

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-96394; File No. 4-698)

November 28, 2022

Joint Industry Plan; Notice of Filing of Partial Amendment No. 1 to an Amendment to the National Market System Plan Governing the Consolidated Audit Trail

On May 13, 2022, the Operating Committee for Consolidated Audit Trail, LLC (“CAT LLC”), on behalf of the following parties to the National Market System Plan Governing the Consolidated Audit Trail (the “CAT NMS Plan” or “Plan”):¹ BOX Exchange LLC; Cboe BYX Exchange, Inc.; Cboe BZX Exchange, Inc.; Cboe EDGA Exchange, Inc.; Cboe EDGX Exchange, Inc.; Cboe C2 Exchange, Inc.; Cboe Exchange, Inc.; Financial Industry Regulatory Authority, Inc.; Investors Exchange LLC; Long-Term Stock Exchange, Inc.; MEMX, LLC; Miami International Securities Exchange LLC; MIAX Emerald, LLC; MIAX PEARL, LLC; Nasdaq BX, Inc.; Nasdaq GEMX, LLC; Nasdaq ISE, LLC; Nasdaq MRX, LLC; Nasdaq PHLX LLC; The NASDAQ Stock Market LLC, New York Stock Exchange LLC; NYSE American LLC; NYSE Arca, Inc.; NYSE Chicago, Inc.; and NYSE National, Inc. (collectively, the “Participants,” “self-regulatory organizations,” or “SROs”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) pursuant to Section 11A(a)(3) of the

¹ The CAT NMS Plan is a national market system plan approved by the Commission pursuant to Section 11A of the Exchange Act and the rules and regulations thereunder. See Securities Exchange Act Release No. 79318 (November 15, 2016), 81 FR 84696 (November 23, 2016) (“CAT NMS Plan Approval Order”). The CAT NMS Plan functions as the limited liability company agreement of the jointly owned limited liability company formed under Delaware state law through which the Participants conduct the activities of the CAT (“Company”). On August 29, 2019, the Participants replaced the CAT NMS Plan in its entirety with the limited liability company agreement of a new limited liability company named Consolidated Audit Trail, LLC (“CAT LLC”), which became the Company. The latest version of the CAT NMS Plan is available at <https://catnmsplan.com/about-cat/cat-nms-plan>.

Securities Exchange Act of 1934 (“Exchange Act”),² and Rule 608 thereunder,³ a proposed amendment to the CAT NMS Plan (“Proposed Amendment”) to implement a revised funding model (“Executed Share Model”) for the consolidated audit trail (“CAT”) and to establish a fee schedule for Participant CAT fees in accordance with the Executed Share Model (“Proposed Participant Fee Schedule”).⁴ The Proposed Amendment was published for comment in the Federal Register on June 1, 2022.⁵ On August 30, 2022, pursuant to Rule 608(b)(2)(i) of Regulation NMS,⁶ the Commission instituted proceedings to determine whether to disapprove the Proposed Amendment.⁷

On November 16, 2022, CAT LLC submitted a letter (the “CAT LLC Letter”) to propose a partial amendment of the Proposed Amendment (“Partial Amendment No. 1”) and to respond to the Commission’s solicitation of comments in the OIP and comments received on the OIP.⁸ Sections I and II below contains an executive summary of Partial Amendment No. 1 and a description of the proposed revisions to the Proposed Amendment, which were substantially

² 15 U.S.C. 78k-1(a)(3).

³ 17 CFR 242.608.

⁴ See Letter from Michael Simon, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission (May 13, 2022).

⁵ See Securities Exchange Act Release No. 94984 (May 25, 2022), 87 FR 33226 (June 1, 2022) (“Notice” or “Proposing Release”). Comments received in response to the Notice can be found on the Commission’s website at <https://www.sec.gov/comments/4-698/4-698-a.htm>.

⁶ 17 CFR 242.608(b)(2)(i).

⁷ See Securities Exchange Act Release No. 95634 (Aug. 30, 2022), 87 Fed. Reg. 54558 (Sept. 6, 2022) (“OIP”). Comments received in response to the OIP can be found on the Commission’s website at <https://www.sec.gov/comments/4-698/4-698-a.htm>.

⁸ See Letter from Michael Simon, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission (Nov. 15, 2022) (“Partial Amendment No. 1”).

prepared by CAT LLC on behalf of the Participants.⁹ The Commission is publishing this notice to solicit comments on Partial Amendment No. 1 from interested persons.

I. Executive Summary

CAT LLC proposes to amend the CAT NMS Plan¹⁰ to implement a revised funding model – Executed Share Model – for the consolidated audit trail (“CAT”) and to establish a fee schedule for Participant CAT fees in accordance with the Executed Share Model. The SEC published the Proposed Amendment for comment on May 25, 2022.¹¹ After considering the comments provided in response to the Proposed Amendment, the issues discussed in the OIP and comments submitted in response to the OIP,¹² CAT LLC continues to believe that the Executed Share Model satisfies the applicable requirements of the Exchange Act as well as the funding principles and other requirements of the CAT NMS Plan, as proposed to be revised.

The Executed Share Model would provide reasonable fees that are equitably allocated, not unfairly discriminatory, and do not impose an undue burden on competition, in that the model reflects a reasonable effort to allocate costs based on the extent to which different CAT

⁹ This notice includes only Sections I and II of the CAT LLC Letter, which describe the changes proposed by Partial Amendment No. 1. The full text of the CAT LLC Letter, which includes the Participants responses to the OIP in Section III thereof, is available on the Commission’s website at <https://www.sec.gov/comments/4-698/4-698-a.htm>.

¹⁰ The twenty-five Participants of the CAT NMS Plan are: BOX Exchange LLC, Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe Exchange, Inc., Financial Industry Regulatory Authority, Inc. (“FINRA”), Investors Exchange LLC, Long-Term Stock Exchange, Inc., MEMX LLC, Miami International Securities Exchange LLC, MIAX Emerald, LLC, MIAX PEARL, LLC, Nasdaq BX, Inc., Nasdaq GEMX, LLC, Nasdaq ISE, LLC, Nasdaq MRX, LLC, Nasdaq PHLX LLC, The NASDAQ Stock Market LLC, New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc. and NYSE National, Inc.

¹¹ See Notice, supra note 5.

¹² Letter from Ellen Greene, Managing Director, Equities and Options Market Structure, SIFMA, to Vanessa Countryman, Secretary, SEC (Oct. 7, 2022) (“SIFMA Letter”).

Reporters participate in and benefit from the equities and options markets. Moreover, the Executed Share Model would be consistent with past fee structures that have been approved by the Commission. It also is transparent, would be relatively easy to calculate and administer, and is designed to not have an impact on market activity because it is neutral as to the location and manner of execution. CAT LLC has gone through an extensive process of evaluating and seeking comment on various funding models since the inception of CAT. As the Commission is aware, the Exchange Act does not require CAT LLC to demonstrate that the Executed Share Model is *superior to any other potential proposal*. Instead, CAT LLC must demonstrate that the Executed Share Model is *consistent with the Exchange Act and the rules and regulations thereunder*. CAT LLC believes that the Executed Share Model satisfies the requirements of the Exchange Act and should be approved by the Commission.

CAT LLC, however, proposes to amend the Proposed Amendment to provide additional detail and clarity on the Executed Share Model in response to the OIP. Specifically, CAT LLC proposes to amend the Proposed Amendment by making changes summarized below and discussed in detail in Section II of this letter. In addition to these proposed revisions, CAT LLC responds to each of the other issues raised in the SEC's OIP in Section III of the CAT LLC Letter.¹³

- (1) CAT LLC proposes to make the following general changes to the description of the Executed Share Model as set forth in the Proposed Amendment:
 - Restructure the description of the Executed Share Model in the CAT NMS Plan to fully describe the process for calculating the Historical CAT Assessment and the CAT Fees related to Prospective CAT Costs, rather than describing certain aspects of

¹³ See supra note 9.

- the Executed Share Model in the Participant fee schedule or in the Participant fee filings related to the Industry Member fees. (Proposed Section 11.3 of the CAT NMS Plan)
- Impose the payment obligation on the executing broker for the buyer for the transaction (“EBB”) instead of the clearing broker for the buyer for the transaction (“CBB”), and impose the payment obligation on the executing broker for the seller for the transaction (“EBS”), rather than the clearing broker for the seller for the transaction (“CBS”). (Proposed Sections 11.3(a)(iii)(A) and (b)(iii)(A) of the CAT NMS Plan)
 - Provide for the use of a twelve-month lookback, rather than a six-month lookback, for the calculation of equivalent executed share volume projections. (Proposed Sections 11.3(a)(i)(D) and (b)(i)(E) of the CAT NMS Plan)
 - Amend the CAT funding principles to clarify that the CAT Fees with regard to Prospective CAT Costs and the Historical CAT Assessment are intended to be cost-based fees – that is, the fees are designed to recover the cost of the creation, implementation and operation of the CAT. (Proposed 11.2(c) of the CAT NMS Plan)
- (2) In addition to the above general changes, CAT LLC proposes to amend the description of CAT Fees related to Prospective CAT Costs as follows:
- Require the calculation of a Fee Rate for the CAT Fee twice a year, once at the beginning of the year and once during the year, and to require the Participants to file with the SEC pursuant to Section 19(b) of the Exchange Act the CAT Fees to be charged to Industry Members calculated using the Fee Rates calculated twice a year. (Proposed Section 11.3(a)(i)(A)(I) and (II) of the CAT NMS Plan)

