## 1. Text of the Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act"),[1] the Financial Industry Regulatory Authority, Inc. ("FINRA") is filing with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change to amend FINRA Rule 6897(b) (CAT Cost Recovery Fees) to implement a Consolidated Audit Trail ("CAT") cost recovery fee designed to permit FINRA to recoup its designated portion of the reasonably budgeted CAT costs of the National Market System Plan Governing the Consolidated Audit Trail (the "CAT NMS Plan" or "Plan") for the period of January 1, 2025 through December 31, 2025.[2]

The text of the proposed rule change is attached as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

## 2. Procedures of the Self-Regulatory Organization

The Chief Legal Officer of FINRA (or his officer designee) authorized the filing of the proposed rule change with the SEC pursuant to delegated authority. No other action by FINRA is necessary for the filing of the proposed rule change.

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[1] 15 U.S.C. 78s(b)(1).

[2] Pursuant to Section 11.3(a) of the CAT NMS Plan, FINRA filed a separate proposed rule change to establish fees assessed to Industry Members, payable to Consolidated Audit Trail, LLC, related to the recovery of approximately one-half of the reasonably budgeted CAT costs for the period of January 1, 2025 through December 31, 2025. See File No. SR-FINRA-2024-023. Unless otherwise specified, capitalized terms used in this rule filing are defined as set forth in the CAT NMS Plan and FINRA Rule 6800 Series (Consolidated Audit Trail Compliance Rule).

FINRA has filed the proposed rule change for immediate effectiveness. The effective date and the implementation date will be the date of filing.

## 3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

Background

On July 11, 2012, the Commission adopted Rule 613 of Regulation NMS, which required the self-regulatory organizations to submit a national market system ("NMS") plan to create, implement and maintain a consolidated audit trail that would capture customer and order event information for orders in NMS securities across all markets, from the time of order inception through routing, cancellation, modification, or execution.[3] On November 15, 2016, the Commission approved the CAT NMS Plan.[4] Under the CAT NMS Plan, the Operating Committee has the discretion to establish funding for Consolidated Audit Trail, LLC ("CAT LLC") to operate the CAT, including establishing fees for Industry Members to be assessed by CAT LLC that would be implemented on behalf of CAT LLC by the Participants.[5] The Operating Committee adopted a revised funding model to fund the CAT ("CAT Funding Model") and, on September 6, 2023, the Commission approved the CAT Funding Model, after concluding

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3 See Securities Exchange Act Release No. 67457 (July 18, 2012), 77 FR 45722 (August 1, 2012).

4 See Securities Exchange Act Release No. 79318 (November 15, 2016), 81 FR 84696 (November 23, 2016) ("CAT NMS Plan Approval Order").

5 See Section 11.1(b) of the CAT NMS Plan.

that the model was reasonable and that it satisfied the requirements of Section 11A of the Exchange Act and Rule 608 thereunder.[6]

The CAT Funding Model provides a framework for the recovery of the costs to create, develop, and maintain the CAT, including providing a method for allocating costs to fund the CAT among Participants and Industry Members. The CAT Funding Model establishes two categories of fees: (1) CAT fees assessed by CAT LLC and payable by certain Industry Members to recover a portion of historical CAT costs previously paid by the Participants;[7] and (2) CAT fees assessed by CAT LLC and payable by Participants and Industry Members to fund Prospective CAT Costs, i.e., costs not previously paid by the Participants.[8]

With respect to CAT fees implemented to fund Prospective CAT Costs, the CAT Operating Committee has established CAT Fee 2025-1 to implement fees payable by Industry Members to recover approximately one-half of the reasonably budgeted Prospective CAT Costs for the period January 1, 2025 through December 31, 2025 ("Budgeted CAT Costs 2025-1").[9] Consistent with the Plan, the Operating Committee

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6 See Securities Exchange Act Release No. 98290 (September 6, 2023), 88 FR 62628 (September 12, 2023) ("CAT Funding Model Approval Order").

