through its Compliance Rule, will require its Industry Members to record and report to the Central Repository the following (“Received Industry Member Data” and, collectively with the Recorded Industry Member Data, “Industry Member Data”): (1) if the order is executed, in whole or in part: (a) an Allocation Report that includes the Firm Designated ID when an execution is allocated (in whole or in part); (b) SRO-Assigned Market Participant Identifier of the clearing broker or prime broker, if applicable; and (c) CAT-Order-ID of any contra-side order(s); (2) if the trade is cancelled, a cancelled trade indicator; and (3) for original receipt or origination of an order, information of sufficient detail to identify the Customer.

With respect to the reporting obligations of an Options Market Maker with regard to its quotes in Listed Options, Reportable Events required pursuant to Section 6.3(d)(ii) and (iv) will be reported to the Central Repository by an Options Exchange in lieu of the reporting of such information by the Options Market Maker. Each Participant that is an Options Exchange will, through its Compliance Rule, require its Industry Members that are Options Market Makers to report to the Options Exchange the time at which a quote in a Listed Option is sent to the Options Exchange (and, if applicable, any subsequent quote modifications and/or cancellation time when such modification or cancellation is originated by the Options Market Maker). Such time information also will be reported to the Central Repository by the Options Exchange in lieu of reporting by the Options Market Maker.

Each Participant will, through its Compliance Rule, require its Industry Members to record and report to the Central Repository other information or additional events as prescribed in Appendix D, Reporting and Linkage Requirements.

As contemplated in Appendix D, Data Types and Sources, each Participant will require its Industry Members to report Industry Member Data to the Central Repository for consolidation and storage in a format(s) specified by the Plan Processor, approved by the Operating Committee and compliant with Rule 613. As further described in Appendix D, Reporting and Linkage Requirements, each Participant will require its Industry Members to record Recorded Industry

Member Data contemporaneously with the applicable Reportable Event. In addition, consistent with Appendix D, Reporting and Linkage Requirements, each Participant will require its Industry Members to report: (1) Recorded Industry Member Data to the Central Repository by 8:00 a.m. Eastern Time on the Trading Day following the day the Industry Member records such Recorded Industry Member Data; and (2) Received Industry Member Data to the Central Repository by 8:00 am Eastern Time on the Trading Day following the day the Industry Member receives such Received Industry Member Data. Each Participant will permit its Industry Members to voluntarily report Industry Member Data prior to the applicable 8:00 a.m. Eastern Time deadline.

Each Participant that is a national securities exchange must require its Industry Members to report Industry Member Data for each NMS Security registered or listed for trading on such exchange or admitted to unlisted trading privileges on such exchange. Each Participant that is a national securities association must require its Industry Members to report Industry Member Data for each Eligible Security for which transaction reports are required to be submitted to the association.

**e. Regular Written Assessment**

As described in Article VI, the Participants are required to provide the Commission with a written assessment of the operation of the CAT that meets the requirements set forth in Rule 613, Appendix D, and the Plan at least every two years or more frequently in connection with any review of the Plan Processor's performance under the Plan pursuant to Section 6.1(m). The Chief Compliance Officer will oversee this assessment and will provide the Participants a reasonable time to review and comment upon the written assessment prior to its submission to the SEC. In no case will the written assessment be changed or amended in response to a comment from a Participant; rather any comment by a Participant will be provided to the SEC at the same time as the written assessment.

**f. Timestamps and Synchronization of Business Clocks**

Section 6.8 of the Plan discusses timestamps and the synchronization of Business Clocks. Each Participant is required to synchronize its Business Clocks (other than such Business Clocks used solely for Manual Order Events) at a minimum to within 50 milliseconds of the time maintained by the National Institute of Standards and Technology, consistent with industry standards. In addition, each Participant must, through its Compliance Rule, require its Industry Members to: (1) synchronize their respective Business Clocks (other than such Business Clocks used solely for Manual Order Events) at a minimum to within 50 milliseconds of the time maintained by the National Institute of Standards and Technology, and maintain such a synchronization; (2) certify periodically that their Business Clocks meet the requirements of the Compliance Rule; and (3) report to the Plan Processor and the Participant any violation of the Compliance Rule pursuant to the thresholds set by the Operating Committee. Furthermore, each Participant is required to synchronize its Business Clocks and, through its Compliance Rule,