- Explain that CAT Fees will remain in effect until the Operating Committee approves a new Fee Rate and the CAT Fees with the new Fee Rate are in effect with regard to Industry Members in accordance with Section 19(b) of the Exchange Act. (Proposed Section 11.3(a)(i)(A)(III) of the CAT NMS Plan)
 - Provide additional detail regarding the categories included in the CAT budget: technology, legal, consulting, insurance, professional and administration, and public relations costs, a reserve and such other categories as determined by the Operating Committee. (Proposed Section 11.1(a)(i) of the CAT NMS Plan)
 - Describe the size of the reserve as not more than 25% of the annual budget, and state that, to the extent collected CAT Fees exceed CAT costs, including the reserve of 25% of the annual budget, such surplus shall be used to offset future fees. (Proposed Section 11.1(a)(ii) of the CAT NMS Plan)
 - Clarify that Participants will be required to pay the CAT Fees approved by the Operating Committee only if such CAT Fees are in effect with regard to Industry Members in accordance with Section 19(b) of the Exchange Act. (Proposed Section 11.3(a)(ii)(B) of the CAT NMS Plan)
 - Require the fee filings pursuant to Section 19(b) of the Exchange Act for CAT Fees related to Prospective CAT Costs to provide details regarding the calculation of the fee, including the Fee Rate, budget, projected volume, and the reconciliation of the budget to the fees. (Proposed Section 11.3(a)(iii)(B) of the CAT NMS Plan)
- (3) Furthermore, CAT LLC proposes to describe in detail the Historical CAT Assessment in the CAT NMS Plan by making the following revisions to the CAT NMS Plan:

- Describe the Historical CAT Assessment as described in the Proposed Amendment in the CAT NMS Plan in detail, including that the Historical CAT Assessment applies to Industry Members, how it will be used to repay the Participants, the manner of calculating the Historical Fee Rate, a description of the calculation of the Historical CAT Assessment, and a description of the fee filings under Section 19(b) of the Exchange Act for the Historical CAT Assessment. (Proposed Section 11.3(b) of the CAT NMS Plan)
- State that the length of the Historical Recovery Period used in calculating the Historical Fee Rate will not be less than 24 months or more than five years, and that the Historical CAT Assessment calculated using the Historical Fee Rate will remain in effect until all Historical CAT Costs are collected. (Proposed Section 11.3(b)(i)(D) of the CAT NMS Plan)
- Clarify that Participants would not be obligated to pay the Historical CAT Assessment as Participants have previously paid Past CAT Costs via loans to CAT LLC, and the Historical CAT Assessment paid by Industry Members would be used by CAT LLC to repay a portion of the loans made to CAT LLC by the Participants on a pro rata basis. (Proposed Section 11.3(b)(ii) of the CAT NMS Plan)
- State that the Participants will file fee filings pursuant to Section 19(b) of the Exchange Act to charge Industry Members the Historical CAT Assessment, and such filings will provide details regarding the calculation of the Historical CAT Assessment, including the Historical Fee Rate, Historical CAT Costs, and projected volume. (Proposed Section 11.3(b)(i)(A) and (iii)(B) of the CAT NMS Plan)

II. Proposed Revisions to Proposed Amendment

CAT LLC has reviewed the SEC’s OIP and the comment letter submitted in response to the OIP and it has determined to propose revisions to the Proposed Amendment. These proposed revisions are discussed in this Section II below. In addition, Exhibit A attached hereto sets forth the cumulative changes proposed to be made to the CAT NMS Plan, including both those changes set forth in the Proposed Amendment as well as the additional revisions proposed in Partial Amendment No. 1. Exhibit B attached hereto sets forth the proposed additional revisions to the Proposed Amendment as described in Partial Amendment No. 1.

A. Role of Clearing Brokers

Under the Proposed Amendment, the CBS, the CBB and the Participant would each pay a fee equal to the number of executed equivalent shares in the transaction multiplied by one-third and a specified fee rate. CAT LLC determined to assess fees upon clearing firm Industry Members because this is the current practice for other fees, such as the options regulatory fee (“ORF”), and thus this approach would reduce administrative burdens. CAT LLC acknowledged, however, that this approach may impose an excessive financial burden on clearing firms and noted that they may pass-through the CAT fees to their clients, who may pass-through their CAT fees until the fees are imposed on the account that executed the transaction. As described in the OIP, certain commenters questioned whether the Proposed Amendment would impose an undue burden on clearing firms. In response to this proposal and the related comments, the SEC requested in the OIP “[c]ommenters’ views on whether the Participants have demonstrated why imposing CAT fees only on clearing brokers, instead of on all Industry Members is consistent with the Exchange Act and Rule 608 of Regulation NMS, and whether such allocation is an unreasonable burden on competition.”¹⁴ In its comment letter, SIFMA

¹⁴ Request for Comment No. 8, OIP at 54578.

raised concerns regarding the cost burden that clearing firms would experience under the Proposed Amendment.¹⁵

CAT LLC recognizes that imposing the fee payment obligation on clearing brokers, rather than Industry Members more generally, potentially may impose a significant financial burden on clearing firms if the fees imposed on clearing firms are not passed through to their clients. Accordingly, CAT LLC proposes to amend the Proposed Amendment to assess the payment obligation on the EBB instead of the CBB, and to assess the payment obligation on the EBS, rather than the CBS. Charging the EBBs and EBSs would reflect the executing role the EBB and EBS have in each transaction. Like with CBBs and CBSs, EBBs and EBSs also may choose to pass the CAT fee on to their clients.

To implement this change, CAT LLC proposes to state in proposed Sections 11.3(a)(iii)(A) and (b)(iii)(A) that EBBs and EBSs would have the obligation to pay the CAT Fee and the Historical CAT Assessment. Specifically, proposed Section 11.3(a)(iii)(A) would state that the EBB and EBS would be required to pay the CAT Fee:

Each Industry Member that is the executing broker for the buyer in a transaction in Eligible Securities (“Executing Broker for the Buyer” or “EBB”) and each Industry Member that is the executing broker for the seller in a transaction in Eligible Securities (“Executing Broker for the Seller” or “EBS”) will be required to pay a CAT Fee for each such transaction in Eligible Securities in the prior month based on CAT Data. The EBB’s CAT Fee or EBS’s CAT Fee (as applicable) for each

¹⁵ SIFMA Letter at 4-5. CAT LLC notes, however, that, contrary to the description set forth in the SIFMA Letter, the Historical CAT Assessment would be assessed based on current market activity, not past market activity. Accordingly, the process of passing fees through for the Historical CAT Assessment would be the same as with CAT Fees related to Prospective CAT Costs.

transaction in Eligible Securities will be calculated by multiplying the number of executed equivalent shares in the transaction by one-third and by the Fee Rate determined pursuant to paragraph (a)(i) of this Section 11.3.

Similarly, proposed Section 11.3(b)(iii)(A) would state that the EBB and EBS would be required to pay the Historical CAT Assessment:

Each month in which the Historical CAT Assessment is in effect, each EBB and each EBS shall pay a fee for each transaction in Eligible Securities executed by the EBB or EBS from the prior month as set forth in CAT Data, where the Historical CAT Assessment for each transaction will be calculated by multiplying the number of executed equivalent shares in the transaction by one-third and by the Historical Fee Rate determined pursuant to paragraph (b)(i) of this Section 11.3.

B. Mid-Year Fee Adjustment

Under the Proposed Amendment, the Operating Committee may, but is not required to, adjust the Fee Rate once during the year either to coordinate the CAT fees with adjustments to budgeted or actual CAT costs or actual or projected volume during the year. In response to this proposal, the SEC requested in the OIP “[c]ommenters’ views on whether the Participants should be required to change the Fee Rate when the budget or projected executed equivalent share volume changes.”¹⁶

CAT LLC recognizes the need to align CAT fees with CAT costs. Requiring the adjustment of the Fee Rate mid-year in response to changes in the budgeted or actual costs or projected or actual total executed equivalent share volume during the year would likely lead to the greater alignment of CAT fees and CAT costs, thereby potentially avoiding the collection of

¹⁶ Request for Comment No. 9, OIP at 54578.

fees in excess of CAT costs or fees that are insufficient to cover CAT costs. Accordingly, CAT LLC proposes to require a mid-year adjustment of the Fee Rate for the CAT Fee, rather than having discretion to adjust the fee mid-year. Specifically, CAT LLC proposes to state in proposed paragraph (a)(i) of Section 11.3 that “[t]he Operating Committee will calculate the Fee Rate for the CAT Fee twice per year, once at the beginning of the year and once during the year.” In addition, CAT LLC proposes a new paragraph (a)(i)(A)(II) of Section 11.3 that would state the following:

During each year, the Operating Committee will calculate a new Fee Rate by dividing the budgeted CAT costs for the remainder of the year by the projected total executed equivalent share volume of all transactions in Eligible Securities for the remainder of the year. Once the Operating Committee has approved the new Fee Rate, the Participants shall be required to file with the SEC pursuant to Section 19(b) of the Exchange Act CAT Fees to be charged to Industry Members calculated using the new Fee Rate. Participants and Industry Members will be required to pay CAT Fees calculated using this new Fee Rate once such CAT Fees are in effect with regard to Industry Members in accordance with Section 19(b) of the Exchange Act.

