

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-91756; File No. SR-GEMX-2021-03)

May 4, 2021

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Adopt a Fee Schedule to Establish Fees for Industry Members Related to the National Market System Plan Governing the Consolidated Audit Trail

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹, and Rule 19b-4 thereunder,² notice is hereby given that on April 21, 2021, Nasdaq GEMX, LLC (“GEMX” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt a fee schedule to establish fees for Industry Members related to the National Market System Plan Governing the Consolidated Audit Trail (the “CAT NMS Plan” or “Plan”).³

The text of the proposed rule change is available on the Exchange’s Website at <https://listingcenter.nasdaq.com/rulebook/gemx/rules>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Unless otherwise specified, capitalized terms used in this rule filing are defined as set forth in Rule General 7 (Consolidated Audit Trail Compliance) (GEMX General 7 incorporates The Nasdaq Stock Market LLC General 7 by reference).

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Under the CAT NMS Plan, the Operating Committee of the Consolidated Audit Trail, LLC (“Company”) (“Operating Committee”) has discretion to establish funding for the Company to operate the CAT, including establishing fees that the Participants will pay, and establishing fees for Industry Members that will be implemented by the Participants.⁴ The Operating Committee has filed with the SEC a proposal to amend the CAT NMS Plan to implement a revised funding model for the CAT (“CAT Funding Model”) and to establish a fee schedule for Participant CAT fees (“Proposed CAT Fee Plan Amendment”).⁵ The Proposed CAT Fee Plan Amendment describes the CAT Funding Model in detail, including the proposal to charge Industry Members CAT fees. The Participants are required to file with the SEC under Section 19(b) of the Exchange Act any CAT fees applicable to Industry Members that the Operating Committee approves.⁶ Accordingly, the purpose of this proposed rule change is to

⁴ Section 11.1(b) of the CAT NMS Plan.

⁵ See Securities Exchange Act Release No. 91555 (April 14, 2017), 86 FR 21050 (April 21, 2021) (“Proposed CAT Fee Plan Amendment”).

⁶ Section 11.1(b) of the CAT NMS Plan.

implement the required fee schedule provisions for CAT fees applicable to Industry Members that are GEMX members in accordance with the CAT Funding Model. The fee schedule provisions will become operative upon the SEC's approval of the Proposed CAT Fee Plan Amendment.

(1) CAT Funding Model

Under the CAT Funding Model set out in the Proposed CAT Fee Plan Amendment, the CAT fees applicable to Participants and Industry Members for the relevant quarter would be designed to cover the total CAT costs associated with developing, implementing and operating the CAT for the relevant quarter (“Total CAT Costs”).⁷ The CAT Funding Model would implement a bifurcated funding model, where these costs would be borne by both Participants and Industry Members. Industry Members as a group would pay 75% of the Total CAT Costs (the “Industry Member Allocation”), and Participants as a group would pay 25% of the Total CAT Costs (the “Participant Allocation”).⁸

Under the CAT Funding Model set out in the Proposed CAT Fee Plan Amendment, each Industry Member will pay a CAT fee that is calculated by multiplying each Industry Member's message traffic percentage of the total message traffic of all Industry Members during the relevant time period by the Industry Member Allocation, subject to certain market maker message traffic discounts, a Minimum Industry Member CAT Fee and a Maximum Industry Member CAT Fee. Each Industry Member that is an Options Market Maker will have a discount

⁷ Note that certain costs would be excluded from the Historical CAT Assessment Costs, as discussed in more detail below. See Proposed CAT Fee Plan Amendment at 21051 [sic], 21074 [sic].

⁸ Each Industry Member and Participant CAT Reporter would be required to pay CAT fees established via the CAT Funding Model. CAT Reporting Agents acting in their role as such would not have an obligation to pay CAT fees. See Proposed CAT Fee Plan Amendment at 21051 [sic].

based on the options trade-to-quote ratio applied to its Options Market Maker message traffic when calculating that Industry Member's message traffic, and each Industry Member that is an Equity Market Maker will have a discount based on the NMS Stock trade-to-quote ratio applied to its Equity Market Maker message traffic when calculating that Industry Member's message traffic. In addition, each Industry Member will pay a Minimum Industry Member CAT Fee of \$125 per quarter if its CAT fee would be less than \$125 per quarter when calculated based on message traffic. Furthermore, an Industry Member's CAT fee would be subject to the Maximum Industry Member CAT Fee. The Maximum Industry Member CAT Fee would be the fee calculated based on 8% of the total message traffic for all Industry Members. If an Industry Member is subject to the Maximum Industry Member CAT Fee, any excess amount which the Industry Member would have paid as a fee above such Maximum Industry Member CAT Fee will be re-allocated among all Industry Members (including any Industry Members subject to the Maximum Industry Member CAT Fee and any Industry Members subject to the Minimum Industry Member CAT Fee) in accordance with each Industry Member's percentage of total message traffic. Each of these aspects of the Industry Member CAT fee are discussed in more detail below.

(A) CAT Fees for Both Industry Members and Participants

Under the CAT Funding Model, both Participants and Industry Members would contribute to the funding of the CAT by paying a CAT fee.⁹ As permitted by Rule 613, the CAT NMS Plan requires Industry Members to pay a CAT fee. Rule 613(a)(1)(vii)(D) contemplates Industry Members contributing to the payment of CAT costs. Specifically, this provision requires the CAT NMS Plan to address “[h]ow the plan sponsors propose to fund the creation,

⁹ Proposed CAT Fee Plan Amendment at 21054-55.

implementation, and maintenance of the consolidated audit trail, including the proposed allocation of such estimated costs among the plan sponsors, and between the plan sponsors and members of the plan sponsors.”

In addition, as approved by the SEC, the CAT NMS Plan specifically contemplates CAT fees to be paid by both Industry Members and Participants. Section 11.1(b) states that “the Operating Committee shall have discretion to establish funding for the Company, including: (i) establishing fees that the Participants shall pay; and (ii) establishing fees for Industry Members that shall be implemented by the Participants.”¹⁰ The Commission stated in approving the CAT NMS Plan the following:

The Commission believes that the proposed funding model reflects a reasonable exercise of the Participants’ funding authority to recover the Participants’ costs related to the CAT. The CAT is a regulatory facility jointly owned by the Participants and, as noted above, the Exchange Act specifically permits the Participants to charge members fees to fund their self-regulatory obligations. The Commission further believes that the proposed funding model is designed to impose fees reasonably related to the Participants’ self-regulatory obligations because the fees would be directly associated with the costs of establishing and maintaining the CAT, and not unrelated SRO services.¹¹

In its recent amendments to the CAT NMS Plan, the SEC reaffirmed the ability for the Participants to charge Industry Members a CAT fee. Specifically, the SEC noted that the amendments were not intended to change the basic funding structure for the CAT, which may

¹⁰ See also Sections 11.1(c), 11.2(c), and 11.3(a) and (b) of the CAT NMS Plan.

¹¹ Securities Exchange Act Rel. No. 79318 (Nov. 15, 2016), 81 Fed. Reg. 84696, 84794 (Nov. 23, 2016) (“CAT NMS Plan Approval Order”).

include fees established by the Operating Committee, and implemented by the Participants, to recover from Industry Members the costs and expenses incurred by the Participants in connection with the development and implementation of the CAT.¹²

Finally, as noted by the SEC, the CAT “substantially enhance[s] the ability of the SROs and the Commission to oversee today’s securities markets,”¹³ thereby benefitting all market participants. As such, both Participants and Industry Members should contribute to covering the cost of the CAT.