7 See Section 11.3(b) of the CAT NMS Plan.

8 See Section 11.3(a) of the CAT NMS Plan.

9 As detailed in File No. SR-FINRA-2024-023, Budgeted CAT Costs 2025-1 would be $272,688,276. Industry Members would be collectively responsible for two-thirds of those costs or $181,792,184, and Participants would be collectively responsible for one-third or $90,896,092. See also Sections 11.3(a)(ii)(A) and 11.3(a)(iii)(A) of the CAT NMS Plan. CAT Fee 2025-1 is designed to recover approximately one-half of Budgeted CAT Costs 2025-1 and a new CAT Fee may be implemented to collect the remaining half of Budgeted CAT Costs 2025-1 based on an adjusted mid-year budget.

has also established fees payable to CAT LLC by the Participants to collect the Participants' designated portion of Budgeted CAT Costs 2025-1.[10] Participants would only be required to pay such fees once CAT Fee 2025-1 is in effect with regard to Industry Members in accordance with Section 19(b) of the Exchange Act.[11]

In light of the filing of File No. SR-FINRA-2024-023, which implements CAT Fee 2025-1 with regard to Industry Members, FINRA is filing the instant proposed rule change to establish a fee that would allow FINRA to recover the monthly fees it is required to pay to CAT LLC towards Budgeted CAT Costs 2025-1 ("Prospective CAT Cost Recovery Fee 2025-1").[12] In the Approval Order, the Commission acknowledged that "the Exchange Act expressly contemplates the ability of the Participants to recoup their costs to fulfill their statutory obligations under the Exchange Act."[13] The Commission also noted FINRA's statement "that it would file a rule change to increase

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[10] See Section 11.3(a)(ii) and Appendix B of the CAT NMS Plan; see also CAT Funding Model Approval Order, 88 FR 62628, 62660 ("The CAT Fees charged to Participants would be implemented through an approval of the CAT Fees by the Operating Committee and not through a plan amendment submitted each time the Fee Rate changes, while CAT Fees charged to Industry Members may only become effective in accordance with the requirements of Section 19(b) of the Exchange Act.").

[11] See Section 11.3(a)(ii)(B) of the CAT NMS Plan; see also CAT Funding Model Approval Order, 88 FR 62628, 62660 ("The Commission also believes it is reasonable that proposed Section 11.3(a)(ii)(B) provides that the Participants would be required to pay CAT Fees only when Industry Members are required to pay CAT Fees.").

[12] FINRA previously has implemented a recovery fee to recoup monthly fees it is required to pay to CAT LLC towards prospective CAT costs—specifically, Prospective CAT Cost Recovery Fee 2024-1. See Rule 6897(b)(1)(C); see also Securities Exchange Act Release No. 100920 (September 4, 2024), 89 FR 73457 (September 10, 2024).

[13] CAT Funding Model Approval Order, 88 FR 62628, 62636-37.

its member fees with the filing of any proposed rule change to effectuate the Funding Model."[14]

FINRA's Designated Portion of Budgeted CAT Costs 2025-1

As discussed in File No. SR-FINRA-2024-023, the Operating Committee has established CAT Fee 2025-1, payable to CAT LLC by Industry Members, to recover two-thirds of the $272,688,276 in Budgeted CAT Costs 2025-1 over the January 1, 2025 through December 31, 2025 period or $181,792,184.[15] The Operating Committee further determined that the fee rate for CAT Fee 2025-1 is $0.00006682588642384252 per

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[14] FINRA has consistently made clear its intention to file a rule change to implement member CAT fees simultaneous with the filing of any proposed rule change to effectuate the CAT Funding Model. See Letter from Marcia E. Asquith, Corporate Secretary, EVP, Board and External Relations, FINRA, to Vanessa Countryman, Secretary, Commission, dated April 11, 2023 ("FINRA April 2023 Letter") at 7 ("If the Funding Model is approved by the Commission, FINRA intends to file a rule change to increase member fees simultaneous with the filing of any proposed rule change to effectuate the Funding Model."); see also Letter from Marcia E. Asquith, Corporate Secretary, EVP, Board and External Relations, FINRA, to Vanessa Countryman, Secretary, Commission, dated June 22, 2022 ("FINRA June 2022 Letter") at 6 ("[G]iven FINRA's unique nature, FINRA necessarily must seek recovery in turn for the costs it is allocated."). FINRA also requested that, if the Commission were to approve the CAT Funding Model, it acknowledge "FINRA's need and ability to cover CAT costs that are not recovered through contractual arrangements through member fee increases, so as not to jeopardize FINRA's ability to carry out its critical regulatory mission." See CAT Funding Model Approval Order, 88 FR 62628, 62645.