C. Lookback Period

As described in the Proposed Amendment, the calculation of the Fee Rate requires the determination of the projected total executed equivalent share volume of transactions in Eligible Securities for the year. In the Proposed Amendment, CAT LLC proposed to determine this projection based on the total executed equivalent share volume of transactions in Eligible Securities from the prior six months. CAT LLC reasoned that the use of the data from the prior six months provides an appropriate balance between using data from a period that is sufficiently

long to avoid short term fluctuations while providing data close in time to the upcoming year. In the OIP, however, the SEC asked for commenters' views on the "use of total executed equivalent share volume from the prior six months to determine a projected total for the year instead of using the past year's total executed equivalent share volume."¹⁷

CAT LLC recognizes that the use of the prior twelve months, rather than the prior six months, would address the issue of potential seasonality. For example, the projection could be based on a period that typically has lighter trading volume than the other half of the year, thereby causing the projection to be too low. In addition, like the six-month look back, the twelve-month look back would be sufficiently long to avoid short term fluctuations in trading while providing data close in time to the upcoming year. Accordingly, CAT LLC proposes to amend the Proposed Amendment to use a twelve-month lookback for the calculation of the projection. With a twelve-month lookback, the Operating Committee would determine the projected total executed equivalent share volume of transactions in Eligible Securities for an upcoming year based on the total executed equivalent share volume from the prior twelve months. In addition, CAT LLC proposes to allow the Operating Committee to base its projection on the prior twelve months, but to use its discretion to analyze the likely volume for the upcoming year. As set forth in proposed Section 11.3(a)(iii)(B), Participants will be required to provide a description of the calculation of the projection in their fee filings pursuant to Section 19(b) of the Exchange Act.

To implement this change, CAT LLC proposes to reference the twelve-month look back period in proposed paragraphs (a)(i)(D) and (b)(i)(E) of Section 11.3 of the CAT NMS Plan. Proposed paragraph (a)(i)(D) of Section 11.3 would state that "[t]he Operating Committee shall determine the projected total executed equivalent share volume of all transactions in Eligible

¹⁷ Request for Comment No. 16, OIP at 54578.

Securities for each relevant period based on the executed equivalent share volume of all transactions in Eligible Securities for the prior twelve months.” Similarly, proposed paragraph (b)(i)(E) of Section 11.3 of the CAT NMS Plan would state that “[t]he Operating Committee shall determine the projected total executed equivalent share volume of all transactions in Eligible Securities for the Historical Recovery Period based on the executed equivalent share volume of all transactions in Eligible Securities for the prior twelve months.”

D. 19b-4 Fee Filing Process for Fee Rate Changes

The SEC has requested “[c]ommenters’ views on whether the Proposed Amendment provides sufficient clarity and detail regarding the content and process relating to the fee filing pursuant to Section 19(b) and Rule 19b-4 thereunder with regard to Fee Rate changes applicable to Industry Members.”¹⁸ In its comment letter, SIFMA requests that CAT LLC provide additional detail regarding the process for collecting CAT fees from Industry Members, including any triggers and/or annual review mechanisms that would result in new fee filings in the future as a result of Fee Rate changes.¹⁹

In response, CAT LLC proposes to restructure the proposed changes to Section 11.3 of the CAT NMS Plan, make additional changes to add clarity and detail regarding the CAT fees under the Executed Share Model, and to provide additional detail regarding the fee filing process with regard to fee rate changes applicable to Industry Members, including the requirement to calculate the Fee Rate twice per year and to make fee filings pursuant to Section 19(b) twice a year with regard to the CAT Fees for Prospective CAT Costs. Proposed Section 11.3(a) in the Proposed Amendment described the fees to be charged Participants and proposed Section 11.3(b)

¹⁸ Request for Comment No. 13, OIP at 54578.

¹⁹ SIFMA Letter at 5-7.

in the Proposed Amendment described the fees to be charged Industry Members. CAT LLC proposes to revise this structure by addressing CAT Fees related to Prospective CAT Costs in proposed Section 11.3(a) and the Historical CAT Assessment in proposed Section 11.3(b). With these changes, CAT LLC intends to make the fee filing process for setting and changing the CAT fees a straightforward and easy to implement process.

1. CAT Fees Related to Prospective CAT Costs

CAT LLC proposes to restructure and revise proposed Section 11.3(a) of the CAT NMS Plan to provide greater clarity and detail regarding CAT Fees related to Prospective CAT Costs calculated pursuant to the Executed Share Model. With the proposed additional revisions, proposed Section 11.3(a) of the CAT NMS Plan would describe that the CAT Fees related to Prospective CAT Costs apply to both Participants and Industry Members, the manner of calculating the Fee Rate, the description of the calculation of the Participant CAT Fee, a description of the calculation of the Industry Member CAT Fee, and a description of the fee filings under Section 19(b) of the Exchange Act for Industry Member CAT Fees. The following describes the proposed revisions to Section 11.3(a) of the CAT NMS Plan.

a. Introductory Statement

In the Proposed Amendment, proposed Section 11.3(a) described the fees to be charged Participants pursuant to the Executed Share Model. CAT LLC proposes to revise proposed Section 11.3(a) to address CAT Fees related to Prospective CAT Costs for both Participants and Industry Members. Accordingly, CAT LLC proposes to revise the introductory statement in proposed Section 11.3(a), which was originally proposed to state that “[t]he Operating Committee will establish fees to be payable by Participants,” to state that “[t]he Operating Committee will establish fees (“CAT Fees”) to be payable by Participants and Industry Members

with regard to CAT costs not previously paid by the Participants (“Prospective CAT Costs”) as follows.”

b. Calculation of the Fee Rate

CAT LLC proposes to move the description of the calculation of the Fee Rate for CAT Fees related to Prospective CAT Costs from proposed paragraph (b) of the Participant fee schedule to proposed Section 11.3(a) of the CAT NMS Plan. Moving the discussion of the calculation of the Fee Rate from the Participant fee schedule to proposed Section 11.3(a) would clarify in the CAT NMS Plan that the proposed calculation of the CAT Fee would apply to both Participants and Industry Members.

i. Fee Rate

Proposed paragraph (b)(1) of the Participant fee schedule as set forth in the Proposed Amendment describes the timing and manner of calculating the Fee Rate for CAT Fees related to Prospective CAT Costs. The proposed paragraph states the following:

The Operating Committee will calculate the Fee Rate at the beginning of each year by dividing the budgeted CAT costs for the year by the projected total executed equivalent share volume of all transactions in Eligible Securities for the year. After setting the Fee Rate at the beginning of each year, the Fee Rate may be adjusted once during the year, if necessary, due to changes in the budgeted or actual costs or projected or actual total executed equivalent share volume during the year.

CAT LLC proposes to move the description of the timing and method for calculating the Fee Rate to proposed Section 11.3(a)(i) of the CAT NMS Plan, and to provide additional detail regarding the Fee Rate in that provision. In addition, proposed Section 11.3(a)(i) will differ from the description in the Proposed Amendment as it will require the calculation of the Fee Rate

twice per year, and to require the Participants to make a fee filing pursuant to Section 19(b) for Industry Member CAT Fees twice a year using the calculated Fee Rate.

Proposed Section 11.3(a)(i) of the CAT NMS Plan would state that CAT Fees related to Prospective CAT Costs will be calculated twice a year. Specifically, this proposed provision would state that “[t]he Operating Committee will calculate the Fee Rate for the CAT Fee twice per year, once at the beginning of the year and once during the year as follows.”

Proposed Section 11.3(a)(i)(A)(I) of the CAT NMS Plan would describe the annual calculation of the Fee Rate and the requirement for Participants to file a fee filing for CAT Fees to be charged Industry Members calculated using the Fee Rate. This proposed provision also would state that Participants and Industry Members would be required to pay such CAT Fees once the CAT Fees are in effect with regard to Industry Members. This proposed provision would not change how the Fee Rate would be calculated; such calculation would be the same as described in the Proposed Amendment. Specifically, this proposed provision would state:

At the beginning of each year, the Operating Committee will calculate the Fee Rate by dividing the budgeted CAT costs for the year by the projected total executed equivalent share volume of all transactions in Eligible Securities for the year. Once the Operating Committee has approved such Fee Rate, the Participants shall be required to file with the SEC pursuant to Section 19(b) of the Exchange Act CAT Fees to be charged to Industry Members calculated using such Fee Rate. Participants and Industry Members will be required to pay CAT Fees calculated using this Fee Rate once such CAT Fees are in effect with regard to Industry Members in accordance with Section 19(b) of the Exchange Act.

Proposed Section 11.3(a)(i)(A)(II) of the CAT NMS Plan describes the mid-year calculation of a new Fee Rate, as discussed above in Section II(B) of this letter. This proposed section would describe the mid-year calculation of the Fee Rate and the requirement for Participants to file a fee filing for CAT Fees to be charged Industry Members calculated using the Fee Rate. This proposed provision also would state that Participants and Industry Members would be required to pay such CAT Fees once the CAT Fees are in effect with regard to Industry Members. Specifically, this proposed provision would state:

During each year, the Operating Committee will calculate a new Fee Rate by dividing the budgeted CAT costs for the remainder of the year by the projected total executed equivalent share volume of all transactions in Eligible Securities for the remainder of the year. Once the Operating Committee has approved the new Fee Rate, the Participants shall be required to file with the SEC pursuant to Section 19(b) of the Exchange Act CAT Fees to be charged to Industry Members calculated using the new Fee Rate. Participants and Industry Members will be required to pay CAT Fees calculated using this new Fee Rate once such CAT Fees are in effect with regard to Industry Members in accordance with Section 19(b) of the Exchange Act.

This proposed provision would not change how the Fee Rate would be calculated; such calculation would be the same as described in the Proposed Amendment. This proposed provision, however, would make the mid-year Fee Rate adjustment mandatory, rather than discretionary.