(B) 75%/25% Allocation between Industry Members and Participants

The CAT NMS Plan as approved by the Commission provides the Operating Committee with discretion to establish CAT fees to be paid by Participants and Industry Members. The CAT Funding Model as set out in the Proposed CAT Fee Plan Amendment contemplates allocating CAT costs between Participants and Industry Members to permit the calculation of CAT fees based on market share for Participants and based on message traffic for Industry Members.¹⁴ Under the CAT Funding Model as proposed, Industry Members as a group would pay 75% of the Total CAT Costs (the “Industry Member Allocation”), and Participants as a group would pay 25% of the Total CAT Costs (the “Participant Allocation”).¹⁵ As discussed in

¹² Securities Exchange Act Rel. No. 88890 (May 15, 2020), 85 Fed. Reg. 31322, 31329 (May 22, 2020) (“Financial Accountability Release”).

¹³ Securities Exchange Act Rel. No. 67457 (Jul. 18, 2012), 77 Fed. Reg. 45722, 45726 (Aug. 1, 2012).

¹⁴ See Proposed CAT Fee Plan Amendment at 21055-56 [sic]. Note that, in the funding model set forth in Article XI of the CAT NMS Plan (“Original Funding Model”), costs were allocated between Execution Venues and certain Industry Members, whereas the CAT Funding Model would allocate costs between Participants and Industry Members.

¹⁵ For additional discussions regarding the 75%-25% allocation, see Proposed CAT Fee Plan Amendment at 21056-58 [sic].

more detail below, the Industry Member Allocation of 75% of the Total CAT Costs is included in proposed paragraphs (a)(2), (b)(2), (c)(2) and (d)(2) of the fee schedule for the Consolidated Audit Trail Funding Fees. In each such paragraph, the calculation of the Industry Member CAT fees is based on 75% of the Total CAT Costs.

(C) Message Traffic

The Industry Member Allocation would be allocated to each Industry Member based on message traffic.¹⁶ Each Industry Member CAT Reporter would pay a CAT fee that is calculated by multiplying each Industry Member's percentage of the total message traffic of all Industry Members each quarter by the Industry Member Allocation, subject to certain market making discounts, Minimum Industry Member CAT Fees, and Maximum Industry Member CAT Fees. To implement the use of message traffic in the calculation of Industry Member CAT fees, the Exchange proposes to describe the use of message traffic in proposed paragraphs (a)(2), (b)(2), (c)(2) and (d)(2) of the fee schedule. In each such paragraph, the Industry Member CAT fees are calculated based on Industry Members' message traffic in the CAT.

As set out in the Proposed CAT Fee Plan Amendment,¹⁷ message traffic would be calculated based on Industry Members' Reportable Events reported to the CAT as defined in the CAT Reporting Technical Specifications for Industry Members ("IM Reporting Tech Specs") as amended from time to time.¹⁸ The Reportable Events may vary over time if the IM Reporting

¹⁶ For additional discussions regarding the use of message traffic for calculating Industry Member CAT fees, see Proposed CAT Fee Plan Amendment at 21059 [sic].

¹⁷ See Proposed CAT Fee Plan Amendment at 21056-57.

¹⁸ The CAT Reporting Technical Specifications for Industry Members are available at www.catnmsplan.com.

Tech Specs are amended.¹⁹ However, Reportable Events in the current IM Reporting Tech Specs that will be counted as message traffic include, but are not limited to, such events as the New Order Event, the Order Route Event and the Trade Event. In addition, message traffic will not include reporting activity related to Customer information as set forth in the CAT Reporting Customer and Account Technical Specifications for Industry Members.²⁰

(D) Market Maker Discounts

As set out in the Proposed CAT Fee Plan Amendment, the Operating Committee recognized that treating Options Market Maker message traffic and Equity Market Maker message traffic in the same way as other message traffic for purposes of calculating Industry Member CAT fees may result in an undue or inappropriate burden on competition or may lead to a reduction in market quality.²¹ For example, charging Industry Members on the basis of message traffic may impact market makers disproportionately because of their continuous quoting obligations. Moreover, in the context of Options Market Makers, message traffic would include bids and offers for every Listed Options strikes and series. Accordingly, the Operating

¹⁹ Due to the Phased Reporting approach, all Reportable Events will not be reported until all Industry Members are reporting all Reportable Events to the CAT. For example, Phase 2d CAT Reporting is scheduled for December 2021, and Small Industry Non-OATS Reporters are not required to report until December 2021. In addition, certain Reportable Events, such as simple options manual orders and OTC link messages, are not required to be reported until later in the Phased Reporting. For a detailed description of such Reportable Events, see CAT Reporting Technical Specifications for Industry Members (available at www.catnmsplan.com). For the Industry Member CAT reporting timeline, see, e.g., FINRA Rule 6895(c). CAT costs will be allocated based on the Reportable Events reported to the CAT in any relevant quarter, regardless of whether all Industry Members are reporting to the CAT or all Reportable Events are required to be reported to the CAT for a relevant quarter. See Proposed CAT Fee Plan Amendment at 27.

²⁰ The CAT Reporting Customer and Account Technical Specifications for Industry Members are available at www.catnmsplan.com.

²¹ See Proposed CAT Fee Plan Amendment at 21057-58.

Committee determined to discount Options Market Maker message traffic by the trade-to-quote ratio for Listed Options when calculating message traffic for Options Market Makers, and to discount Equity Market Maker message traffic by the trade-to-quote ratio for NMS Stocks when calculating message traffic for Equity Market Makers. The message traffic of Options Market Makers and Equity Market Makers, as discounted, would be counted as part of the total message traffic for all Industry Members. The practical effect of applying such discounts for market making activity would be to lower the CAT fees for Options Market Makers and Equity Market Makers.

(I) Options Market Maker Discount

Each Industry Member that is an Options Market Maker²² would have a discount based on the options trade-to-quote ratio applied to its options market making message traffic when calculating that Industry Member's message traffic to prevent a potentially disproportionate effect on options market making due to such message traffic.²³ Specifically, for each Options Market Maker, a discount would be applied to (1) all message traffic reported to the CAT by the Options Market Maker related to an order originated by a market maker in its market making account for a security in which it is registered, regardless of where the order is ultimately routed or executed;²⁴ and (2) all message traffic for which a "quote sent time" is reported by an Options Exchange on behalf of the given Options Market Maker.

²² Section 1.1 of the CAT NMS Plan; Nasdaq General 7 Section 1(ee) defines an "Options Market Maker" as "a broker-dealer registered with an exchange for the purpose of making markets in options contracts traded on the exchange." (GEMX General 7 incorporates The Nasdaq Stock Market LLC General 7 by reference).

²³ See Proposed CAT Fee Plan Amendment at 21058.