require its Industry Members to synchronize their Business Clocks used solely for Manual Order Events at a minimum to within one second of the time maintained by the National Institute of Standards and Technology, consistent with industry standards, and maintain such synchronization. Each Participant will require its Industry Members to certify periodically (according to a schedule defined by the Operating Committee) that their Business Clocks used solely for Manual Order Events meet the requirements of the Compliance Rule. The Compliance Rule of a Participant shall require its Industry Members using Business Clocks solely for Manual Order Events to report to the Plan Processor any violation of the Compliance Rule pursuant to the thresholds set by the Operating Committee. Pursuant to Rule 613(d)(1), the Participants believe that these synchronization standards are consistent with current industry standards.

Each Participant shall, and through its Compliance Rule require its Industry Members to, report information required by Rule 613 and this Agreement to the Central Repository in milliseconds. To the extent that any Participant utilizes timestamps in increments finer than the minimum required by the Plan, the Participant is required to make reports to the Central Repository utilizing such finer increment when reporting CAT Data to the Central Repository so that all Reportable Events reported to the Central Repository can be adequately sequenced. Each Participant will, through its Compliance Rule: (1) require that, to the extent that its Industry Members utilize timestamps in increments finer than the minimum required in the Plan, such Industry Members will utilize such finer increment when reporting CAT Data to the Central Repository; and (2) provide that a pattern or practice of reporting events outside of the required clock synchronization time period without reasonable justification or exceptional circumstances may be considered a violation of SEC Rule 613 and the Plan. Notwithstanding the preceding sentences, each Participant and Industry Member will be permitted to record and report Manual Order Events to the Central Repository in increments up to and including one second, provided that Participants and Industry Members will be required to record and report the time when a Manual Order Event has been captured electronically in an order handling and execution system of such Participant or Industry Member in milliseconds. In conjunction with Participants' and other appropriate Industry Member advisory groups, the Chief Compliance Officer will annually evaluate and make a recommendation to the Operating Committee as to whether industry standards have evolved such that the required synchronization should be shortened or the required timestamp should be in finer increments. The Operating Committee will make determinations regarding the need to revise the synchronization and timestamp requirements.

**g. Technical Specifications**

Section 6.9 of the Plan establishes the requirements involving the Plan Processor's Technical Specifications. The Plan Processor will publish Technical Specifications that are at a minimum consistent with Appendices C and D, and updates thereto as needed, providing detailed instructions regarding the submission of CAT Data by Participants and Industry Members to the Plan Processor for entry into the Central Repository. The Technical Specifications will be made available on a publicly available web site to be developed and maintained by the Plan Processor.

The initial Technical Specifications and any Material Amendments thereto will require the approval of the Operating Committee by Supermajority Vote.

The Technical Specifications will include a detailed description of the following: (1) the specifications for the layout of files and records submitted to the Central Repository; (2) the process for the release of new data format specification changes; (3) the process for industry testing for any changes to data format specifications; (4) the procedures for obtaining feedback about and submitting corrections to information submitted to the Central Repository; (5) each data element, including permitted values, in any type of report submitted to the Central Repository; (6) any error messages generated by the Plan Processor in the course of validating the data; (7) the process for file submissions (and re-submissions for corrected files); (8) the storage and access requirements for all files submitted; (9) metadata requirements for all files submitted to the CAT System; (10) any required secure network connectivity; (11) data security standards, which will, at a minimum: (a) satisfy all applicable regulations regarding database security, including provisions of Regulation Systems Compliance and Integrity under the Exchange Act (“Reg SCI”); (b) to the extent not otherwise provided for under the Plan (including Appendix C thereto), set forth such provisions as may be necessary or appropriate to comply with Rule 613(e)(4); and (c) comply with industry best practices; and (12) any other items reasonably deemed appropriate by the Plan Processor and approved by the Operating Committee.