CAT LLC also proposes to add Section 11.3(a)(i)(A)(III) of the CAT NMS Plan to clarify that CAT Fees related to Prospective CAT Costs do not sunset automatically; such CAT

Fees would remain in place until new CAT Fees are in place with a new Fee Rate. Specifically, this proposed provision would state:

For the avoidance of doubt, CAT Fees with a Fee Rate calculated as set forth in this paragraph (a)(i) shall remain in effect until the Operating Committee approves a new Fee Rate as described in this paragraph (a)(i) and CAT Fees with the new Fee Rate are in effect with regard to Industry Members in accordance with Section 19(b) of the Exchange Act.

This provision clarifies, but does not change, the substance of the Proposed Amendment. This proposed change and the use of continuous fees more generally are discussed in more detail in Section II(H) of this letter.

ii. Executed Equivalent Shares

Paragraph (b)(2) of the Participant fee schedule as set forth in the Proposed Amendment describes how executed equivalent shares would be counted. CAT LLC proposes to move this proposed paragraph (b)(2) of the Participant fee schedule as set forth in the Proposed Amendment to proposed Section 11.3(a)(i)(B) of the CAT NMS Plan. Accordingly, proposed Section 11.3(a)(i)(B) of the CAT NMS Plan would state the following:

For purposes of calculating the fees, executed equivalent shares in a transaction in Eligible Securities will be counted as follows:

- (I) each executed share for a transaction in NMS Stocks will be counted as one executed equivalent share;
- (II) each executed contract for a transaction in Listed Options will be counted based on the multiplier applicable to the specific Listed

Option (i.e., 100 executed equivalent shares or such other applicable multiplier); and

(III) each executed share for a transaction in OTC Equity Securities shall be counted as 0.01 executed equivalent share.

iii. Budgeted CAT Costs

CAT LLC proposes to move proposed paragraph (b)(3) of the Participant fee schedule as set forth in the Proposed Amendment to proposed Section 11.3(a)(i)(C). Accordingly, proposed Section 11.3(a)(i)(C) of the CAT NMS Plan would state the following, which is the same as proposed paragraph (b)(3) of the Participant fee schedule in the Proposed Amendment:

The budgeted CAT costs for the year shall be comprised of all fees, costs and expenses budgeted to be incurred by or for the Company in connection with the development, implementation and operation of the CAT as set forth in the annual operating budget approved by the Operating Committee pursuant to Section 11.1(a) of the CAT NMS Plan, or as adjusted during the year by the Operating Committee.

CAT LLC also proposes to provide additional details regarding what is included in the annual operating budget approved by the Operating Committee pursuant to Section 11.1(a) of the CAT NMS Plan in new proposed paragraphs (a)(i) and (ii) of Section 11.1 of the CAT NMS Plan. As discussed in detail below in Section II(I), proposed Section 11.1(a)(i) would describe the categories of costs to be included in the CAT budget: “technology, legal, consulting, insurance, professional and administration, and public relations costs, a reserve, and such other cost categories as determined by the Operating Committee to be included in the budget.”

In addition, proposed Section 11.1(a)(ii) of the CAT NMS Plan would provide additional details regarding the use and size of the reserve. Specifically, proposed Section 11.1(a)(ii) of the

CAT NMS Plan would state that “[f]or the reserve referenced in paragraph (a)(i) of this Section, the budget will include an amount necessary to allow the Company to maintain a reserve of not more than 25% of the annual budget,” and, if the CAT Fees exceed CAT costs, including the reserve, then the surplus will be used to offset future fees. An analysis of budgeted CAT costs and actual CAT costs for 2020, 2021 and the first nine months of 2022 demonstrates that actual CAT costs were approximately 20% higher than budgeted amounts over this period on a cumulative average basis. Based on the magnitude of historical budget to actual variances as well as the difficulty in accurately predicting various variable CAT costs, CAT LLC believes that a 25% reserve would appear to be reasonable. In addition, this provision would clarify that each year CAT LLC would collect sufficient funds to maintain a reserve of 25% of the annual budget. For example, if CAT LLC only had a reserve of 5% of the annual budget at the end of a year, the budget for the next year would include an additional amount for the reserve of not more than 20% of the annual budget.

**iv. Projected Total Executed Equivalent Share
Volume of Transactions in Eligible Securities**

CAT LLC proposes to move proposed paragraph (b)(4) of the Participant fee schedule as set forth in the Proposed Amendment to proposed Section 11.3(a)(i)(D) of the CAT NMS Plan. Accordingly, proposed Section 11.3(a)(i)(D) of the CAT NMS Plan would be the same as proposed paragraph (b)(4) of the Participant fee schedule in the Proposed Amendment except for the change regarding the length of the lookback period as discussed above in Section II(C) of this letter. Specifically, Section 11.3(a)(i)(D) of the CAT NMS Plan would state that “[t]he Operating Committee shall determine the projected total executed equivalent share volume of all transactions in Eligible Securities for each relevant period based on the executed equivalent share volume of all transactions in Eligible Securities for the prior twelve months.”

c. Participant CAT Fee for Prospective CAT Costs

CAT LLC proposes to describe the Participant CAT Fees related to Prospective CAT Costs in proposed Section 11.3(a)(ii) of the CAT NMS Plan. Proposed paragraph (a)(ii) of Section 11.3 would be the same as proposed Section 11.3(a)(i) and (ii) as set forth in the Proposed Amendment, with two minor changes. Instead of referring to “a fee” generally, the paragraph would refer to the “CAT Fee.” The use of the term “CAT Fee” would clarify that this paragraph applies to the CAT Fee related to Prospective CAT Costs, not the Historical CAT Assessment. In addition, the general reference to “the applicable fee rate for the relevant period” would be replaced with the more specific reference to the Fee Rate “determined pursuant to paragraph (a)(i) of this Section 11.3.” As discussed above, proposed Section 11.3(a)(i) describes the calculation of the Fee Rate for the CAT Fees related to Prospective CAT Costs.

Accordingly, proposed Section 11.3(a)(ii)(A) of the CAT NMS Plan would state the following:

Each Participant that is a national securities exchange will be required to pay the CAT Fee for each transaction in Eligible Securities executed on the exchange in the prior month based on CAT Data. Each Participant that is a national securities association will be required to pay the CAT Fee for each transaction in Eligible Securities executed otherwise than on an exchange in the prior month based on CAT Data. The CAT Fee for each transaction in Eligible Securities will be calculated by multiplying the number of executed equivalent shares in the transaction by one-third and by the Fee Rate determined pursuant to paragraph (a)(i) of this Section 11.3.

CAT LLC also proposes to add paragraph (a)(ii)(B) to Section 11.3 of the CAT NMS Plan to clarify that Participants would only be required to pay CAT Fees when Industry

Members are required to pay CAT Fees. The Executed Share Model is designed to cover 100% of CAT costs by allocating costs between and among Participants and Industry Members. However, the CAT Fees charged to Participants are implemented via a different process than CAT Fees charged to Industry Members. CAT Fees charged to Participants are implemented via an approval by the Operating Committee in accordance with the requirements of the CAT NMS Plan. In contrast, CAT Fees charged to Industry Members may only become effective in accordance with the requirements of Section 19(b) of the Exchange Act. Accordingly, proposed paragraph (a)(ii)(B) of Section 11.3 of the CAT NMS Plan would state that “[e]ach Participant will be required to pay the CAT Fee calculated using the Fee Rate determined pursuant to paragraph (a)(i) of this Section 11.3 and approved by the Operating Committee only if such CAT Fees are in effect with regard to Industry Members in accordance with Section 19(b) of the Exchange Act.”

d. Industry Member CAT Fees for Prospective CAT Costs

i. Industry Member CAT Fee Obligation

CAT LLC proposes to describe the CAT Fees related to Prospective CAT Costs that are charged to Industry Members in proposed Section 11.3(a)(iii)(A) of the CAT NMS Plan. This proposed paragraph would be similar to proposed Section 11.3(b)(i) and (ii) of the CAT NMS Plan as set forth in the Proposed Amendment subject to several changes. Instead of referring to “a fee” generally, the paragraph would refer to the “CAT Fee.” The use of the term “CAT Fee” would clarify that this paragraph applies to the CAT Fee related to Prospective CAT Costs, not the Historical CAT Assessment. In addition, the general reference to “the applicable fee rate for the relevant period” would be replaced with the more specific reference to the Fee Rate “determined pursuant to paragraph (a)(i) of this Section 11.3.” As discussed above, proposed

Section 11.3(a)(i) of the CAT NMS Plan describes the calculation of the Fee Rate for the CAT Fees related to Prospective CAT Costs. Furthermore, the proposed language would simplify the provision by eliminating repetitive language that was set forth in proposed Section 11.3(b)(i) and (ii) of the CAT NMS Plan as set forth in the Proposed Amendment. Finally, as discussed above, the provision would refer to EBBs and EBSs, rather than CBBs and CBSs. Accordingly, proposed Section 11.3(a)(iii)(A) of the CAT NMS Plan would state the following:

Each Industry Member that is the executing broker for the buyer in a transaction in Eligible Securities (“Executing Broker for the Buyer” or “EBB”) and each Industry Member that is the executing broker for the seller in a transaction in Eligible Securities (“Executing Broker for the Seller” or “EBS”) will be required to pay a CAT Fee for each such transaction in Eligible Securities in the prior month based on CAT Data. The EBB’s CAT Fee or EBS’s CAT Fee (as applicable) for each transaction in Eligible Securities will be calculated by multiplying the number of executed equivalent shares in the transaction by one-third and by the Fee Rate determined pursuant to paragraph (a)(i) of this Section 11.3.

ii. Fee Filings under Section 19(b) of the Exchange Act

CAT LLC proposes to provide additional detail as to the information that Participants would be required to include in their fee filings for CAT Fees in proposed paragraph (a)(iii)(B) of Section 11.3 of the CAT NMS Plan. The proposed paragraph sets forth the information about the CAT Fees related to Prospective CAT Costs that should be included in the fee filings required to be made by the Participants pursuant to Section 19(b) of the Exchange Act.²⁰