²⁴ Under the current version of the IM Reporting Tech Specs, the discount would apply to new order messages and all related messages reported to the CAT by an Options Market Maker with an accountHolderType = O. See CAT FAQ C5 (available at www.catnmsplan.com). The discount would not apply to messages by an Industry

The relevant trade-to-quote ratio for the Options Market Maker discount would be calculated each quarter based on the prior quarter's SIP Data that is included in CAT Data. The discount is calculated by dividing the adjusted trade count (that is, the total number of trades for the quarter minus the total number of trade busts) by the total number of quotes received by the securities information processors ("SIP"). As an example, the trade-to-quote ratio for Listed Options for the fourth quarter of 2020 was 0.01%.

Accordingly, each Options Market Maker's discounted message traffic count would be calculated by multiplying its message traffic by the options trade-to-quote ratio. The Options Market Maker's CAT fee then would be calculated by multiplying its discounted percentage of the total message traffic of all Industry Members during the relevant time period²⁵ by the Industry Member Allocation, subject to the Minimum Industry Member CAT Fee and the Maximum Industry Member CAT Fee.

To implement the Options Market Maker discount, the Exchange proposes to add paragraph (g)(1) to the fee schedule. Paragraph (g)(1) would state that "[w]hen calculating the message traffic of an Industry Member that is an Options Market Maker, the Options Market Maker's market making message traffic would be discounted by multiplying its Listed Options market making message traffic by the Listed Options trade-to-quote ratio." In addition, proposed paragraphs (a)(2), (b)(2), (c)(2) and (d)(2) of the fee schedule would state that the message traffic

Member that are associated with any other accountHolderType. The IM Reporting Tech Specs may be amended from time to time and this designation could be changed. See Proposed CAT Fee Plan Amendment at 21058.

²⁵ Note that the total message traffic of all Industry Members during the relevant time period will be calculated using the discounted total for all Options Market Makers. See Proposed CAT Fee Plan Amendment at 21058.

calculation would be subject to applicable discounts for Options Market Maker message traffic for each of the four Industry Member CAT fees.

(II) Equity Market Maker Discount

Similarly, each Industry Member that is an equity market maker in NMS Stocks (“Equity Market Maker”) would have a discount based on the NMS Stock trade-to-quote ratio applied to its market making message traffic in NMS Stocks when calculating that Industry Member’s message traffic to prevent a potentially disproportionate effect on market making in NMS Stocks.²⁶ Specifically, for each Equity Market Maker, a discount would be applied to all message traffic reported to the CAT by the Equity Market Maker related to an order originated by a market maker in its market making account for a security in which it is registered,²⁷ regardless of where the order is ultimately routed or executed.²⁸

The relevant trade-to-quote ratio for the Equity Market Maker discount would be calculated each quarter based on the prior quarter’s SIP Data that is included in CAT Data. The discount is calculated by dividing the adjusted trade count (that is, the total number of trades for the quarter minus the total number of trade busts) by the total number of quotes received by the SIP. As an example, the trade-to-quote ratio for NMS Stocks for the fourth quarter of 2020 was 4.77%.

²⁶ See Proposed CAT Fee Plan Amendment at 21058.

²⁷ Note that Equity Market Makers do not have a quote sent time exemption comparable to the Options Market Maker quote sent time exemption, as discussed above.

²⁸ Under the current version of the IM Reporting Tech Specs, the discount would apply to new order messages and all related messages reported to the CAT by an Equity Market Maker with an accountHolderType = O. See CAT FAQ C5 (available at www.catnmsplan.com). The discount would not apply to messages by the Industry Member that are associated with any other accountHolderType. The IM Reporting Tech Specs may be amended from time to time and this designation could be changed. See Proposed CAT Fee Plan Amendment at 21058.

The Equity Market Maker CAT fee would be calculated in the same manner as the Options Market Maker CAT fee. Each Equity Market Maker's discounted message traffic count would be calculated by multiplying its message traffic by the NMS Stock trade-to-quote ratio. The Equity Market Maker CAT fee then would be calculated by multiplying its discounted percentage of the total message traffic of all Industry Members during the relevant time period²⁹ by the Industry Member Allocation, subject to the Minimum Industry Member CAT Fee and the Maximum Industry Member CAT Fee.

To implement the Equity Market Maker discount, the Exchanges proposes to add paragraph (g)(2) to the fee schedule. Paragraph (g)(2) would state that "[w]hen calculating the message traffic of an Industry Member that is an equity market maker in NMS Stocks ("Equity Market Maker"), the Equity Market Maker's market making message traffic would be a [sic] discounted by multiplying its market making message traffic in NMS Stocks by the NMS Stock trade-to-quote ratio." In addition, proposed paragraphs (a)(2), (b)(2), (c)(2) and (d)(2) of the fee schedule would state that the message traffic calculation would be subject to applicable discounts for Equity Market Maker message traffic for each of the four Industry Member CAT fees.

(E) Minimum Industry Member CAT Fee

Each Industry Member would be required to pay a Minimum Industry Member CAT Fee of \$125 per quarter if its CAT fee would be less than \$125 per quarter when calculated based on message traffic.³⁰ All Industry Members required to report to the CAT, including those that have not yet begun to report to the CAT due to the phased implementation schedule for the CAT,

²⁹ Note that the total message traffic of all Industry Members during the relevant time period will be calculated using the discounted total for all Equity Market Makers. See Proposed CAT Fee Plan Amendment at 21058.

³⁰ For additional discussions regarding the Minimum Industry Member CAT Fee, see Proposed CAT Fee Plan Amendment at 21058-59.

would be subject to the Minimum Industry Member CAT Fee. If any Industry Member is required to pay the Minimum Industry Member CAT Fee, the total additional amount paid by all such Industry Members over the amount they otherwise would have paid as a result of their message traffic calculation would be discounted from all Industry Members other than those that were subject to a Minimum Industry Member CAT Fee in accordance with their message traffic percentage.³¹

To implement the Minimum Industry Member CAT Fee, the Exchange proposes to add paragraph (h) to the fee schedule. Proposed paragraph (h)(1) of the fee schedule would state that “[t]he Minimum Industry Member CAT Fee is \$125 per quarter.” Proposed paragraph (h)(2) of the fee schedule would state that “[i]f any Industry Member is required to pay the Minimum Industry Member CAT Fee, the total additional amount paid by all such Industry Members over the amount they otherwise would have paid as a result of their message traffic calculation would be discounted from all Industry Members other than those that were subject to a Minimum Industry Member CAT Fee in accordance with their message traffic percentage (“Minimum Industry Member CAT Fee Re-Allocation”).” In addition, proposed paragraphs (a)(2), (b)(2), (c)(2) and (d)(2) of the fee schedule describes the Minimum Industry Member CAT Fee Re-Allocation for each of the four Industry Member CAT fees.

(F) Maximum Industry Member CAT Fee

An Industry Member’s CAT fee also would be subject to a Maximum Industry Member CAT Fee.³² The Maximum Industry Member CAT Fee would be the fee calculated based on 8%

³¹ Options Market Makers and Equity Market Makers will be required to pay the Minimum Industry Member CAT Fee if their quarterly CAT fee calculated with the market maker discounts is less than \$125 per quarter.