Amendments to the Technical Specifications may be made only in accordance with Section 6.9(c). The process for amending the Technical Specifications varies depending on whether the change is material. An amendment will be deemed “material” if it would require a Participant or an Industry Member to engage in significant changes to the coding necessary to submit information to the Central Repository pursuant to the Plan, or if it is required to safeguard the security or confidentiality of the CAT Data. Except for Material Amendments to the Technical Specifications, the Plan Processor will have the sole discretion to amend and publish interpretations regarding the Technical Specifications; however, all non-Material Amendments made to the Technical Specifications and all published interpretations will be provided to the Operating Committee in writing at least ten days before being published. Such non-Material Amendments and published interpretations will be deemed approved ten days following provision to the Operating Committee unless two unaffiliated Participants call for a vote to be taken on the proposed amendment or interpretation. If an amendment or interpretation is called for a vote by two or more unaffiliated Participants, the proposed amendment must be approved by Majority Vote of the Operating Committee. Once a non-Material Amendment has been approved or deemed approved by the Operating Committee, the Plan Processor will be responsible for determining the specific changes to the Central Repository and providing technical documentation of those changes, including an implementation timeline.

Material Amendments to the Technical Specifications require approval of the Operating Committee by Supermajority Vote. The Operating Committee, by Supermajority Vote, may amend the Technical Specifications on its own motion.

## **h. Surveillance**

Surveillance issues are described in Section 6.10. Using the tools provided for in Appendix D, Functionality of the CAT System, each Participant will develop and implement a surveillance system, or enhance existing surveillance systems, reasonably designed to make use of the consolidated information contained in the Central Repository. Unless otherwise ordered by the SEC, within fourteen months after the Effective Date, each Participant must initially implement a new or enhanced surveillance system(s) as required by Rule 613 and Section 6.10(a) of the Plan. Participants may, but are not required to, coordinate surveillance efforts through the use of regulatory services agreements and agreements adopted pursuant to Rule 17d-2 under the Exchange Act.

Consistent with Appendix D, Functionality of the CAT System, the Plan Processor will provide Participants and the SEC with access to all CAT Data stored in the Central Repository. Regulators will have access to processed CAT Data through two different methods: (1) an online targeted query tool; and (2) user-defined direct queries and bulk extracts. The online targeted query tool will provide authorized users with the ability to retrieve CAT Data via an online query screen that includes the ability to choose from a variety of pre-defined selection criteria. Targeted queries must include date(s) and/or time range(s), as well as one or more of a variety of fields. The user-defined direct queries and bulk extracts will provide authorized users with the ability to retrieve CAT Data via a query tool or language that allows users to query all available attributes and data sources.

Extraction of CAT Data will be consistent with all permission rights granted by the Plan Processor. All CAT Data returned will be encrypted, and PII data will be masked unless users have permission to view the CAT Data that has been requested.

The Plan Processor will implement an automated mechanism to monitor direct query usage. Such monitoring will include automated alerts to notify the Plan Processor of potential issues with bottlenecks or excessively long queues for queries or CAT Data extractions. The Plan Processor will provide the Operating Committee or its designee(s) details as to how the monitoring will be accomplished and the metrics that will be used to trigger alerts.

The Plan Processor will reasonably assist regulatory staff (including those of Participants) with creating queries. Without limiting the manner in which regulatory staff (including those of Participants) may submit queries, the Plan Processor will submit queries on behalf of regulatory staff (including those of Participants) as reasonably requested. The Plan Processor will staff a CAT help desk, as described in Appendix D, CAT Help Desk, to provide technical expertise to assist regulatory staff (including those of Participants) with questions about the content and structure of the CAT Data.

**i. Information Security Program**

As set forth in Section 6.12, the Plan Processor is required to develop and maintain a comprehensive information security program for the Central Repository that contains, at a minimum, the specific requirements detailed in Appendix D, Data Security. The information security program must be approved and reviewed at least annually by the Operating Committee.