²⁰ CAT LLC expects the fee filings required to be made by the Participants pursuant to Section 19(b) of the Exchange Act with regard to CAT Fees to be filed pursuant to Section 19(b)(3)(A) of the Exchange Act. In accordance with Section 19(b)(3)(A) of the

Specifically, such filings would be required to include (1) the Fee Rate; (2) the budget for the year (or remainder of the year, as applicable), including a brief description of each line item in the budget (including technology, legal, consulting, insurance, professional and administration, and public relations costs, a reserve and such other categories as determined by the Operating Committee to be included in the budget) and the reason for changes in each such line item from the prior CAT Fee filing; (3) a discussion of how the budget is reconciled to the collected fees; and (4) the projected total executed equivalent share volume of all transactions in Eligible Securities for the year (or remainder of the year, as applicable), and a description of the calculation of the projection. This detail would describe how the Fee Rate is calculated, and explain how the budget used in the calculation is reconciled to the collected fees. Such detailed information would provide Industry Members and other interested parties with a clear understanding of the calculation of the CAT Fees and their relationship to CAT costs.²¹

2. Historical CAT Assessment

CAT LLC proposes to restructure and revise proposed Section 11.3(b) of the CAT NMS Plan as set forth in the Proposed Amendment to provide greater clarity and detail regarding the Historical CAT Assessment. With the proposed additional revisions, like with the description of the CAT Fee related to Prospective CAT Costs in proposed Section 11.3(a) of the CAT NMS Plan, proposed Section 11.3(b) of the CAT NMS Plan would describe the Historical CAT Assessment, including that the Historical CAT Assessment is charged to Industry Members, how it will be used to repay the Participants, the manner of calculating the Historical Fee Rate, a

Exchange Act, fee filings made pursuant to Section 19(b)(3)(A) of the Exchange Act would be effective upon filing.

²¹ As a practical matter, the fee filing would provide the exact fee per executed equivalent share to be paid for the CAT Fees, by multiplying the Fee Rate by one-third and describing the relevant number of decimal places for the fee.

description of the calculation of the Historical CAT Assessment, and description of the fee filings under Section 19(b) of the Exchange Act for the Historical CAT Assessment. The following describes the proposed revisions to Section 11.3(b) of the CAT NMS Plan.

a. Introductory Statement

In the Proposed Amendment, proposed Section 11.3(b) of the CAT NMS Plan describes the fees to be charged Industry Members pursuant to the Executed Share Model. CAT LLC proposes to revise proposed Section 11.3(b) of the CAT NMS Plan to address the Historical CAT Assessment to be charged to Industry Members. Accordingly, CAT LLC proposes to revise the introductory statement in proposed Section 11.3(b) of the CAT NMS Plan, which was originally proposed to state that “[t]he Operating Committee will establish fees to be payable by Industry Members,” to state that “[t]he Operating Committee will establish fees (“Historical CAT Assessment”) to be payable by Industry Members with regard to CAT costs previously paid by the Participants (“Past CAT Costs”) as follows.”²²

b. Calculation of Historical Fee Rate

In the Proposing Release, CAT LLC stated that Industry Member CAT fees for Past CAT Costs would be calculated in accordance with the Executed Share Model, and that the Fee Rate for the CAT fees related to Past CAT Costs would be calculated by dividing the Past CAT Costs for the relevant period (as determined by the Operating Committee) by the projected total executed equivalent share volume of all transactions in Eligible Securities for the relevant period based on CAT Data. CAT LLC proposes to provide details regarding the calculation of the

²² Note that there may be one or more Historical CAT Assessments, depending upon the timing of any approval of the amendment to the CAT NMS Plan and the completion of the Financial Accountability Milestones. For a discussion of the Financial Accountability Milestones, see Section 11.6 of the CAT NMS Plan

Historical CAT Assessment in proposed Section 11.3(b) of the CAT NMS Plan. The detail would be similar to the detail provided in proposed Section 11.3(a) of the CAT NMS Plan regarding CAT Fees related to Prospective CAT Costs, including a description of the calculation of the Historical Fee Rate, the counting method for executed equivalent shares, the Historical CAT Costs, the Historical Recovery Period, and the projected total executed equivalent share volume of transactions in Eligible Securities for the Historical Recovery Period.

i. Historical Fee Rate

Proposed Section 11.3(b)(i)(A) of the CAT NMS Plan would describe the calculation of the Historical Fee Rate for the Historical CAT Assessment and the requirement for Participants to file a fee filing for the Historical CAT Assessment. This proposed provision also would state that Industry Members would be required to pay the Historical CAT Assessment once such Historical CAT Assessment is in effect in accordance with Section 19(b) of the Exchange Act. Specifically, this proposed provision also would state that:

The Operating Committee will calculate the Historical Fee Rate for the Historical CAT Assessment by dividing the Historical CAT Costs by the projected total executed equivalent share volume of all transactions in Eligible Securities for the Historical Recovery Period. Once the Operating Committee has approved such Historical Fee Rate, the Participants shall be required to file with the SEC pursuant to Section 19(b) of the Exchange Act the Historical CAT Assessment to be charged Industry Members calculated using such Historical Fee Rate. Industry Members will be required to pay the Historical CAT Assessment calculated using this Historical Fee Rate once such Historical CAT Assessment is in effect in accordance with Section 19(b) of the Exchange Act.

This proposed provision would not change how the Historical Fee Rate would be calculated; such calculation would be the same as described in the Proposed Amendment.

ii. Executed Equivalent Shares

As described in the Proposing Release, the Historical CAT Assessment would be calculated based on the same executed equivalent share calculation as CAT Fees related to Prospective CAT Costs. Accordingly, proposed Section 11.3(b)(i)(B) of the CAT NMS Plan would make it clear that the calculation is the same for both types of fees. Specifically, proposed Section 11.3(b)(i)(B) of the CAT NMS Plan would state that “[f]or purposes of calculating the Historical CAT Assessment, executed equivalent shares in a transaction in Eligible Securities will be counted in the same manner as set forth in paragraph (a)(i)(B) of this Section 11.3.”

iii. Historical CAT Costs

The Proposing Release stated generally that the Operating Committee will determine the Past CAT Costs sought to be recovered through the Historical CAT Assessment. CAT LLC proposes to make this approach clear in the language of the CAT NMS Plan by adding proposed Section 11.3(b)(i)(C) of the CAT NMS Plan, which would state that “[t]he Operating Committee will determine the Historical CAT Costs sought to be recovered by the Historical CAT Assessment, where the Historical CAT Costs will be Past CAT Costs minus Past CAT Costs excluded from Historical CAT Costs by the Operating Committee.” As discussed below, the Historical CAT Costs, which were discussed in detail in CAT LLC’s response to comments,²³ also will be discussed in the fee filings regarding the Historical CAT Assessment that are required to be made under Section 19(b) of the Exchange Act.

²³ Letter to Vanessa Countryman, Secretary, SEC, from Mike Simon, Chair, Operating Committee, CAT, (Aug. 16, 2022) at 23-28 (“CAT Response Letter”).

iv. Historical Recovery Period

The Proposing Release did not discuss the length of time during which the Historical CAT Assessment would be in effect. As the total amount of the Historical CAT Costs have not yet been determined because the fee model has not yet been approved and CAT LLC continues to incur costs, CAT LLC had not determined the appropriate recovery period. Based on CAT costs incurred to date, however, CAT LLC believes that the Historical Recovery Period should not be less than 24 months or more than five years. In analyzing the potential Historical Recovery Periods, CAT LLC sought to weigh the need for a reasonable Historical Fee Rate that spreads the Historical CAT Costs over an appropriate amount of time and the need to repay the loan notes to the Participants in a timely fashion. CAT LLC analyzed potential recovery periods using the Historical CAT Costs through 2022 as discussed in the CAT Response Letter²⁴ and the total executed equivalent share volume of transactions in Eligible Securities for 2021 to calculate the projected total executed equivalent share volume of transactions.²⁵ Based on the variables in this analysis, CAT LLC determined that the Historical Fee Rate would range from approximately \$0.00002 – \$0.00006 per executed equivalent share for a two through five-year period. CAT LLC believes that such Historical Fee Rates would be reasonable even if Industry Members were required to pay the Historical CAT Assessment and the ongoing CAT Fee at the same time. CAT LLC notes, however, that the actual Historical CAT Assessment would be calculated using up-to-date Historical CAT Costs and executed equivalent share volume.

Proposed Section 11.3(b)(i)(D)(I) of the CAT NMS Plan would describe the Historical Recovery Period used in calculating the Historical Fee Rate. This proposed provision would

²⁴ Id.

²⁵ Proposing Release at 33246.

state that “[t]he length of the Historical Recovery Period used in calculating the Historical Fee Rate will be established by the Operating Committee based upon the amount of the Historical CAT Costs to be recovered by the Historical CAT Assessment.” This proposed provision, however, would state that Historical Recovery Period used for calculating the Historical Fee Rate would not be less than 24 months or more than five years. As discussed below, the Historical Recovery Period is used to calculate the Historical Fee Rate. The actual recovery period may be longer or shorter than the Historical Recovery Period depending on the actual executed equivalent share volumes during the time that the Historical CAT Assessment is in effect.