³² For additional discussions regarding the Maximum Industry Member CAT Fee, see Proposed CAT Fee Plan Amendment at 21058-59 [sic].

of the total message traffic for all Industry Members. If an Industry Member's fee is subject to the Maximum Industry Member CAT Fee, any excess amount which the Industry Member would have paid as a fee above such Maximum Industry Member CAT Fee will be re-allocated among all Industry Members (including any Industry Members subject to the Maximum Industry Member CAT Fee and any Industry Members subject to the Minimum Industry Member CAT Fee) in accordance with each Industry Member's percentage of total message traffic.

To implement the Maximum Industry Member CAT Fee, the Exchange proposes to add proposed paragraph (f) to the "Consolidated Audit Trail Funding Fees" section of its fee schedule. Proposed paragraph (f)(1) would state that "[t]he Maximum Industry Member CAT Fee for each quarter is 8% of the total CAT costs for the relevant quarter." In addition, proposed paragraph (f)(2) would state that

If an Industry Member's CAT Fee that is calculated pursuant to paragraph (a)(2), (b)(2), (c)(2), (d)(2), as applicable, without reference to the Maximum Industry Member CAT Fee and the Maximum Industry Member CAT Fee Re-Allocation, is greater than the Maximum Industry Member CAT Fee, then the Industry Member will be subject to the Maximum Industry Member CAT Fee. If any Industry Member is subject to the Maximum Industry Member CAT Fee, then any excess amount which the Industry Member otherwise would have paid as a fee above such Maximum Industry Member CAT Fee will be re-allocated among all Industry Members, including any Industry Member that is subject to the Maximum Industry Member CAT Fee or subject to the Minimum Industry Member CAT Fee in accordance with their message traffic percentage ("Maximum Industry Member CAT Fee Re-Allocation").

Furthermore, proposed paragraphs (a)(1), (b)(1), (c)(1) and (d)(1) would state that an Industry Member's CAT fee calculated pursuant to (a)(1), (b)(1), (c)(1) and (d)(1) would include any applicable Maximum Industry Member CAT Fee Re-Allocation. Finally, proposed paragraphs (a)(2), (b)(2), (c)(2) and (d)(2) would state that an Industry Member's CAT fee calculated pursuant to paragraph (a)(2), (b)(2), (c)(2) or (d)(2) is subject to the Maximum Industry Member CAT Fee and the Maximum Industry Member CAT Fee Re-Allocation.

(G) Total CAT Costs

As set out in the Proposed CAT Fee Plan Amendment, the Total CAT Costs for the year would be comprised of all fees, costs and expenses incurred by or for the Company in connection with the development, implementation and operation of the CAT during this period.³³

For purposes of the Historical CAT Assessment, the Total CAT Costs would be \$193,273,342, as set forth in the Proposed CAT Fee Plan Amendment. Accordingly, the quarterly CAT fee for the Historical CAT Assessment will be calculated based on costs of \$36,238,752, which is 1/4th of 75% of the Total CAT Costs. This amount is set forth in proposed paragraph (b)(2) of the fee schedule.

In addition, proposed paragraph (i) of the "Consolidated Audit Trail Funding Fees" section of its fee schedule describes the Total CAT Costs to be used in calculating the Period 3 CAT Fee, the Period 4 CAT Fee and the Quarterly CAT Fees. Proposed paragraph (i)(1) of the fee schedule would state that "[t]he Period 3 CAT Costs shall be the total CAT costs set forth in the year-end financial statements of the Consolidated Audit Trail, LLC for 2021." Proposed paragraph (i)(2) of the fee schedule would state that "[t]he Period 4 CAT Costs shall be the total CAT costs set forth in the year-end financial statements of the Consolidated Audit Trail, LLC for

³³ See Proposed CAT Fee Plan Amendment at 21063.

2022.” Proposed paragraph (i)(3) of the fee schedule would state the following with regard to the Quarterly CAT Fees:

For purposes of the Quarterly CAT Fee, the budgeted Total CAT Costs for the relevant year shall be the total CAT costs set forth in the annual operating budget approved by the Operating Committee pursuant to Section 11.1(a) of the CAT NMS Plan for the relevant year. The budgeted Total CAT Costs for the relevant year may be adjusted on a quarterly basis as the Operating Committee reasonably deems appropriate for the prudent operation of the Company. To the extent that the Operating Committee adjusts the total budgeted costs for the CAT for the relevant year during its quarterly budget review, the adjusted budgeted costs for the CAT will be used in calculating the remaining CAT fees for that year.

(2) Proposed CAT Fees

The Exchange proposes to charge its Industry Members fees related to CAT costs. To implement these CAT fees, the Exchange proposes to add a section entitled “Consolidated Audit Trail Funding Fees” to its fee schedule, and to describe the CAT fees in that section.

(A) Historical CAT Assessment (for Pre-Period 1, Period 1 and Period 2)

As set forth in the Proposed CAT Fee Plan Amendment, the Operating Committee determined to charge Industry Members a historical assessment (“Historical CAT Assessment”) to recover certain CAT costs incurred prior to January 1, 2021 (“Historical CAT Assessment Costs”).³⁴ Specifically, as detailed in the Proposed CAT Fee Plan Amendment, the Historical CAT Assessment is intended to collect from Industry Members 75% of certain costs incurred

³⁴ See Proposed CAT Fee Plan Amendment at 21064-65.

through June 22, 2020, the effective date for the Financial Accountability Milestones,³⁵ certain costs from Period 1 of the Financial Accountability Milestones (which covered the period from June 22, 2020 – July 31, 2020) and certain costs from Period 2 of the Financial Accountability Milestones (which covered the period from August 1, 2020 – December 31, 2020). The Total CAT Costs, excluding Excluded Costs (as defined below) and certain costs related to the conclusion of the relationship with Thesys CAT, LLC is \$193,273,342. The Historical CAT Assessment is designed to recover 75% of these CAT costs. Accordingly, the Historical CAT Assessment Costs would be \$144,955,006.

Using the Historical CAT Assessment Costs, as set forth in the Proposed CAT Fee Plan Amendment, the Operating Committee will calculate the Historical CAT Assessment owed by each Industry Member in accordance with the CAT Funding Model. Per the Proposed CAT Fee Plan Amendment, the Operating Committee plans to recover the Historical CAT Assessment Costs over a period of four calendar quarters, commencing upon the SEC's approval of the Historical CAT Assessment. Each quarter, each Industry Member will pay the greater of the minimum fee of \$125 or the Industry Member's fee calculated based on message traffic (subject to the market making discounts and the maximum fee). The message traffic fee would be calculated by multiplying the percentage of the Industry Member's message traffic of the total Industry Member message traffic by \$36,238,752, which is 1/4th of the Historical CAT Assessment Costs (subject to applicable discounts for Options Market Maker message traffic and Equity Market Maker message traffic, the Maximum Industry Member CAT Fee, the Maximum Industry Member CAT Fee Re-Allocation, and the Minimum Industry Member CAT Fee Re-Allocation). Each Industry Member's message traffic would be calculated using CAT Data from

³⁵ See Section 11.6 of the CAT NMS Plan; and Financial Accountability Release.

the prior quarter. Industry Members would be required to commence paying the Historical CAT Assessment in the first quarter after SEC approval of the Historical CAT Assessment, based on CAT Data from the quarter in which the SEC approved the CAT fees.