**6. Financial Matters**

Articles VII and VIII of the Plan address certain financial matters related to the Company. In particular, the Plan states that, subject to certain special allocations provided for in Section 8.2, any net profit or net loss will be allocated among the Participants equally. In addition, subject to Section 10.2, cash and property of the Company will not be distributed to the Participants unless the Operating Committee approves by Supermajority Vote a distribution after fully considering the reason that such distribution must or should be made to the Participants, including the circumstances contemplated under Section 8.3, Section 8.6, and Section 9.3. To the extent a distribution is made, all Participants will participate equally in any such distribution except as otherwise provided in Section 10.2.

Article XI addresses the funding of the Company. On an annual basis the Operating Committee will approve an operating budget for the Company. The budget will include the projected costs of the Company, including the costs of developing and operating the CAT System 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.

Subject to certain funding principles set forth in Article XI, the Operating Committee will have discretion to establish funding for the Company, including: (1) establishing fees that the Participants will pay; and (2) establishing fees for Industry Members that will be implemented by Participants. In establishing the funding of the Company, the Operating Committee will seek to: (1) 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; (2) 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; (3) establish a tiered fee structure in which the fees charged to: (a) CAT Reporters that are Execution Venues, including ATSS, are based upon the level of market share, (b) Industry Members' non-ATSS activities are based upon message traffic, and (c) 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); (4) provide for ease of billing and other administrative functions; (5) avoid any disincentives such as placing an inappropriate burden on competition and a reduction in

market quality; and (6) build financial stability to support the Company as a going concern. The Participants will 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 will be labeled as “Consolidated Audit Trail Funding Fees.”

To fund the development and implementation of the CAT, the Company will 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 for Participants and Industry Members, the Operating Committee shall take into account fees, costs and expenses (including legal and consulting fees and expenses) incurred by the Participants on behalf of the Company prior to the Effective Date in connection with the creation and implementation of the CAT, and such fees, costs and expenses shall be fairly and reasonably shared among the Participants and Industry Members. Consistent with Article XI, the Operating Committee will 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. As a part of its regular review of fees for the CAT, the Operating Committee will have the right to change the tier assigned to any particular Person pursuant to this Article XI. Any such changes will be effective upon reasonable notice to such Person.

The Operating Committee will establish fixed fees to be payable by Execution Venues as follows. Each Execution Venue that executes transactions, or, 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. The Operating Committee will establish at least two and no more than five tiers of fixed fees, based on an Execution Venue’s NMS Stocks and OTC Equity Securities market share. For these purposes, market share will be calculated by share volume. In addition, 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. The Operating Committee will establish at least two and no more than five tiers of fixed fees, based on an Execution Venue’s Listed Options market share. For these purposes, market share will be calculated by contract volume.

The Operating Committee also will establish fixed fees payable by Industry Members, based on the message traffic generated by such Industry Member. The Operating Committee will establish 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 will, in addition to any other applicable message traffic, include message traffic generated by: (1) an ATS that does not execute orders that is sponsored by such Industry Member; and (2) routing orders to and from any ATS system sponsored by such Industry Member.

Furthermore, the Operating Committee may establish any other fees ancillary to the operation of the CAT that it reasonably determines appropriate, including: fees for the late or

inaccurate reporting of information to the CAT; fees for correcting submitted information; and fees based on access and use of the CAT for regulatory and oversight purposes (and not including any reporting obligations).

The Company will make publicly available a schedule of effective fees and charges adopted pursuant to the Plan as in effect from time to time. Such schedule will be developed after the Plan Processor is selected. The Operating Committee will review the fee schedule on at least an annual basis and will make any changes to such fee schedule that it deems appropriate. The Operating Committee is authorized to review the fee schedule on a more regular basis, but will not make any changes on more than a semi-annual basis unless, pursuant to a Supermajority Vote, the Operating Committee concludes that such change is necessary for the adequate funding of the Company.

The Operating Committee will establish a system for the collection of fees authorized under the Plan. The Operating Committee may include such collection responsibility as a function of the Plan Processor or another administrator. Alternatively, the Operating Committee may use the facilities of a clearing agency registered under Section 17A of the Exchange Act to provide for the collection of such fees.