[15] Consistent with Section 11.3(a)(iii)(B) of the CAT NMS Plan, Budgeted CAT Costs 2025-1 include reasonably budgeted (1) technology line items (including cloud hosting services, operating fees, CAIS operating fees, change request fees, and capitalized developed technology costs), (2) legal fees, (3) consulting fees, (4) insurance, (5) professional and administration expenses, (6) public relations costs, and (7) a reserve. A detailed description (including the amounts) of all such costs budgeted during the January 1, 2025 through December 31, 2025 period is provided in File No. SR-FINRA-2024-023.

executed equivalent share,[16] and, under the CAT Funding Model, each of the CAT Executing Broker for the Buyer ("CEBB"), the CAT Executing Broker for the Seller ("CEBS"), and the relevant Participant for a given transaction in an Eligible Security would be responsible for one-third of that rate, or $0.000022 per executed equivalent share.[17] Consequently, CEBBs collectively, CEBSs collectively, and the Participants collectively will each be responsible for $90,896,092, which is one-third of Budgeted CAT Costs 2025-1 during the January 1, 2025 through December 31, 2025 period.[18] As provided for in File No. SR-FINRA-2024-023, approximately one-half of Budgeted CAT Costs 2025-1 will be recovered pursuant to CAT Fee 2025-1 and a new CAT Fee will be established to recoup the remaining half of Budgeted CAT Costs 2025-1 based on an adjusted mid-year budget.

For the twelve months from October 1, 2023, through September 30, 2024, the average monthly executed equivalent share volume in Eligible Securities where FINRA

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16 In approving the CAT Funding Model, the Commission concluded that "the use of executed equivalent share volume as the basis of the proposed cost allocation methodology is reasonable and consistent with the approach taken by the funding principles of the CAT NMS Plan." See CAT Funding Model Approval Order, 88 FR 62628, 62640. Under the CAT NMS Plan, executed equivalent shares in a transaction in Eligible Securities are reasonably counted as follows: (1) each executed share for a transaction in NMS Stocks will be counted as one executed equivalent share; (2) each executed contract for a transaction in Listed Options will be counted based on the multiplier applicable to the specific Listed Options (i.e., 100 executed equivalent shares or such other applicable multiplier); and (3) each executed share for a transaction in OTC Equity Securities shall be counted as 0.01 executed equivalent share. See Section 11.3(a)(i)(B) and 11.3(b)(i)(B) of the CAT NMS Plan.

17 Dividing $0.00006682588642384252 by three and rounding to six decimal places equals $0.000022.

18 See File No. SR-FINRA-2024-023.

was the relevant Participant (i.e., off-exchange transactions) was approximately 109 billion shares. Assuming similar monthly executed equivalent share volume for off-exchange transactions in Eligible Securities from January 1, 2025 through June 30, 2025, for this period, FINRA would be responsible for paying approximately $2.4 million per month and approximately $14.4 million in total to CAT LLC toward the Participants' $45,448,046 designated portion of one-half of Budgeted CAT Costs 2025-1 (or approximately 31.8% of the total from January 1, 2025 through June 30, 2025).

FINRA's recovery of its designated portion of Budgeted CAT Costs 2025-1 is reasonable and consistent with the Exchange Act. As discussed herein and in File No. SR-FINRA-2024-023, Budgeted CAT Costs 2025-1 are reasonable, appropriate and necessary for the creation, implementation, and maintenance of the CAT. In addition, the portion of Budgeted CAT Costs 2025-1 designated to FINRA has been established under the SEC-approved CAT Funding Model.[19] As stated by FINRA and permitted under the Exchange Act, FINRA will seek to recover its designated portion of the Participants' share of CAT costs to ensure that FINRA can fulfill its regulatory mandate and responsibilities.[20]

Prospective CAT Cost Recovery Fee 2025-1

FINRA is proposing to amend Rule 6897(b) (CAT Cost Recovery Fees) to implement Prospective CAT Cost Recovery Fee 2025-1 to allow FINRA to recover its designated portion of Budgeted CAT Costs 2025-1.[21] FINRA intends that the fee

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19 Detailed information regarding Budgeted CAT Costs 2025-1 (which was prepared on the accrual basis of accounting) is discussed in detail in SR-FINRA-2024-023.

20 See supra note 14.

21 In approving the CAT Funding Model, the Commission noted that it "believe[d]

framework for the Prospective CAT Cost Recovery Fee 2025-1 would generally correspond to the framework put in place by CAT LLC with respect to CAT Fee 2025-1, as provided for in File No. SR-FINRA-2024-023. FINRA also intends that the timing and commencement of payment for Prospective CAT Cost Recovery Fee 2025-1 would correspond with that established by CAT LLC with respect to CAT Fee 2025-1, as provided for in File No. SR-FINRA-2024-023. Thus, as with CAT Fee 2025-1, FINRA proposes that each member CAT Executing Broker shall receive its first invoice for Prospective CAT Cost Recovery Fee 2025-1 in February 2025, setting forth fees calculated based on January 2025 transactions in Eligible Securities executed otherwise than on an exchange, as reflected in CAT Data.