To implement the Historical CAT Assessment, the Exchange proposes to add proposed paragraph (b) to the “Consolidated Audit Trail Funding Fees” section of its fee schedule. Proposed paragraph (b) would state that “each Industry Member shall pay an Historical CAT Assessment in the amount of the greater of the following each quarter for four quarters commencing upon approval of the Historical CAT Assessment by the SEC: (1) Minimum Industry Member CAT Fee (plus any applicable Maximum Industry Member CAT Fee Re-Allocation); or (2) the amount calculated by multiplying the percentage of the Industry Member’s message traffic of the total Industry Member message traffic based on the prior quarter’s message traffic by \$36,238,752 (subject to applicable discounts for Options Market Maker message traffic and Equity Market Maker message traffic, the Maximum Industry Member CAT Fee, the Maximum Industry Member CAT Fee Re-Allocation and the Minimum Industry Member CAT Fee Re-Allocation).”

In accordance with Section 11.6(b) of the CAT NMS Plan and as provided in the Proposed CAT Fee Plan Amendment, the proposed Historical CAT Assessment seeks to recover costs that are related to Post-Amendment Expenses incurred during Period 1. Period 1 began on June 22, 2020, the effective date of Section 11.6 of the CAT NMS Plan, and concluded on July 31, 2020, the date of Initial Industry Member Core Equity and Options Reporting. As indicated by the Participants’ Quarterly Progress Report,³⁶ Initial Industry Member Core Equity and Option Reporting was completed on schedule by July 31, 2020. As discussed above, the

³⁶ Q3 2020 Quarterly Progress Report (Oct. 30, 2020) (available at www.catnmsplan.com).

Historical CAT Assessment Costs to be recovered via the Historical CAT Assessment would include fees, costs and expenses incurred by or for the Company in connection with the development, implementation and operation of the CAT during the period from June 22, 2020 through July 31, 2020.

As provided in the Proposed CAT Fee Plan Amendment, the proposed Historical CAT Assessment seeks to recover costs that are related to Post-Amendment Expenses incurred during Period 2. Period 2 began on August 1, 2020, and concluded on December 31, 2020, the date of the Full Implementation of Core Equity Reporting. As indicated by the Participants' Quarterly Progress Report,³⁷ Full Implementation of Core Equity Reporting was completed on schedule by December 31, 2020. As discussed above, the Historical CAT Assessment Costs to be recovered via the Historical CAT Assessment would include fees, costs and expenses incurred by or for the Company in connection with the development, implementation and operation of the CAT during the period from August 1, 2020 through December 31, 2020. Accordingly, proposed paragraph (b) of the "Consolidated Audit Trail Funding Fees" section of its fee schedule would state that Industry Members will be required to pay the Historical CAT Assessment "[s]ubject to the requirements of Section 11.6 of the CAT NMS Plan."

The following chart summarizes the imposition of the Historical CAT Assessment:

³⁷ Q4 2020 Quarterly Progress Report (Jan. 29, 2021) (available at www.catnmsplan.com).

Quarterly CAT Fee	Quarterly Industry Member Allocation	CAT Data Used for Message Traffic Calculation	Payment Due
Quarterly CAT Fee #1	\$36,238,752	Quarter of SEC approval of Historical CAT Assessment	1 st quarter after SEC approval of Industry Member CAT Fees as set forth in the CAT Fee Plan Amendment
Quarterly CAT Fee #2	\$36,238,752	1 st quarter after SEC approval of Historical CAT Assessment	2 nd quarter after SEC approval of Industry Member CAT Fees as set forth in the CAT Fee Plan Amendment
Quarterly CAT Fee #3	\$36,238,752	2 nd quarter after SEC approval of Historical CAT Assessment	3 rd quarter after SEC approval of Industry Member CAT Fees as set forth in the CAT Fee Plan Amendment
Quarterly CAT Fee #4	\$36,238,752	3 rd quarter after SEC approval of Historical CAT Assessment	4 th quarter after SEC approval of Industry Member CAT Fees as set forth in the CAT Fee Plan Amendment

(B) Period 3 CAT Fee

Per the Proposed CAT Fee Plan Amendment, the Operating Committee also determined to charge Industry Members a quarterly fee to recover a percentage of the Total CAT Costs incurred from January 1, 2021 through December 31, 2021, referred to as the Period 3 CAT Fee.³⁸ The Total CAT Costs incurred from January 1, 2021 through December 31, 2021 (“Period 3 CAT Costs”) will be calculated at the completion of 2021. Specifically, the Period 3 CAT Costs will be the total actual costs incurred for the CAT for 2021 as set forth in the 2021 financial statements for the Company.

³⁸ See Proposed CAT Fee Plan Amendment at 21065-66.

Using the Period 3 CAT Costs, as set forth in the Proposed CAT Fee Plan Amendment, the Operating Committee will calculate the Period 3 CAT Fee owed by each Industry Member in accordance with the CAT Funding Model. Per the Proposed CAT Fee Plan Amendment, the Operating Committee plans to recover Period 3 CAT Costs over a period of four calendar quarters, commencing in 2022. Each quarter, each Industry Member will pay the greater of the minimum fee of \$125 or the Industry Member's fee calculated based on message traffic. The message traffic fee would be calculated by multiplying the percentage of the Industry Member's message traffic of the total Industry Member message by 1/4th of 75% of the Period 3 CAT Costs traffic (subject to applicable discounts for Options Market Maker message traffic and Equity Market Maker message traffic, the Maximum Industry Member CAT Fee, the Maximum Industry Member CAT Fee Re-Allocation and the Minimum Industry Member CAT Fee Re-Allocation). Each Industry Member's message traffic would be calculated using CAT Data from the prior quarter. Industry Members would be required to commence paying the Period 3 CAT Fee in the second quarter of 2022, based on CAT Data from the first quarter of 2022.

The Exchange understands that the Operating Committee will announce via a CAT alert after the end of 2021 the Total CAT Costs for 2021 to be used in calculating the quarterly Period 3 CAT Fees. Such Total CAT Costs will be set forth in the year-end financial statements of the Consolidated Audit Trail, LLC. Such financial statements are required to be prepared in accordance with Section 9.2 of the CAT NMS Plan, including requirements related to compliance with GAAP, auditing by an independent public accounting firm and making the statements publicly available.

To implement the Period 3 CAT Fee, the Exchange proposes to add proposed paragraph (c) to the "Consolidated Audit Trail Funding Fees" section of its fee schedule. Proposed

paragraph (c) would state that “each Industry Member shall pay a Period 3 CAT Fee in the amount of the greater of the following each quarter for four quarters commencing in the second quarter of 2022: (1) Minimum Industry Member CAT Fee (plus any applicable Maximum Industry Member CAT Fee Re-Allocation); or (2) the amount calculated by multiplying the percentage of the Industry Member’s message traffic of the total Industry Member message traffic based on the prior quarter’s message traffic by 1/4th of 75% of the Period 3 Total CAT Costs (subject to applicable discounts for Options Market Maker message traffic and Equity Market Maker message traffic, the Maximum Industry Member CAT Fee, the Maximum Industry Member CAT Fee Re-Allocation and the Minimum Industry Member CAT Fee Re-Allocation).”