Proposed Section 11.3(b)(i)(D)(II) of the CAT NMS Plan would describe the length of the time that the Historical CAT Assessment would be in effect, which may be greater than or less than the Historical Recovery Period, depending on the Historical CAT Assessment fees collected based on the actual volume. The Historical CAT Assessment would remain in effect until all Historical CAT Costs are collected. Accordingly, this provision states that “[n]otwithstanding the length of the Historical Recovery Period used in calculating the Historical Fee Rate, the Historical CAT Assessment calculated using the Historical Fee Rate will remain in effect until all Historical CAT Costs are collected.”

v. Projected Total Executed Equivalent Share Volume of Transactions in Eligible Securities for Historical Recovery Period

As described in the Proposing Release, the Historical Fee Rate would be calculated by using “the projected total executed equivalent share volume of all transactions in Eligible Securities for the relevant period based on CAT Data.” CAT LLC proposes to clarify the manner of calculating the projected total executed equivalent share volume for the Historical CAT Assessment by adding proposed Section 11.3(b)(i)(E) to the CAT NMS Plan. CAT LLC

proposes to state in this provision that the projection will be determined based on transactions in Eligible Securities for the prior twelve months. Accordingly, proposed Section 11.3(b)(i)(E) of the CAT NMS Plan would state that “[t]he Operating Committee shall determine the projected total executed equivalent share volume of all transactions in Eligible Securities for the Historical Recovery Period based on the executed equivalent share volume of all transactions in Eligible Securities for the prior twelve months.”

c. Past CAT Costs and Participants

As described in the Proposing Release, because the Participants have paid all CAT costs to date, the Participants would not pay the Historical CAT Assessment; only Industry Members would be required to pay the Historical CAT Assessment. Proposed Section 11.3(a)(iv) of the CAT NMS Plan as set forth in the Proposed Amendment clarified this point by stating that “[n]otwithstanding anything to contrary, Participants will not be required to a pay a CAT fee related to CAT costs previously paid by the Participants in a manner determined by the Operating Committee (‘Past CAT Costs’).” However, the Proposing Release provided additional color regarding the Participants obligations with regard to certain Past CAT Costs. Specifically, it stated that Participants would remain responsible for the one-third of Past CAT Costs allocated to Participants under the Executed Share Model, as well as 100% of certain other past CAT Costs. The CAT fees related to included Past CAT Costs would recoup two-thirds of the included Past CAT Costs; the Participants have paid for and would not be reimbursed for the remaining one-third of the included Past CAT Costs. The CAT fees related to included Past CAT Costs paid by the Industry Members would be used to reimburse the Participants for the two-thirds of included Past CAT Costs allocated to Industry Members. The CAT fees for the included Past CAT Costs collected from Industry Members will be allocated to Participants for

repayment of the outstanding loan notes of the Participants to the Company on a pro rata basis; such fees would not be allocated to Participants based on the executed equivalent share volume of transactions in Eligible Securities. CAT LLC proposes to amend proposed Section 11.3 of the CAT NMS Plan to add this detail to the CAT NMS Plan.

Specifically, CAT LLC proposes to delete proposed Section 11.3(a)(iv) of the CAT NMS Plan as set forth in the Proposed Amendment and replace it with proposed Section 11.3(b)(ii) of the CAT NMS Plan. Proposed Section 11.3(b)(ii) would clarify that the Participants would not be required to pay the Historical CAT Assessment as the Participants previously have paid Past CAT Costs. It would state that, “[b]ecause Participants previously have paid Past CAT Costs via loans to the Company, Participants would not be required to pay the Historical CAT Assessment.” In addition, proposed Section 11.3(b)(ii) of the CAT NMS Plan would clarify that the Historical CAT fees collected from Industry Members would be allocated to Participants for repayment of the outstanding loan notes of the Participants to the Company on a pro rata basis; such fees would not be allocated to Participants based on the executed equivalent share volume of transactions in Eligible Securities. Specifically, proposed Section 11.3(b)(ii) of the CAT NMS Plan would state that “[t]he Historical CAT Assessment to be paid by Industry Members and collected by the Company will be used by the Company to repay a portion of the loans from the Participants to the Company on a pro rata basis.” Furthermore, proposed Section 11.3(b)(ii) of the CAT NMS Plan would emphasize that “[t]he Historical CAT Assessment is designed to recover two-thirds of the Historical CAT Costs from Industry Members.”

d. Historical CAT Assessment for Industry Members

i. Industry Member Obligation

CAT LLC proposes to describe the Historical CAT Assessment charged to Industry Members in proposed Section 11.3(b)(iii)(A) of the CAT NMS Plan. This proposed paragraph (b)(iii)(A) of Section 11.3 of the CAT NMS Plan would be similar to proposed Section 11.3(a)(iii)(A) of the CAT NMS Plan discussed above, but would provide additional specifics regarding the Historical CAT Assessment. In particular, this paragraph would refer to the “Historical CAT Assessment,” “Historical Fee Rate” and the “Historical Recovery Period.” Specifically, this proposed paragraph would state that:

Each month in which the Historical CAT Assessment is in effect, each EBB and each EBS shall pay a fee for each transaction in Eligible Securities executed by the EBB for the buyer or EBS for the seller from the prior month as set forth in CAT Data, where the Historical CAT Assessment for each transaction will be calculated by multiplying the number of executed equivalent shares in the transaction by one-third and by the Historical Fee Rate determined pursuant to paragraph (b)(i) of this Section 11.3.

ii. Fee Filings under Section 19(b) of the Exchange Act

CAT LLC proposes to provide additional detail as to when Participants would file fee filings for the Historical CAT Assessment and what would be required to be included in such filings. Proposed Section 11.3(b)(iii)(B) would describe the requirements for filings for the Historical CAT Assessment.²⁶ The proposed paragraph would state that “[w]hen the Participants file with the SEC under Section 19(b) of the Exchange Act the Historical CAT Assessment to be

²⁶ CAT LLC expects the fee filings required to be made by the Participants pursuant to Section 19(b) of the Exchange Act with regard to the Historical CAT Assessment to be filed pursuant to Section 19(b)(3)(A) of the Exchange Act. In accordance with Section 19(b)(3)(A) of the Exchange Act, fee filings made pursuant to Section 19(b)(3)(A) of the Exchange Act would be effective upon filing.

charged to Industry Members that the Operating Committee approved in accordance with paragraph (b) of this Section 11.3,” the filing should set forth the following information: (1) the Historical Fee Rate; (2) a brief description of the amount and type of the Historical CAT Costs; (3) the Historical Recovery Period and the reason for its length; and (4) the projected total executed equivalent share volume of all transactions in Eligible Securities for the Historical Recovery Period, and a description of the calculation of the projection.²⁷

E. Calculation of Past CAT Costs: Relevant Period

The SEC requested “[c]ommenters’ views on the calculation of the Past CAT Costs Fee Rate, including any views on the relevant period to be used by the Operating Committee to calculate the Fee Rate for Past CAT Costs.”²⁸ As discussed above in Section II(D) of this letter, CAT LLC proposes to add substantial detail regarding the calculation of the Historical Fee Rate to proposed Section 11.3(b) of the CAT NMS Plan. Included in those proposed changes is a provision that addresses the Historical Recovery Period used in calculating the Historical Fee Rate for the Historical CAT Assessment, and a provision that addresses the length of time that the Historical CAT Assessment would be in effect.

F. Proposed Plan Changes to Describe Executed Share Model

The SEC requested “[c]ommenters’ views on the proposed changes to Section 11.3 of the CAT NMS Plan in order to conform the Plan to the Executed Shares Model by revising the manner in which fees to recover costs will be assessed on Participants and Industry Members.”²⁹

²⁷ As a practical matter, the fee filing would provide the exact fee per executed equivalent share to be paid for the Historical CAT Assessment, by multiplying the Historical Fee Rate by one-third and describing the relevant number of decimal places for the fee.

²⁸ Request for Comment No. 17, OIP at 54578.

²⁹ Request for Comment No. 32, OIP at 54579.

As described in detail above, CAT LLC has restructured proposed Section 11.3 and added additional detail to Section 11.3 to provide a more detailed description of the implementation of the Executed Share Model in the CAT NMS Plan.

In addition, CAT LLC proposes to amend the CAT funding principles to clarify that the CAT Fee and the Historical CAT Assessment are intended to be cost-based fees – that is, the fees are designed to recover the cost of the creation, implementation and operation of the CAT. CAT LLC proposes to amend the funding principle set forth in Section 11.2(c) by making a specific reference to the costs of the CAT. With this proposed change, proposed Section 11.2(c) would state that “[i]n establishing the funding of the Company, the Operating Committee shall seek: . . . to establish a fee structure in which the fees charged to Participants and Industry Members are based upon the executed equivalent share volume of transactions in Eligible Securities, and the costs of the CAT.”

G. Reconciliation of Budget to Fees

In the OIP, the SEC requested comment on “whether the Proposed Amendment needs a discussion of how the budget will be reconciled to fees.”³⁰ If the CAT LLC collects a surplus of fees above and beyond what is required for the CAT costs, including the requisite reserve, such surpluses would be used to offset future fees and would not be distributed to the Participants as profits.³¹ To provide transparency regarding this reconciliation process, CAT LLC proposes to require that Participants provide a discussion of how the budget is reconciled to the collected

³⁰ Request for Comment No. 24, OIP at 54578.

³¹ Section 11.1(c) of the CAT NMS Plan specifically states that “[a]ny surplus of the Company’s revenues over its expenses shall be treated as an operational reserve to offset future fees.”

fees in their fee filings pursuant Section 19(b) of the Exchange Act. CAT LLC proposes to include this requirement in Section 11.3(a)(iii)(B) of the CAT NMS Plan.