The following fields of the Participant Technical Specifications indicate the CAT Executing Brokers for transactions executed otherwise than on an exchange.[22]

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that FINRA's allocation of CAT fees likely will be passed through to Industry Members." See CAT Funding Model Approval Order, 88 FR 62628, 62684.

[22] As per Section 1.1 of the Plan, for a transaction in an Eligible Security executed otherwise than on an exchange and required to be reported to an equity trade reporting facility of a registered national securities association, i.e., one of FINRA's Trade Reporting Facilities (each a "TRF"), OTC Reporting Facility ("ORF") or Alternative Display Facility ("ADF"), the CEBB and CEBS are the Industry Members identified as the executing broker and the contra-side executing broker in the TRF/ORF/ADF transaction data event in CAT Data. In those circumstances where there is a non-Industry Member identified as the contra-side executing broker in the TRF/ORF/ADF transaction data event or no contra-side executing broker is identified in the TRF/ORF/ADF transaction data event, then the Industry Member identified as the executing broker in the TRF/ORF/ADF transaction data event would be treated as, and be required to pay the fee assessed to, both the CEBB and CEBS.

<u>TRF/ORF/ADF Transaction Data Event</u>[23]

| # | Field Name | Data Type | Description | Include Key |
|---|---|---|---|---|
| 26 | reportingExecutingMpid | Member Alias | MPID of the executing party | R |
| 28 | contraExecutingMpid | Member Alias | MPID of the contra-side executing party. | C |

As discussed in File No. SR-FINRA-2024-023, consistent with the CAT Funding Model, in implementing CAT Fee 2025-1, the Operating Committee has determined that each of the CEBB, CEBS and relevant Participant for a given transaction in an Eligible Security would be assessed a fee of $0.000022 per executed equivalent share. In line with this approach, FINRA is proposing, for Prospective CAT Cost Recovery Fee 2025-1, to split CAT Fee 2025-1 between each of the CEBB and CEBS for transactions where FINRA is the relevant Participant such that each member CEBB and CEBS would pay a fee of $0.000011 per executed equivalent share for each transaction in Eligible Securities executed otherwise than on an exchange.[24]

FINRA proposes to adopt Rule 6897(b)(1)(D) (Prospective CAT Cost Recovery Fee 2025-1) to implement Prospective CAT Cost Recovery Fee 2025-1. Proposed Rule 6897(b)(1)(D)(i) would provide that each member CAT Executing Broker shall receive its first invoice from FINRA in February 2025, setting forth the Prospective CAT Cost

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23 <u>See</u> Table 61, Section 6.1 (TRF/ORF/ADF Transaction Data Event) of the CAT Reporting Technical Specifications for Plan Participants.

24 Dividing $0.000022 by two equals $0.000011. Based on historical executed equivalent share volumes in Eligible Securities where FINRA was the relevant Participant, FINRA would expect to recoup approximately $2.4 million per month during the time that Prospective CAT Cost Recovery Fee 2025-1 is in effect.

Recovery Fee 2025-1 fees calculated based on transactions in January 2025, and shall receive an invoice for Prospective CAT Cost Recovery Fee 2025-1 from FINRA for each month thereafter until July 2025. As provided in proposed Rule 6897(b)(1)(D)(ii), FINRA shall provide each member CAT Executing Broker with an invoice for Prospective CAT Cost Recovery Fee 2025-1 on a monthly basis (which shall be separate from the invoice provide by CAT LLC with respect to CAT Fee 2025-1). Each monthly invoice provided by FINRA shall set forth a fee for each transaction in Eligible Securities executed by the CAT Executing Broker in its capacity as the CEBB and/or the CEBS (as applicable) otherwise than on an exchange from the prior month as set forth in CAT Data. The fee assessed to each CEBB and CEBS for each such transaction will be calculated by multiplying the number of executed equivalent shares in the transaction by the Prospective CAT Cost Recovery Fee 2025-1 fee rate of $0.000011 per executed equivalent share.