Per the Proposed CAT Fee Plan Amendment, the proposed Period 3 CAT Fee seeks to recover costs that will be related to Post-Amendment Expenses incurred during Period 3. Period 3 began on January 1, 2021 and is expected to conclude on December 31, 2021, the date of Full Availability and Regulatory Utilization of Transactional Database Functionality. As discussed above, the Period 3 CAT Costs to be recovered via the Period 3 CAT Fee would include fees, costs and expenses incurred by or for the Company in connection with the development, implementation and operation of the CAT during the period from January 1, 2020 through December 31, 2021. The collection of the full amount of the Period 3 CAT Fee will depend upon achievement of Full Availability and Regulatory Utilization of Transaction Database Functionality by December 31, 2021; if not, the amount of the Period 3 CAT Fee that may be collected from the Industry Members will depend upon the fee limitations set forth in Section 11.6(a)(ii) of the CAT NMS Plan. Accordingly, proposed paragraph (c) of the “Consolidated Audit Trail Funding Fees” section of its fee schedule would state that Industry Members will be

required to pay the Period 3 CAT Fee “[s]ubject to the requirements of Section 11.6 of the CAT NMS Plan.”

The following chart summarizes the imposition of the Period 3 CAT Fee:

Quarterly CAT Fee	Quarterly Industry Member Allocation	CAT Data Used for Message Traffic Calculation	Payment Due
Quarterly CAT Fee #1	1/4 th of 75% of the Period 3 CAT Costs ³⁹	CAT Data from first quarter of 2022	2 nd quarter of 2022
Quarterly CAT Fee #2	1/4 th of 75% of the Period 3 CAT Costs	CAT Data from second quarter of 2022	3 rd quarter of 2022
Quarterly CAT Fee #3	1/4 th of 75% of the Period 3 CAT Costs	CAT Data from third quarter of 2022	4 th quarter of 2022
Quarterly CAT Fee #4	1/4 th of 75% of the Period 3 CAT Costs	CAT Data from fourth quarter of 2022	1 st quarter of 2023

(C) Period 4 CAT Fee

As set forth in the Proposed CAT Fee Plan Amendment, the Operating Committee also determined to charge Industry Members a quarterly fee to recover a percentage of the Total CAT Costs incurred from January 1, 2022 through December 30, 2022, referred to as the Period 4 CAT Fee.⁴⁰ The Total CAT Costs incurred from January 1, 2022 through December 30, 2022 (“Period 4 CAT Costs”) will be calculated at the completion of 2022. Specifically, the Period 4 CAT Costs will be the total actual costs incurred for the CAT for 2022 as set forth in the 2022 financial statements of the Company.

³⁹ The Period 3 CAT Costs will be the total actual costs incurred for the CAT for 2021 as set forth in the 2021 financial statements for the Company.

⁴⁰ See Proposed CAT Fee Plan Amendment at 21066-67.

Using the Period 4 CAT Costs, as set forth in the Proposed CAT Fee Plan Amendment, the Operating Committee will calculate the Period 4 CAT Fee owed by each Industry Member in accordance with the CAT Funding Model. Per the Proposed CAT Fee Plan Amendment, the Operating Committee plans to recover Period 4 CAT Costs over a period of four calendar quarters, commencing in 2023. Each quarter, each Industry Member will pay the greater of the minimum fee of \$125 or the Industry Member's fee calculated based on message traffic. The message traffic fee would be calculated by multiplying the percentage of the Industry Member's message traffic of the total Industry Member message traffic by 1/4th of 75% of the Period 4 CAT Costs (subject to applicable discounts for Options Market Maker message traffic and Equity Market Maker message traffic, the Maximum Industry Member CAT Fee, the Maximum Industry Member CAT Fee Re-Allocation and the Minimum Industry Member CAT Fee Re-Allocation). Each Industry Member's message traffic would be calculated using CAT Data from the prior quarter. Industry Members will be required to commence paying the Period 4 CAT Fee in the second quarter of 2023, based on data from the first quarter of 2023.

To implement the Period 4 CAT Fee, the Exchange proposes to add proposed paragraph (d) to the "Consolidated Audit Trail Funding Fees" section of its fee schedule. Proposed paragraph (d) would state that "each Industry Member shall pay a Period 4 CAT Fee in the amount of the greater of the following each quarter for four quarters commencing in the second quarter of 2023: (1) Minimum Industry Member CAT Fee (plus any applicable Maximum Industry Member CAT Fee Re-Allocation); or (2) the amount calculated by multiplying the percentage of the Industry Member's message traffic of the total Industry Member message traffic based on the prior quarter's message traffic by 1/4th of 75% of the Period 4 CAT Costs (subject to applicable discounts for Options Market Maker message traffic and Equity Market

Maker message traffic, the Maximum Industry Member CAT Fee, the Maximum Industry Member CAT Fee Re-Allocation and the Minimum Industry Member CAT Fee Re-Allocation).”

The Exchange understands that the Operating Committee will announce via a CAT alert after the end of 2022 the Total CAT Costs for 2022 to be used in calculating the quarterly Period 4 CAT Fees. Such Total CAT Costs will be set forth in the year-end financial statements of the Consolidated Audit Trail, LLC. As noted above, such financial statements are required to be prepared in accordance with the requirements set forth in Section 9.2 of the CAT NMS Plan.

The Exchange indicates that the proposed Period 4 CAT Fee seeks to recover costs that will be related to Post-Amendment Expenses incurred during Period 4. Period 4 is expected to begin on January 1, 2022 and conclude on December 30, 2022, the date of Full Implementation of CAT NMS Plan Requirements. As discussed above, the Period 4 CAT Costs to be recovered via the Period 4 CAT Fee would include fees, costs and expenses incurred by or for the Company in connection with the development, implementation and operation of the CAT during the period from January 1, 2022 through December 30, 2022. The collection of the full amount of the Period 4 CAT Fee will depend upon achievement of Full Implementation of CAT NMS Plan Requirements by December 30, 2022; if not, the amount of the Period 4 CAT Fee that may be collected from the Industry Members will depend upon the fee limitations set forth in Section 11.6(a)(ii) of the CAT NMS Plan. Accordingly, proposed paragraph (e) of the “Consolidated Audit Trail Funding Fees” section of its fee schedule would state that Industry Members will be required to pay the Period 4 CAT Fee “[s]ubject to the requirements of Section 11.6 of the CAT NMS Plan.”

The following chart summarizes the imposition of the Period 4 CAT Fee:

Quarterly CAT Fee	Quarterly Industry Member Allocation	CAT Data Used for Message Traffic Calculation	Payment Due
Quarterly CAT Fee #1	1/4 th of 75% of the Period 4 CAT Costs ⁴¹	CAT Data from first quarter of 2023	2 nd quarter of 2023
Quarterly CAT Fee #2	1/4 th of 75% of the Period 4 CAT Costs	CAT Data from second quarter of 2023	3 rd quarter of 2023
Quarterly CAT Fee #3	1/4 th of 75% of the Period 4 CAT Costs	CAT Data from third quarter of 2023	4 th quarter of 2023
Quarterly CAT Fee #4	1/4 th of 75% of the Period 4 CAT Costs	CAT Data from fourth quarter of 2023	1 st quarter of 2024

(D) Quarterly CAT Fee – Beginning 2023

As provided in the Proposed CAT Fee Plan Amendment, to recover the costs of the CAT going forward beginning in 2023, the Operating Committee determined to charge Industry Members an ongoing quarterly CAT fee calculated based on the allocation of Total CAT Costs pursuant to the CAT Funding Model (“Quarterly CAT Fee”).⁴² The Operating Committee will use the costs set forth in the annual operating budget as the Total CAT Costs in the calculation of the Quarterly CAT Fee. Specifically, the Total CAT Costs budgeted for the upcoming year for the Company required pursuant to Section 11.1(a) of the CAT NMS Plan. Using these estimated Total CAT Costs, the Operating Committee will calculate the Quarterly CAT Fee owed by each Industry Member in accordance with the CAT Funding Model. As provided in the Proposed CAT Fee Plan Amendment, the Operating Committee proposes to seek to recover the budgeted Total CAT Costs over the course of the year. Each quarter, each Industry Member will pay the

⁴¹ The Period 4 CAT Costs will be the total actual costs incurred for the CAT for 2022 as set forth in the 2022 financial statements for the Company.