H. Continuous Fees versus Sunsetting Fees

CAT LLC does not propose to require the proposed CAT Fees to sunset automatically; instead, a CAT Fee would continue until a new CAT Fee is in place in accordance with the requirements of the CAT NMS Plan and Section 19(b) of the Exchange Act. In response to this proposal, the SEC requested “[c]ommenters’ views on whether it is necessary or appropriate in the public interest for the Proposed Amendment to permit the Fee Rate to potentially remain in effect even if the budget or projected executed equivalent share volume changes (both would be used to calculate the Fee Rate under the Executed Share Model) or if the Fee Rate should sunset after a year. For example, if the Commission temporarily suspends and institutes proceedings to determine whether to approve or to disapprove a Section 19(b) fee filing to institute a new Fee Rate, the old Fee Rate could remain in effect during the proceedings.”³² In its comment letter, SIFMA advocates for a trigger or automatic review to ensure that the fee rate remains aligned with the CAT costs.³³ CAT LLC believes that the Proposed Amendment, with the revisions proposed herein, would address the concerns related to the alignment of CAT costs and CAT fees.

CAT LLC believes that it is critical that a CAT fee remain in place at all times. The financial viability of the CAT would be put at risk without a constant source of revenue. CAT LLC pays various bills, including technology bills, on a monthly basis. Accordingly, even short delays in the implementation of new CAT fees after the sunsetting of a prior CAT fee may have

³² Request for Comment No. 11, OIP at 54578.

³³ SIFMA Letter at 5-7.

a deleterious effect on the operation of the CAT. Indeed, adopting sunseting fees would contradict the funding principle of seeking to “build financial stability to support the Company as a going concern.”³⁴ CAT LLC proposes to add Section 11.3(a)(i)(A)(III) of the CAT NMS Plan to clarify that CAT Fees related to Prospective CAT Costs do not sunset automatically; such CAT Fees would remain in place until new CAT Fees with a new Fee Rate is in effect.

Moreover, CAT LLC does not believe that a sunseting requirement is necessary to ensure that the CAT Fees are closely coordinated with Prospective CAT costs. CAT LLC has proposed a comprehensive, multi-pronged approach to ensure that the CAT Fees are closely tied to CAT costs. First, CAT LLC will be required to calculate the Fee Rates for the CAT Fees based on budgeted CAT costs. In addition, CAT LLC will be required to calculate the Fee Rate twice a year to determine whether the Fee Rate has changed due to changes in the budgeted or actual costs or actual or projected executed equivalent share volume, and to make a fee filing twice a year to reflect this calculation. Accordingly, the Fee Rate will be required to be updated twice a year, thereby ensuring the CAT Fees are closely tied to CAT costs.

Second, the CAT NMS Plan requires that the Company operate on a “break-even” basis, with fees imposed to cover costs and an appropriate reserve. Any surpluses would be treated as an operational reserve to offset future fees and would not be distributed to the Participants as profits. To ensure that the Participants’ operation of the CAT will not contribute to the funding of their other operations, Section 11.1(c) of the CAT NMS Plan specifically states that “[a]ny surplus of the Company’s revenues over its expenses shall be treated as an operational reserve to offset future fees.” Moreover, as discussed in detail in Section II(I) and (G) of this letter, CAT LLC proposes to amend the CAT NMS Plan to limit the reserve to no more than 25% of the

³⁴ Section 11.2(f) of the CAT NMS Plan.

annual budget and to clarify that CAT fees collected in excess of the CAT costs, including the reserve, will be used to offset future fees.³⁵

Third, as discussed above in Section II(D) of this letter, CAT LLC proposes to amend the CAT NMS Plan to require Participants to provide significant details in their fee filings regarding Industry Member CAT Fees. Proposed paragraph (a)(iii)(B) of Section 11.3 of the CAT NMS Plan would state that “[w]hen Participants file with the SEC pursuant to Section 19(b) of the Exchange Act CAT Fees to be charged to Industry Members calculated using the Fee Rate that the Operating Committee approved in accordance with paragraph (a) of this Section 11.3” such filings would be required to include (1) the Fee Rate; (2) the budget for the upcoming year (or remainder of the year, as applicable), including a brief description of each line item in the budget (including technology, legal, consulting, insurance, professional and administration, and public relations costs, a reserve and/or such other categories as determined by the Operating Committee to be included in the budget) and the reason for changes in each such line item from the prior CAT Fee filing; (3) a discussion of how the budget is reconciled to the collected fees; and (4) the projected total executed equivalent share volume of all transactions in Eligible Securities for the year (or remainder of the year, as applicable), and a description of the calculation of the projection. This detail would describe how the Fee Rate is calculated and explain how the budget used in the calculation is reconciled to the collected fees. Such detailed information would provide Industry Members and other interested parties with a clear understanding of the calculation of the CAT fees and their relationship to CAT costs.

I. Definition of Budgeted CAT Costs

³⁵ See proposed Section 11.1(a)(i) and (ii) of the CAT NMS Plan.

The Proposed Amendment would state that the budgeted CAT costs for the year shall be “comprised of all fees, costs and expenses budgeted to be incurred by or for the Company in connection with the development, implementation and operation of the CAT as set forth in the annual operating budget approved by the Operating Committee pursuant to Section 11.1(a) of the CAT NMS Plan, or as adjusted during the year by the Operating Committee.” The SEC requested “[c]ommenters’ views on the costs that would be included in the proposed definition of Budgeted CAT Costs in the Proposed Participant Fee Schedule.”³⁶ CAT LLC believes that budgeted CAT costs appropriately include the costs set forth in the approved budget for CAT LLC. In addition, CAT LLC believes that using budgeted CAT costs, rather than CAT costs already incurred, allows the Company to collect fees prior to when bills become payable.

The budgeted CAT costs for the upcoming year would 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. Section 11.1(a) states that “[o]n an annual basis the Operating Committee shall approve an operating budget for the Company. The budget shall include the projected costs of the Company, including the costs of developing and operating the CAT for the upcoming year, and the sources of all revenue to cover such costs, as well as the funding of any reserve that the Operating Committee reasonably deems appropriate for prudent operation of the Company.”

The CAT costs budgeted for the year would be comprised of all fees, costs and expenses estimated to be incurred by or for the Company in connection with the development, implementation and operation of the CAT during the year. These CAT costs would include, but not be limited to, Plan Processor costs, insurance costs, third-party support costs and an operational reserve. Plan Processor costs would consist of the Plan Processor’s ongoing costs,

³⁶ Request for Comment No. 24, OIP at 54578.

including development costs. This amount would be based upon the fees due to the Plan Processor pursuant to the Company's agreement with the Plan Processor. Insurance costs would include cyber insurance and director liability insurance. Third-party support costs would include legal fees, consulting fees, vendor fees and audit fees. In addition, the Operating Committee aims to accumulate the necessary funds to establish an operating reserve for the Company through the CAT fees charged to CAT Reporters. As set forth in Section 11.1(a) of the CAT NMS Plan, the Operating Committee may include in the budget "funding of any reserve that the Operating Committee reasonably deems appropriate for prudent operation of the Company."³⁷ CAT LLC proposes to add proposed Section 11.1(a)(i) to provide additional clarity regarding the costs to be included in the CAT budget by listing the types of CAT costs to be included in the budget. Specifically, proposed Section 11.1(a)(i) of the CAT NMS Plan would state that "[w]ithout limiting the foregoing, the budgeted CAT costs shall include technology, legal, consulting, insurance, professional and administration, and public relations costs, a reserve, and such other categories as determined by the Operating Committee to be included in the budget."

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. In the Proposed Amendment, CAT LLC stated that "[a]lthough the Operating Committee may determine at its discretion that a different level of reserves is appropriate in the future, the Operating Committee proposes to include in the budget for purposes of determining CAT fees an operational reserve comprised of three months of ongoing CAT costs."³⁸ To provide additional clarity regarding the size of the reserve, CAT LLC

³⁷ Section 11.1(a) of the CAT NMS Plan.

³⁸ Proposing Release at 33228.

proposes to add proposed paragraph (a)(ii) to Section 11.1 of the CAT NMS Plan to set forth the parameters for the size of the reserve. Specifically, proposed Section 11.1(a)(ii) of the CAT NMS Plan would state that “[t]he budget will include a reserve in the amount of not more than 25% of the annual budget.” In addition, CAT LLC proposes to clarify how CAT fees collected in excess of CAT costs, including the reserve, would be used. Specifically, proposed paragraph (a)(ii) of Section 11.1 of the CAT NMS Plan would state that “[t]o the extent collected CAT fees exceed CAT costs, including the reserve of 25% of the annual budget, such surplus will be used to offset future fees.”

To address potential changes related to the CAT during the year, the Operating Committee may adjust the budgeted CAT costs for the year as it reasonably deems appropriate for the prudent operation of the Company. For example, the Operating Committee may determine that an adjustment to the budget is necessary if actual costs during the year are more or less than the budget, or if unanticipated expenditures are necessary. To the extent that the Operating Committee adjusts the budgeted CAT costs during the year and determines to adjust the Fee Rate, the adjusted budgeted CAT costs would be used in calculating the new Fee Rate for the remaining months of the year.

The Operating Committee has determined to publicly provide the annual operating budget for the Company as well as any updates to the budget that occur during the year. This publicly available budget information describes in detail the budget for the Company. For example, among other things, the budget provides specific budgeted technology costs (including cloud hosting services, operating fees, Customer and Account Information System (“CAIS”) operating fees and change request fees) and general and administrative costs (including legal, consulting, insurance, professional and administration, and public relations). The Company

provides such budget information on a dedicated webpage on the CAT NMS Plan website to make it readily accessible for CAT Reporters and others.