Further, as provided in proposed Rule 6897(b)(1)(D)(iii), notwithstanding the last invoice date of July 2025 for Prospective CAT Cost Recovery Fee 2025-1 in Rule 6897(b)(1)(D)(i), Prospective CAT Cost Recovery Fee 2025-1 shall continue in effect after July 2025, with each CAT Executing Broker receiving an invoice for Prospective CAT Cost Recovery Fee 2025-1 each month, until a new subsequent Prospective CAT Cost Recovery Fee is in effect with regard to members in accordance with Section 19(b) of the Exchange Act.[25] Proposed paragraph (b)(1)(D)(iii) of Rule 6897 also states that

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[25] As noted in File No. SR-FINRA-2024-023, CAT Fee 2025-1 would continue in effect after July 2025 until a new subsequent CAT Fee to collect the Industry Members' designated portion of Budgeted CAT Costs is in effect, in accordance with Section 19(b) of the Exchange Act. While CAT Fee 2025-1 remains in effect for Industry Members, the Participants would continue to be assessed a

FINRA will provide notice when Prospective CAT Cost Recovery Fee 2025-1 will no longer be in effect. Proposed Rule 6897(b)(1)(D)(iv) provides that each member CAT Executing Broker shall be required to pay each invoice for Prospective CAT Cost Recovery Fee 2025-1 as set forth in Rule 6897(b)(2).

Beginning with the initial invoice for Prospective CAT Cost Recovery Fee 2025-1 in February 2025, FINRA will make available to each member CAT Executing Broker a copy of the relevant details for fee liable transactions executed each month otherwise than on an exchange. Similar to the information that would be provided by CAT LLC to CAT Executing Brokers in assessing the off-exchange portion of CAT Fee 2025-1 each month,[26] such information would provide member CAT Executing Brokers with the ability to understand the details regarding the calculation of their Prospective CAT Cost Recovery Fee 2025-1 fees. In addition, to provide transparency to the industry, FINRA will make publicly available on its website: (i) the total amount invoiced each month that Prospective CAT Cost Recovery Fee 2025-1 is in effect, (ii) the total amount invoiced for Prospective CAT Cost Recovery Fee 2025-1 for all months since its commencement, (iii) the total amount that FINRA is invoiced each month by CAT LLC in connection with CAT Fee 2025-1, (iv) the total amount that FINRA has been invoiced for CAT Fee 2025-1 for all months since its commencement, and (v) the variance, both on a monthly and

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monthly fee based on that same fee rate, i.e., $0.000022 per executed equivalent share. Likewise, unless amended, Prospective CAT Cost Recovery Fee 2025-1 also would remain in effect to allow FINRA to continue to recoup funds in connection with its monthly payment obligations under CAT Fee 2025-1, until a new CAT Fee is established by the Operating Committee.

[26] See File No. SR-FINRA-2024-023.

cumulative basis, between the amount invoiced by FINRA under Prospective CAT Cost Recovery 2025-1 and the amount FINRA is invoiced under CAT Fee 2025-1.

As noted in Item 2 of this filing, FINRA has filed the proposed rule change for immediate effectiveness. The effective date and the implementation date will be the date of filing.

(b) Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[27] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest; and must not be designed to permit unfair discrimination between customers, issuers, brokers or dealers. FINRA also believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,[28] which requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that FINRA operates or controls. FINRA further believes that the proposed rule change is consistent with the provisions of Section 15A(b)(9) of the Act,[29] which requires that FINRA rules not impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Exchange Act. Section 15A(b)(2) of the Act also requires that FINRA be "so organized and [have] the capacity to be able to carry

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[27] 15 U.S.C. 78o-3(b)(6).

[28] 15 U.S.C. 78o-3(b)(5).

[29] 15 U.S.C. 78o-3(b)(9).

out the purposes" of the Act and "to comply, and . . . to enforce compliance by its members, and persons associated with its members," with the provisions of the Exchange Act.[30]

FINRA believes that this proposed rule change is consistent with the Act because it is designed to assist FINRA in meeting regulatory obligations pursuant to the Plan. In approving the Plan, the SEC noted that the Plan "is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act."[31] To the extent that this proposed rule change implements a requirement that facilitates FINRA's achievement of its regulatory obligations under the Plan and applies specific requirements to FINRA members in this regard, FINRA believes that this proposed rule change furthers the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Act.

As discussed in detail in File No. SR-FINRA-2024-023, FINRA believes that the proposed fees paid by the CEBBs and CEBSs in connection with CAT Fee 2025-1 are reasonable, equitably allocated and not unfairly discriminatory. Prospective CAT Cost Recovery Fee 2025-1 would similarly allow FINRA to recover costs related to CAT Fee 2025-1 from member CAT Executing Brokers in a fair and reasonable manner, as contemplated by the Exchange Act and consistent with the CAT Funding Model Approval Order.