Each Participant will require each Industry Member to pay all applicable fees authorized under Article XI within thirty days after receipt of an invoice or other notice indicating payment is due (unless a longer payment period is otherwise indicated). If an Industry Member fails to pay any such fee when due, such Industry Member will pay interest on the outstanding balance from such due date until such fee is paid at a per annum rate equal to the lesser of: (1) the Prime Rate plus 300 basis points; or (2) the maximum rate permitted by applicable law. Each Participant will pay all applicable fees authorized under Article XI as required by Section 3.7(b).

Disputes with respect to fees the Company charges Participants pursuant to Article XI will be determined by the Operating Committee or a Subcommittee designated by the Operating Committee. Decisions by the Operating Committee on such matters shall be binding on Participants, without prejudice to the rights of any Participant to seek redress from the SEC pursuant to SEC Rule 608 or in any other appropriate forum. The Participants will adopt rules requiring that disputes with respect to fees charged to Industry Members pursuant to Article XI be determined by the Operating Committee or a Subcommittee. Decisions by the Operating Committee or Subcommittee on such matters will be binding on Industry Members, without prejudice to the rights of any Industry Member to seek redress from the SEC pursuant to SEC Rule 608 or in any other appropriate forum.

## **7. Amendments**

Section 12.3, which governs amendments to the Plan, states that, except with respect to the addition of new Participants (Section 3.3), the transfer of Company Interest (Section 3.4), the termination of a Participant's participation in the Plan (Section 3.7), amendments to the Selection Plan (Section 5.3) and special allocations (Section 8.2), any change to the Plan requires a written

amendment authorized by the affirmative vote of not less than two-thirds of all of the Participants, or with respect to Section 3.8 by the affirmative vote of all the Participants. Such proposed amendment must be approved by the Commission pursuant to Rule 608 or otherwise becomes effective under Rule 608. Notwithstanding the foregoing, to the extent that the SEC grants exemptive relief applicable to any provision of this Agreement, Participants and Industry Members will be entitled to comply with such provision pursuant to the terms of the exemptive relief so granted at the time such relief is granted irrespective of whether the LLC Agreement has been amended.

## **8. Compliance Rule Applicable to Industry Members**

Under Article III, each Participant agrees to comply with and enforce compliance by its Industry Members with the provisions of Rule 613 and the Plan, as applicable, to the Participant and its Industry Members. Accordingly, the Participants will endeavor to promulgate consistent rules (after taking into account circumstances and considerations that may impact Participants differently) requiring compliance by their respective Industry Members with the provisions of Rule 613 and the Plan.

## **9. Plan Appendices**

The Plan includes three appendices.<sup>43</sup> Appendix A provides the Consolidated Audit Trail National Market System Plan Request for Proposal, as issued February 26, 2013 and subsequently updated. In addition, Rule 613(a)(1) requires that the Plan discuss twelve considerations that explain the choices made by the Participants to meet the requirements specified in Rule 613 for the CAT. In accordance with this requirement, the Participants have addressed each of the twelve considerations in detail in Appendix C. Finally, Appendix D describes the technical requirements for the Plan Processor.

### **B. Governing or Constituent Documents**

Rule 608 requires copies of all governing or constituent documents relating to any person (other than a self-regulatory organization) authorized to implement or administer such plan on behalf of its sponsors. The Participants will submit to the Commission such documents related to the Plan Processor when the Plan Processor is selected.

### **C. Development and Implementation Phases**

The terms of the Plan will be effective immediately upon approval of the Plan by the Commission (the "Effective Date"). The Plan sets forth each of the significant phases of development and implementation contemplated by the Plan, together with the projected date of

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<sup>43</sup> Appendix B is reserved for future use.

completion of each phase. These include the following, each of which is subject to orders otherwise by the Commission:

- Within two months after the Effective Date, the Participants will jointly select the winning Shortlisted Bid and the Plan Processor pursuant to the process set forth in Article V. Following the selection of the Initial Plan Processor, the Participants will file with the Commission a statement identifying the Plan Processor and including the information required by Rule 608;
- Within four months after the Effective Date, each Participant will, and, through its Compliance Rule, will require its Industry Members to, synchronize its or their Business Clocks and certify to the Chief Compliance Officer (in the case of Participants) or the applicable Participant (in the case of Industry Members) that it has met this requirement;
- Within six months after the Effective Date, the Participants must jointly provide to the SEC a document outlining how the Participants could incorporate into the CAT information with respect to equity securities that are not NMS Securities, including Primary Market Transactions in securities that are not NMS Securities, which document will include details for each order and Reportable Event that may be required to be provided, which market participants may be required to provide the data, the implementation timeline, and a cost estimate;
- Within one year after the Effective Date, each Participant must report Participant Data to the Central Repository;
- Within fourteen months after the Effective Date, each Participant must implement a new or enhanced surveillance system(s);
- Within two years after the Effective Date, each Participant must, through its Compliance Rule, require its Industry Members (other than Small Industry Members) to report Industry Member Data to the Central Repository; and
- Within three years after the Effective Date, each Participant must, through its Compliance Rule, require its Small Industry Members to provide Industry Member Data to the Central Repository.

In addition, Industry Members and Participants will be required to participate in industry testing with the Central Repository on a schedule to be determined by the Operating Committee. Furthermore, Appendix C, A Plan to Eliminate Existing Rules and Systems (SEC Rule 613(a)(1)(ix)), and Appendix D, Data Types and Sources, set forth additional implementation details concerning the elimination of rules and systems.

The Chief Compliance Officer will appropriately document objective milestones to assess progress toward the implementation of this Agreement.

**D. Analysis of Impact on Competition**

The Plan does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. Section 8 of Appendix C, An Analysis of the Impact on Competition, Efficiency and Capital Formation, discusses the competition impact of the Plan in detail. In addition, the Participants do not believe that the Plan introduces terms that are unreasonably discriminatory for the purposes of Section 11A(c)(1)(D) of the Exchange Act. As noted in Section A, the Participants are aware that potential conflicts of interest are raised because a Participant, or an Affiliate of a Participant, may be both submitting a Bid (or participating in a Bid (*e.g.*, as a subcontractor)) and participating in the evaluation of Bids to select the Plan Processor. As described in Section A, the Selection Plan previously approved by the Commission and incorporated in the Plan includes multiple provisions designed to mitigate the potential impact of these conflicts by imposing restrictions on the Voting Senior Officers and by requiring the recusal of Bidding Participants for certain votes taken by the Selection Committee.

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

The Participants have no written understandings or agreements relating to interpretations of, or participation in, the Plan other than those set forth in the Plan itself. For example, Section 4.3(a)(iii) states that the Operating Committee only may authorize the interpretation of the Plan by Majority Vote, Section 6.9(c)(i) addresses interpretations of the Technical Specifications, and Section 8.2 addresses the interpretation of Sections 8.1 and 8.2. In addition, Section 3.3 sets forth how any entity registered as a national securities exchange or national securities association under the Exchange Act may become a Participant.

**F. Dispute Resolution**

The Plan does not include a general provision addressing the method by which disputes arising in connection with the operation of the Plan will be resolved. The Plan does, however, provide the means for resolving disputes regarding the Participation Fee. Specifically, Article III states that, in the event that the Company and a prospective Participant do not agree on the amount of the Participation Fee, such amount will be subject to the review by the SEC pursuant to Section 11A(b)(5) of the Exchange Act. In addition, the Plan addresses disputes with respect to fees charged to Participants and Industry Members pursuant to Article XI. Specifically, such disputes will be determined by the Operating Committee or a Subcommittee designated by the Operating Committee. Decisions by the Operating Committee or such designated Subcommittee on such matters will be binding on Participants and Industry Members, without prejudice to the

Mr. Brent J. Fields  
February 27, 2015  
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rights of any Participant or Industry Member to seek redress from the SEC pursuant to Rule 608 or in any other appropriate forum.

\* \* \* \* \*

The Participants look forward to further discussions with the Staff regarding the attached proposed Plan.