⁴² See Proposed CAT Fee Plan Amendment at 21067-68.

greater of the minimum fee of \$125 or the Industry Member's fee calculated based on message traffic.⁴³ The message traffic fee would be calculated by multiplying the percentage of the Industry Member's message traffic of the total Industry Member message traffic by 1/4th of 75% of the budgeted Total CAT Costs for the year (subject to applicable discounts for Options Market Maker message traffic and Equity Market Maker message traffic, the Maximum Industry Member CAT Fee, the Maximum Industry Member CAT Fee Re-Allocation and the Minimum Industry Member CAT Fee Re-Allocation). Each Industry Member's message traffic would be calculated using data from the prior calendar quarter. The Exchange proposes to commence charging this CAT fee in the second quarter of 2023, based on CAT Data from the first quarter of 2023.

To implement the Quarterly CAT Fee, the Exchange proposes to add proposed paragraph (a) to the "Consolidated Audit Trail Funding Fees" section of its fee schedule. Proposed paragraph (a) would state that "[e]ach Industry Member shall pay a Quarterly CAT Fee in the amount of the greater of the following each quarter commencing in the second quarter of 2023: (1) Minimum Industry Member CAT Fee (plus any applicable Maximum Industry Member CAT Fee Re-Allocation); or (2) the amount calculated by multiplying the percentage of the Industry

⁴³ To the extent that any two or more of the four categories of Industry Member CAT fees (i.e., the Historical CAT Assessment, Period 3 CAT Fee, Period 4 CAT Fee and the Quarterly CAT Fee) are due during the same quarter, any Industry Member obligated to pay one or more categories of fees is required to pay each category of fee for that quarter. For example, if an Industry Member would be subject to the Minimum Industry Member CAT Fee for the Period 4 CAT Fee and the Minimum Industry Member CAT Fee for the Quarterly CAT Fee during the same quarter, the Industry Member would be required to pay two minimum \$125 fees that quarter for a total of \$250. As another example, suppose that an Industry Member owed a CAT fee (other than the minimum fee of \$125) for both the Historical CAT Assessment and the Period 3 CAT Fee, the Industry Member would be required to pay both fees that quarter. See Proposed CAT Fee Plan Amendment at 21067.

Member's message traffic of the total Industry Member message traffic based on the prior quarter's message traffic by 1/4th of 75% of the budgeted Total CAT Costs for the relevant year (subject to applicable discounts for Options Market Maker message traffic and Equity Market Maker message traffic, the Maximum Industry Member CAT Fee, the Maximum Industry Member CAT Fee Re-Allocation and the Minimum Industry Member CAT Fee Re-Allocation).”

The Exchange understands the Operating Committee will announce at the beginning of the relevant year via a CAT alert the budgeted Total CAT Costs to be used in calculating the Quarterly CAT Fees for that year. The budgeted Total CAT Costs will be the costs set forth in the annual operating budget for the Company required pursuant to Section 11.1(a) of the CAT NMS Plan. As discussed above, CAT costs would include, but not be limited to, Plan Processor costs, insurance costs, third-party support costs and an operational reserve. As required by Section 11.1(c) of the CAT NMS Plan, any surpluses collected will be treated as an operational reserve to offset future fees and will not be distributed to the Participants as profits.⁴⁴ In addition, to address potential changes in the budget during the year, the total budgeted costs for the CAT for the relevant year may be adjusted on a quarterly basis as the Operating Committee reasonably deems appropriate for the prudent operation of the Company. To the extent that the Operating Committee adjusts the total budgeted costs for the CAT for the relevant year during its quarterly budget review, the adjusted total budgeted costs for the CAT will be used in calculating the remaining quarterly CAT fees for that year.

The following chart summarizes the imposition of the Quarterly CAT Fee each year commencing in 2023 and continuing each year thereafter:

⁴⁴ CAT NMS Plan Approval Order at 84792.

Quarterly CAT Fee	Quarterly Industry Member Allocation	CAT Data Used for Message Traffic Calculation	Payment Due
Quarterly CAT Fee #1	1/4 th of 75% of the budgeted annual CAT costs for the relevant year	CAT Data from first quarter of the relevant year	2 nd quarter of the relevant year
Quarterly CAT Fee #2	1/4 th of 75% of the budgeted annual CAT costs for the relevant year	CAT Data from second quarter of the relevant year	3 rd quarter of the relevant year
Quarterly CAT Fee #3	1/4 th of 75% of the budgeted annual CAT costs for the relevant year	CAT Data from third quarter of the relevant year	4 th quarter of the relevant year
Quarterly CAT Fee #4	1/4 th of 75% of the budgeted annual CAT costs for the relevant year	CAT Data from fourth quarter of the relevant year	1 st quarter of year following the relevant year

(3) Time and Manner of Payment

The Exchange proposes to add paragraph (e) to the “Consolidated Audit Trail Funding Fees” section of its fee schedule to describe the time and manner of the payment of the Industry Member CAT fees as provided in the Proposed CAT Fee Plan Amendment.⁴⁵ Proposed paragraph (e)(1) would state that “Consolidated Audit Trail, LLC will provide each Industry Member with an invoice setting forth the Industry Member’s Historical CAT Assessment, Period 3 CAT Fee, Period 4 CAT Fee and/or Quarterly CAT Fee (as applicable) (collectively, “CAT Fees”) for each payment period.” Proposed paragraph (e)(2) would state that “Consolidated Audit Trail, LLC will provide each Industry Member with one invoice each payment period for its CAT Fees as determined pursuant to paragraph (a) – (d) above, regardless of whether the Industry Member is a member of multiple self-regulatory organizations.” Proposed paragraph

⁴⁵ See Proposed CAT Fee Plan Amendment at 21068.

(e)(3) would state that “[e]ach Industry Member will pay its CAT Fees to the Consolidated Audit Trail, LLC via the centralized system for the collection of CAT Fees established by the Consolidated Audit Trail, LLC in the manner prescribed by the Consolidated Audit Trail, LLC.” Finally, proposed paragraph (e)(4) would require that Industry Members pay their CAT Fees 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 shall 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 (i) the Prime Rate plus 300 basis points, or (ii) the maximum rate permitted by applicable law.⁴⁶

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of the Exchange Act. The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act⁴⁷, which requires, among other things, that the Exchange’s 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 not designed to permit unfair discrimination between customers, issuers, brokers and dealers. The Exchange also believes that the proposed rule change is consistent with the provisions of Section 6(b)(4) of the Act,⁴⁸ because it provides for the equitable allocation of reasonable dues, fees and

⁴⁶ CAT Reporters will be responsible for each quarterly fee in which they are a CAT Reporter. If a CAT Reporter ceases to meet the definition of a CAT Reporter during a quarter, the CAT Reporter will still be responsible for CAT fees attributable to its message traffic (or, the minimum fee in the alternative) during that quarter. See Proposed CAT Fee Plan Amendment at 21068.