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30 See 15 U.S.C. 78o-3(b)(2).

31 CAT NMS Plan Approval Order, 81 FR 84696, 84697.

Proposed Prospective CAT Cost Recovery Fee 2025-1 would be charged to member CAT Executing Brokers in support of the maintenance of a consolidated audit trail for regulatory purposes. The proposed fees, therefore, are consistent with the Commission's view that regulatory fees be used for regulatory purposes. The proposed fees would not cover FINRA costs unrelated to the CAT, and any surplus would be used as a reserve to offset future member fees for CAT costs. Accordingly, FINRA believes that the proposed fees are reasonable, equitable and not unfairly discriminatory.

The reasonableness of Prospective CAT Cost Recovery Fee 2025-1 and its consistency with the Exchange Act likewise is grounded in the facts described above and detailed in File No. SR-FINRA-2024-023. Specifically, the reasonably budgeted expenses that compose the portion of Budgeted CAT Costs 2025-1 sought to be recovered through Prospective CAT Cost Recovery Fee 2025-1 were recognized by the SEC as appropriate for recovery pursuant to the formula approved in the CAT Funding Model (i.e., technology, legal, consulting, insurance, professional administration, and public relations costs). FINRA has determined that these costs, which are described in detail in File No. SR-FINRA-2024-023, are reasonable and it is appropriate that FINRA recover its designated portion of such costs through Prospective CAT Cost Recovery Fee 2025-1.[32] FINRA also has determined that Prospective CAT Cost Recovery Fee 2025-1 provides for the equitable allocation of fees among FINRA members and is not unfairly discriminatory, as discussed herein.

Prospective CAT Cost Recovery Fee 2025-1 is designed to allow FINRA to recover its designated portion of Budgeted CAT Costs 2025-1, consistent with the

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[32] See supra note 19.

Exchange Act and the CAT Funding Model Approval Order.[33] In approving the CAT Funding Model, the Commission noted FINRA's request that it acknowledge "FINRA's need and ability to cover CAT costs that are not recovered through contractual arrangements through member fee increases, so as not to jeopardize FINRA's ability to carry out its critical regulatory mission."[34] The Commission also recognized that "the Exchange Act expressly contemplates the ability of the Participants to recoup their costs to fulfill their statutory obligations under the Exchange Act."[35] The Commission further noted FINRA's statement "that it would file a rule change to increase its member fees with the filing of any proposed rule change to effectuate the Funding Model."[36] The instant proposed rule change to adopt Prospective CAT Cost Recovery Fee 2025-1 represents such a fee with respect to Budgeted CAT Costs 2025-1.[37]

Without a mechanism to recover its CAT costs, FINRA, which is unique among the Participants as a not-for-profit, national securities association, would not be able to effectively sustain its regulatory mission.[38] Thus, consistent with the cost allocation framework put in place by the SEC-approved CAT Funding Model, whereby CEBBs and CEBSs share equal responsibility for the costs assessed directly to Industry Members based on their transactions in Eligible Securities, FINRA is seeking to recoup its

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[33] See supra note 14.

[34] See CAT Funding Model Approval Order, 88 FR 62628, 62645.

[35] See CAT Funding Model Approval Order, 88 FR 62628, 62636.

[36] See supra note 34.

[37] See supra note 12.

[38] See supra note 14.

designated portion of Budgeted CAT Costs 2025-1 in a like manner that is fair, reasonable, and equitably allocated among FINRA's member firms in their capacity as CAT Executing Brokers.

Prospective CAT Cost Recovery Fee 2025-1 is designed to recover FINRA's designated portion of budgeted CAT costs to be incurred by CAT LLC associated with the development, implementation, and operation of the CAT system under the CAT NMS Plan. Thus, Prospective CAT Cost Recovery Fee 2025-1 also generally is designed to support FINRA's efforts to align its operating expenses with its operating revenues, target break-even cash flows, and continue to responsibly manage expenses driven by mandatory initiatives, like the CAT NMS Plan, in a manner consistent with FINRA's public Financial Guiding Principles.[39]

FINRA's approach in determining Prospective CAT Cost Recovery Fee 2025-1, which generally is consistent with the approach provided for under the SEC-approved CAT Funding Model, is also reasonable and consistent with the Exchange Act. Specifically, similar to the CAT cost assessment methodology approved by the Commission, FINRA proposes to allocate equally among member CEBBs and CEBSs FINRA's designated portion of the Participants' one-third share of Budgeted CAT Costs 2025-1.[40] FINRA proposes to determine the rate for Prospective CAT Cost Recovery Fee

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39 See FINRA's Financial Guiding Principles, https://www.finra.org/sites/default/files/finra_financial_guiding_principles_0.pdf. See also Securities Exchange Act Release No. 90176 (October 14, 2020), 85 FR 66592, 66602-03 (October 20, 2020) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2020-032).