Respectfully submitted,

*[Signature Pages Follow]*

Enclosure

cc: The Hon. Mary Jo White, Chair  
The Hon. Luis A. Aguilar, Commissioner  
The Hon. Daniel M. Gallagher, Commissioner  
The Hon. Kara M. Stein, Commissioner  
The Hon. Michael S. Piwowar, Commissioner  
Mr. Stephen I. Luparello, Director of Trading and Markets  
Mr. Gary L. Goldsholle, Deputy Director of Trading and Markets  
Mr. David S. Shillman, Associate Director of Trading and Markets

**BATS EXCHANGE, INC.**

By: Tamara Schademann

Name: Tamara Schademann

Title: EVP, CRO

**BATS Y-EXCHANGE, INC.**

By: Tamara Schademann

Name: Tamara Schademann

Title: EVP, CRO

**BOX Options Exchange LLC**

By: Bruce A. Goodhue

Name: Bruce Goodhue

Title: Chief Regulatory Officer

Date: February 26, 2015

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101 Arch Street, Suite 610

Boston, MA 02110

Facsimile: 617 235 2355

Attention: \_\_\_\_\_

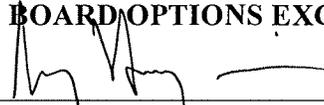
**C2 OPTIONS EXCHANGE, INC**

By: 

Name: Greg Hoogasian

Title: Chief Regulatory Officer

**CHICAGO BOARD OPTIONS EXCHANGE, INC**

By: 

Name: Greg Hoogasian

Title: Chief Regulatory Officer

**CHICAGO STOCK EXCHANGE, INC.**

By: 

Name: Peter D. Santori

Title: Executive Vice President  
Chief Compliance Officer  
Chief Regulatory Officer

**EDGA EXCHANGE, INC.**

By: Tamara Schademann

Name: Tamara Schademann

Title: EVP, CRO

**EDGX EXCHANGE, INC.**

By: Tamara Schademann

Name: Tamara Schademann

Title: EVP, CRO

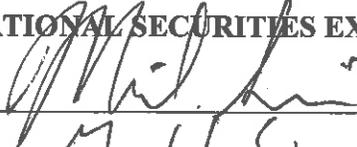
**FINANCIAL INDUSTRY REGULATORY AUTHORITY, INC.**

By: Marcia E. Asquith

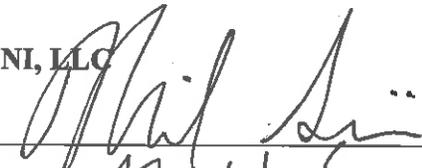
Name: Marcia E. Asquith

Title: Senior Vice President and Corporate Secretary

**INTERNATIONAL SECURITIES EXCHANGE, LLC**

By:   
Name: Michel Simon  
Title: Secretary

**ISE GEMINI, LLC**

By:   
Name: Michel Simon  
Title: Secretary

**MIAMI INTERNATIONAL SECURITIES EXCHANGE LLC**

By: 

Name: Edward Deitzel

Title: EVP, CRO

**THE NASDAQ STOCK MARKET LLC**

By: 

Name: John W. Zee

Title: SVP + CRO

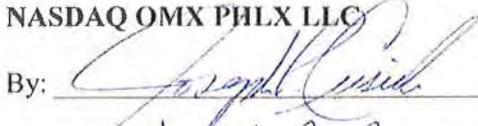
**NASDAQ OMX BX, INC.**

By: 

Name: John W. Zee

Title: SVP

**NASDAQ OMX PHLX LLC**

By: 

Name: Joseph P. Cusack

Title: V.P. & CRO

**NATIONAL STOCK EXCHANGE, INC.**

By: *James G. Buckley*

Name: James G. BUCKLEY

Title: CHIEF REGULATORY OFFICER

**NYSE ARCA, INC.**

By: Elizabeth K. King

Name: Elizabeth King

Title: Secretary & General Counsel

**NEW YORK STOCK EXCHANGE LLC**

By: Elizabeth K. King

Name: Elizabeth King

Title: Secretary & General Counsel

**NYSE MKT LLC**

By: Elizabeth K. King

Name: Elizabeth King

Title: Secretary & General Counsel