⁴⁷ 15 U.S.C. 78f(b)(6).

⁴⁸ 15 U.S.C. 78f(b)(4).

other charges among members and issuers and other persons using its facilities. The Exchange further believes that the proposed rule change is consistent with Section 6(b)(8) of the Act⁴⁹ which requires that the Exchange's rules not impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Exchange Act.

Section 11.1(b) of the CAT NMS Plan states that “[t]he Participants shall file with the SEC under Section 19(b) of the Exchange Act any such fees on Industry Members that the Operating Committee approves.” Per Section 11.1(b) of the CAT NMS Plan, the Exchange has filed this proposed rule change to implement the Industry Member CAT fees included in the CAT Funding Model approved by the Operating Committee. The Exchange believes that this proposal is consistent with the Exchange Act because it is consistent with, and implements, the CAT Funding Model, and is designed to assist the Exchange and its Industry Members in meeting regulatory obligations pursuant to the CAT NMS Plan. In approving the CAT NMS 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.”⁵⁰ To the extent that this proposal implements the Plan, and applies specific requirements to Industry Members, the Exchange believes that this proposal furthers the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Exchange Act.

The Exchange further notes that, as provided in the Proposed CAT Fee Plan Amendment, the Operating Committee determined that the proposed Industry Member CAT fees comply with

⁴⁹ 15 U.S.C. 78f(b)(8).

⁵⁰ CAT NMS Plan Approval Order at 84696.

the requirements of the Exchange Act and the CAT NMS Plan.⁵¹ The Operating Committee determined that the Industry Member CAT fees provide for the “equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities necessary or appropriate in furtherance of the purposes of this chapter,”⁵² as required by the Exchange Act. The Operating Committee determined that the CAT fees equitably allocate CAT costs between Participants and Industry Members, and among Industry Members, as discussed in detailed [sic] above. For the reasons discussed above, the Operating Committee determined that the 75%-25% allocation between Industry Members and Participants in the CAT Funding Model as well as the use of message traffic for allocating costs among Industry Members provide for an equitable allocation of CAT costs among CAT Reporters. In addition, as discussed above, the Operating Committee determined that the imposition of minimum and maximum fees and market maker discounts would operate to provide for an equitable allocation of CAT costs among Industry Members.

As further provided in the Proposed CAT Fee Plan Amendment, the Operating Committee also determined that the CAT Funding Model is “not designed to permit unfair discrimination between customers, issuers, brokers, or dealers,”⁵³ as required by the Exchange Act, as the CAT Funding Model does not unfairly discriminate between Industry Members and Participants, or among Industry Members. In making this determination, the Operating Committee noted that all Industry Members are grouped together for the purpose of determining CAT fees, and Industry Members with similar levels of activity would pay similar fees. For

⁵¹ See Proposed CAT Fee Plan Amendment at 21068-70.

⁵² Sections 6(b)(4) and 15A(b)(5) of the Exchange Act.

⁵³ Sections 6(b)(5) and 15A(b)(6) of the Exchange Act.

example, Industry Members with higher levels of message traffic would pay higher fees, and those with lower levels of message traffic would pay lower fees. With the elimination of tiers in the Original Funding Model, fees for Industry Members are directly related to their message traffic. With tiers, the relationship between message traffic and the CAT fee would not have been as direct.

In addition, as discussed in the Proposed CAT Fee Plan Amendment, where the method of fee calculation may potentially affect certain groups of CAT Reporters adversely, the Operating Committee sought to limit such adverse effects. For example, the Operating Committee proposed market maker discounts to address the high levels of message traffic generally exhibited by market makers. As discussed above, the SEC has recognized repeatedly that such favorable treatment for market makers in other contexts was not unfairly discriminatory or a burden on competition in light of its positive effects on market quality, nor was it considered to involve an inequitable allocation of fees among members.

As also provided in the Proposed CAT Fee Plan Amendment, the Operating Committee also proposed the Maximum Industry Member CAT Fee to address the potential for significant fees based on outsized message traffic for certain Industry Members. The Maximum Industry Member CAT Fee would serve as a method to institute a cap on fees to fairly allocate costs to Industry Members. Such a fee would prevent Industry Members from paying significantly larger CAT fees than Participant complexes.

The Proposed CAT Fee Plan Amendment notes that Operating Committee also determined that the proposed Industry Member CAT fees would promote just and equitable principles of trade, and, in general, protect investors and the public interest, as the fees would be transparent and relate specifically to CAT activity. The Operating Committee also determined

that the proposed fees were reasonable because they would provide ease of calculation, ease of billing and other administrative functions. Such factors are crucial to estimating a reliable revenue stream for the Company.

B. Self-Regulatory Organization's Statement on Burden on Competition

Section 6(b)(8) of the Act⁵⁴ requires that the Exchange's rules not impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Exchange Act. The Exchange 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. The Exchange notes that the proposed rule change implements provisions of the CAT NMS Plan that are subject to approval by the Commission and is designed to assist the Exchange in meeting its regulatory obligations pursuant to the Plan. The Exchange also notes that the proposed rule changes will apply equally to all Industry Members, including its GEMX members. In addition, all national securities exchanges and FINRA are proposing a similar proposed fee change to implement the requirements of the CAT NMS Plan. Therefore, this is not a competitive fee filing, and, therefore, it does not raise competition issues between and among the exchanges and FINRA.

Moreover, the Exchange notes that, as discussed in the Proposed CAT Fee Plan Amendment, the Operating Committee determined that the proposed fees do not impose an unnecessary or inappropriate burden on competition as they fairly and equitably allocate costs among CAT Reporters.⁵⁵ The Operating Committee determined that the cost allocation between Participants and Industry Members recognizes the greater number of Industry

⁵⁴ 15 U.S.C. 78f(b)(8).

⁵⁵ See Proposed CAT Fee Plan Amendment at 21070.

Members as compared to the Participants and the greater collective revenue of Industry Members as compared to Participants. In addition, cost allocations among Industry Members based on message traffic fairly and equitably distribute CAT costs. Furthermore, the market maker discounts and the Maximum Industry Member CAT Fee address the potential for burdens on market makers and Industry Members with outsized message traffic potentially resulting from the proposed fee calculations. Moreover, the Operating Committee determined that the Minimum Industry Member CAT Fee would not act as a barrier to entry for smaller Industry Member CAT Reporters.

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

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.⁵⁶ At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

⁵⁶ 15 U.S.C. 78s(b)(3)(A)(ii).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-GEMX-2021-03 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-GEMX-2021-03. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, D.C. 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change.

Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-GEMX-2021-03 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁵⁷

J. Matthew DeLesDernier
Assistant Secretary

⁵⁷ 17 CFR 200.30-3(a)(12).