40 In its approval of the CAT Funding Model, the Commission determined that charging CAT fees to CAT Executing Brokers was reasonable. In reaching this conclusion the Commission noted that the use of CAT Executing Brokers is appropriate because the CAT Funding Model is based upon the calculation of

2025-1 by dividing CAT Fee 2025-1, i.e., $0.000022 per executed equivalent share, by two such that member CEBBs and CEBSs would each be subject to an equal fee, i.e., $0.000011 per executed equivalent share, for each transaction in Eligible Securities executed otherwise than on an exchange. Therefore, for each month that Prospective CAT Cost Recovery Fee 2025-1 is in effect, member CEBBs and CEBSs will pay a fee to FINRA based on the same transactions used to determine fees payable by CEBBs and CEBSs to CAT LLC under CAT Fee 2025-1 for off-exchange transactions.[41] FINRA believes that this approach is reasonable in that, as is the case with the SEC-approved CAT Funding Model, it apportions the assessed fee for members equally between the CAT Executing Broker for the buyer and the seller.[42]

FINRA believes that it is reasonable, appropriate, and consistent with the Exchange Act to determine Prospective CAT Cost Recovery Fee 2025-1 by dividing CAT Fee 2025-1, i.e., $0.000022 per executed equivalent share, by two such that member CEBBs and CEBSs would each be subject to an equal fee of $0.000011 per executed equivalent share. As discussed above, equally apportioning the fee between the CEBBs

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executed equivalent shares, and, therefore, charging CAT Executing Brokers would reflect their executing role in each transaction. Furthermore, the Commission noted that, because CAT Executing Brokers are already identified in transaction reports from FINRA's equity trade reporting facilities recorded in CAT Data, charging CAT Executing Brokers could streamline the billing process. See CAT Funding Model Approval Order, 88 FR 62628, 62629.

[41] See supra note 24.

[42] See supra note 40.

and CEBSs is consistent with the approach to apportioning costs between Executing Brokers under the SEC-approved CAT Funding Model.[43]

**4. <u>Self-Regulatory Organization's Statement on Burden on Competition</u>**

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Section 15A(b)(9) of the Act[44] requires that FINRA's rules not impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Exchange Act. FINRA notes that Prospective CAT Cost Recovery Fee 2025-1 is designed to assist FINRA in meeting its regulatory obligations pursuant to the Plan.

Furthermore, in approving the CAT Funding Model, the SEC analyzed the potential competitive impact of the CAT Funding Model, including competitive issues related to market services, trading services and regulatory services, efficiency concerns, and capital formation.[45] The SEC also analyzed the potential effect of CAT fees calculated pursuant to the CAT Funding Model on affected categories of market participants, including Participants (including exchanges and FINRA), Industry Members (including subcategories of Industry Members, such as alternative trading systems, CAT Executing Brokers and market makers), and investors generally, and considered market effects related to equities and options, among other things.[46] Based on this analysis, the SEC approved the CAT Funding Model as compliant with the Exchange Act. The

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[43] <u>See</u> <u>supra</u> note 40.

[44] 15 U.S.C. 78<u>o</u>-3(b)(9).

[45] <u>See</u> CAT Funding Model Approval Order, 88 FR 62628, 62678-86.

[46] <u>See</u> <u>supra</u> note 45.

Prospective CAT Cost Recovery Fee 2025-1 framework generally is consistent with the fee framework of the CAT Funding Model, as approved by the SEC.

As discussed in File No. SR-FINRA-2024-023, each of the inputs into the calculation of CAT Fee 2025-1 is reasonable and the resulting fee rate for CAT Fee 2025-1 is reasonable. Therefore, Prospective CAT Cost Recovery Fee 2025-1, for these same reasons, is reasonable and would not impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Exchange Act.

Economic Impact Assessment

Based on the regulatory need discussed above, FINRA has undertaken an economic impact assessment, as set forth below, to analyze the potential economic impacts of the proposed rule change, including potential costs, benefits, and distributional and competitive effects, relative to the current baseline.

Regulatory Need

As discussed above under the "FINRA's Designated Portion of Budgeted CAT Costs 2025-1" section, FINRA is filing a proposed rule change to establish Prospective CAT Cost Recovery Fee 2025-1 to recover its designated portion of the Participants' share of Budgeted CAT Costs 2025-1. FINRA intends that the fee framework and timeline for Prospective CAT Cost Recovery Fee 2025-1 generally correspond to the fee framework and timeline put in place by CAT LLC with respect to CAT Fee 2025-1, as provided for in File No. SR-FINRA-2024-023 and as discussed above.

Economic Baseline

Also, as discussed above under the "FINRA's Designated Portion of Budgeted CAT Costs 2025-1" section, FINRA arrived at the fee rate for Prospective CAT Cost

Recovery Fee 2025-1 by dividing by two CAT Fee 2025-1, i.e., $0.000022 per executed equivalent share.[47]

For the twelve months from October 1, 2023, through September 30, 2024, based on transactions reported to a FINRA TRF or to the ORF, there were 944 firm MPIDs that executed at least one purchase or sale of an equivalent share of an Eligible Security.[48] The top 50 MPIDs by reported executed equivalent share volume bought and/or sold 2,226,290,152,669 equivalent shares, or 85.14% of total shares bought and/or sold.

Economic Impacts

FINRA's proposal to recover its designated portion of the Participants' share of Prospective CAT Costs applies an approach generally consistent with the CAT Funding Model as approved by the SEC in that it assesses half of CAT Fee 2025-1 to each of the CEBB and CEBS for transactions where FINRA is the relevant Participant.[49] With regard to off-exchange transactions in Eligible Securities, generally the same members that will be assessed Prospective CAT Cost Recovery Fee 2025-1 will also be assessed CAT Fee 2025-1. Therefore, FINRA's proposed approach in recovering its designated

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[47] See also File No. SR-FINRA-2024-023.

[48] For the twelve months from October 1, 2023 through September 30, 2024, approximately 1.30 trillion shares of NMS stocks were reported to the TRF, and approximately 1.11 trillion shares of OTC Equity Securities were reported to ORF. Given that each executed share for a transaction in an OTC Equity Security is counted as 0.01 equivalent share, FINRA estimates that the executed equivalent share volume for NMS stocks and OTC Equity Securities reported to a FINRA equity trade reporting facility in that twelve-month period is approximately 1.31 trillion shares. Dividing that figure by twelve provides the average monthly executed equivalent share volume of approximately 109 billion shares.

[49] See also File No. SR-FINRA-2024-023 and CAT Funding Model Approval Order, 88 FR 62628.

portion of Budgeted CAT Costs 2025-1 should reduce potential complexity in connection with the fee and billing structure for Prospective CAT Cost Recovery Fee 2025-1.

As the SEC noted in approving the revised CAT Funding Model, if FINRA passes on its portion of the CAT fee allocation to its member firms and exchanges choose not to pass through their CAT fee allocations to their members, the cost to transact off-exchange may increase relative to executing on an exchange, potentially giving exchanges a competitive advantage.[50] However, we do not know whether or to what extent (or how) the exchanges may seek to recover their portion of the Budgeted CAT Costs 2025-1, and we do not know whether or to what extent member firms will choose to pass through exchange-incurred CAT fees to customers. We also note that FINRA members remain subject to regulatory obligations, such as best execution obligations, with respect to their order routing decisions.

**5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others**

Written comments were neither solicited nor received.

**6. Extension of Time Period for Commission Action**

Not applicable.

**7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2) or Section 19(b)(7)(D)**

The proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act[51] and paragraph (f)(2) of Rule 19b-4 thereunder,[52] in that the

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50 See CAT Funding Model Approval Order, 88 FR 62628, 62684.

51 15 U.S.C. 78s(b)(3)(A)(ii).

52 17 CFR 240.19b-4(f)(2).

proposed rule change is establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization. This proposed rule change establishes dues, fees or other charges among its members and, as such, may take effect upon filing with the Commission pursuant to Section 19(b)(3)(A)(ii) of the Act[53] and paragraph (f)(2) of Rule 19b-4 thereunder.[54] Accordingly, the proposed rule change would take effect upon filing with the Commission.

**8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission**

Not applicable.

**9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act**

Not applicable.

**10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act**

Not applicable.

**11. Exhibits**

Exhibit 1. Completed notice of proposed rule change for publication in the Federal Register.

Exhibit 5. Text of the proposed rule change.

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53 15 U.S.C. 78s(b)(3)(A)(ii).

54 17 CFR 240.19b-4(f)(2).