III. Solicitation of Comments

The Commission seeks comments on the Proposed Amendment, as modified by Partial Amendment No. 1. Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the Proposed Amendment, as modified by Partial Amendment No. 1 is consistent with the Exchange 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 4-698 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 4-698. 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 Partial Amendment No. 1 that are filed with the Commission, and all written communications relating to Partial Amendment No. 1 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, DC

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 Participants' offices. 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 4-698 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.³⁹

Sherry R. Haywood

Assistant Secretary

³⁹ 17 CFR 200.30-3(a)(12).

EXHIBIT A:

Cumulative Proposed Revisions to CAT NMS Plan

Additions **underlined**; deletions [**bracketed**]

* * * * *

ARTICLE I

DEFINITIONS

* * * * *

[“Execution Venue” means a Participant or an alternative trading system (“ATS”) (as defined in Rule 300 of Regulation ATS) that operates pursuant to Rule 301 of Regulation ATS (excluding any such ATS that does not execute orders).]

* * * * *

ARTICLE XI

FUNDING OF THE COMPANY

Section 11.1. Funding Authority.

(a) On an annual basis the Operating Committee shall approve an operating budget for the Company. The budget shall include the projected costs of the Company, including the costs of developing and operating the CAT for the upcoming year, and the sources of all revenues to cover such costs, as well as the funding of any reserve that the Operating Committee reasonably deems appropriate for prudent operation of the Company.

(i) Without limiting the foregoing, the budgeted CAT costs shall include technology, legal, consulting, insurance, professional and administration, and public relations costs, a reserve and such other cost categories as determined by the Operating Committee to be included in the budget.

(ii) For the reserve referenced in paragraph (a)(i) of this Section, the budget will include an amount necessary to allow the Company to maintain a reserve of not more than 25% of the annual budget. To the extent collected CAT fees exceed CAT costs, including the reserve of 25% of the annual budget, such surplus shall be used to offset future fees.

(b) Subject to Section 11.2, 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 Participants. The

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, and such fees shall be labeled as “Consolidated Audit Trail Funding Fees.”

(c) To fund the development and implementation of the CAT, the Company shall time the imposition and collection of all fees on Participants and Industry Members in a manner reasonably related to the timing when the Company expects to incur such development and implementation costs. In determining fees on Participants and Industry Members the Operating Committee shall take into account fees, costs and expenses (including legal and consulting fees and expenses) incurred by the Participants on behalf of the Company prior to the Effective Date in connection with the creation and implementation of the CAT, and such fees, costs and expenses shall be fairly and reasonably shared among the Participants and Industry Members. Any surplus of the Company’s revenues over its expenses shall be treated as an operational reserve to offset future fees.

(d) Consistent with this Article XI, the Operating Committee shall adopt policies, procedures, and practices regarding the budget and budgeting process, **[assignment of tiers,]** resolution of disputes, billing and collection of fees, and other related matters. **[For the avoidance of doubt, as part of its regular review of fees for the CAT, the Operating Committee shall have the right to change the tier assigned to any particular Person in accordance with fee schedules previously filed with the Commission that are reasonable, equitable and not unfairly discriminatory and subject to public notice and comment, pursuant to this Article XI. Any such changes will be effective upon reasonable notice to such Person.]**

Section 11.2. Funding Principles. In establishing the funding of the Company, the Operating Committee shall seek:

(a) to create transparent, predictable revenue streams for the Company that are aligned with the anticipated costs to build, operate and administer the CAT and the other costs of the Company;

(b) to establish an allocation of the Company’s related costs among Participants and Industry Members that is consistent with the Exchange Act, taking into account the timeline for implementation of the CAT **[and distinctions in the securities trading operations of Participants and Industry Members and their relative impact upon Company resources and operations];**

(c) to establish a **[tiered]** fee structure in which the fees charged to **[: (i) Participants and [CAT Reporters that are Execution Venues, including ATs, are based upon the level of market share; (ii) Industry Members]’ non-ATS activities] are based upon the executed equivalent share volume of transactions in Eligible Securities, and the costs of the CAT [message traffic; and (iii) the CAT Reporters with the most CAT-related activity (measured by market share and/or message traffic, as applicable) are generally comparable (where, for these comparability purposes, the tiered fee structure takes into consideration**

affiliations between or among CAT Reporters, whether Execution Venues and/or Industry Members)].

- (d) to provide for ease of billing and other administrative functions;
- (e) to avoid any disincentives such as placing an inappropriate burden on competition and a reduction in market quality; and
- (f) to build financial stability to support the Company as a going concern.

Section 11.3. Recovery.

(a) The Operating Committee will establish [fixed] fees ("CAT Fees") to be payable by [Execution Venues] Participants and Industry Members with regard to CAT costs not previously paid by the Participants ("Prospective CAT Costs") as follows [provided in this Section 11.3(a)]:

(i) Fee Rate. The Operating Committee will calculate the Fee Rate for the CAT Fee twice per year, once at the beginning of the year and once during the year.

(A) General.

(I) At the beginning of each year, the Operating Committee will calculate the Fee Rate by dividing the budgeted CAT costs for the year by the projected total executed equivalent share volume of all transactions in Eligible Securities for the year. Once the Operating Committee has approved such Fee Rate, the Participants shall be required to file with the SEC pursuant to Section 19(b) of the Exchange Act CAT Fees to be charged to Industry Members calculated using such Fee Rate. Participants and Industry Members will be required to pay CAT Fees calculated using this Fee Rate once such CAT Fees are in effect with regard to Industry Members in accordance with Section 19(b) of the Exchange Act.

(II) During each year, the Operating Committee will calculate a new Fee Rate by dividing the budgeted CAT costs for the remainder of the year by the projected total executed equivalent share volume of all transactions in Eligible Securities for the remainder of the year. Once the Operating Committee has approved the new Fee Rate, the Participants shall be required to file with the SEC pursuant to Section 19(b) of the Exchange Act CAT Fees to be charged to Industry Members calculated using the new Fee Rate. Participants and

Industry Members will be required to pay CAT Fees calculated using this new Fee Rate once such CAT Fees are in effect with regard to Industry Members in accordance with Section 19(b) of the Exchange Act.

(III) For the avoidance of doubt, CAT Fees with a Fee Rate calculated as set forth in this paragraph (a)(i) shall remain in effect until the Operating Committee approves a new Fee Rate as described in paragraph (a)(i) and CAT Fees with the new Fee Rate are in effect with regard to Industry Members in accordance with Section 19(b) of the Exchange Act.

(B) Executed Equivalent Shares. For purposes of calculating CAT Fees, executed equivalent shares in a transaction in Eligible Securities will be counted as follows:

(I) each executed share for a transaction in NMS Stocks will be counted as one executed equivalent share;

(II) each executed contract for a transaction in Listed Options will be counted based on the multiplier applicable to the specific Listed Option (i.e., 100 executed equivalent shares or such other applicable multiplier); and

(III) each executed share for a transaction in OTC Equity Securities shall be counted as 0.01 executed equivalent share.

(C) Budgeted CAT Costs. The budgeted CAT costs for the year shall be comprised of all fees, costs and expenses budgeted to be incurred by or for the Company in connection with the development, implementation and operation of the CAT as set forth in the annual operating budget approved by the Operating Committee pursuant to Section 11.1(a) of the CAT NMS Plan, or as adjusted during the year by the Operating Committee.

(D) Projected Total Executed Equivalent Share Volume of Transactions in Eligible Securities. The Operating Committee shall determine the projected total executed equivalent share volume of all transactions in Eligible Securities for each relevant period based on the executed equivalent share volume of all transactions in Eligible Securities for the prior twelve months.

(ii) Participant CAT Fees.

(A) CAT Fee Obligation. Each Participant that is a national securities exchange will be required to pay the CAT Fee for each transaction in Eligible Securities executed on the exchange in the prior month based on CAT Data. Each Participant that is a national securities association will be required to pay the CAT Fee for each transaction in Eligible Securities executed otherwise than on an exchange in the prior month based on CAT Data. The CAT Fee for each transaction in Eligible Securities will be calculated by multiplying the number of executed equivalent shares in the transaction by one-third and by the Fee Rate determined pursuant to paragraph (a)(i) of this Section 11.3.

(B) Effectiveness. Each Participant will be required to pay the CAT Fee calculated using the Fee Rate determined pursuant to paragraph (a)(i) of this Section 11.3 and approved by the Operating Committee only if such CAT Fees are in effect with regard to Industry Members in accordance with Section 19(b) of the Exchange Act.

(iii) Industry Member CAT Fees.

(A) CAT Fee Obligation. Each Industry Member that is the executing broker for the buyer in a transaction in Eligible Securities (“Executing Broker for the Buyer” or “EBB”) and each Industry Member that is the executing broker for the seller in a transaction in Eligible Securities (“Executing Broker for the Seller” or “EBS”) will be required to pay a CAT Fee for each such transaction in Eligible Securities in the prior month based on CAT Data. The EBB’s CAT Fee or EBS’s CAT Fee (as applicable) for each transaction in Eligible Securities will be calculated by multiplying the number of executed equivalent shares in the transaction by one-third and by the Fee Rate determined pursuant to paragraph (a)(i) of this Section 11.3.

(B) Content of Fee Filings. When Participants file with the SEC pursuant to Section 19(b) of the Exchange Act CAT Fees to be charged to Industry Members calculated using the Fee Rate that the Operating Committee approved in accordance with paragraph (a) of this Section 11.3, such filings shall set forth (A) the Fee Rate; (B) the budget for the upcoming year (or remainder of the year, as applicable), including a brief description of each line item in the budget, including technology, legal, consulting, insurance, professional and administration, and public relations costs, a reserve

and/or such other categories as determined by the Operating Committee to be included in the budget, and the reason for changes in each such line item from the prior CAT Fee filing; (C) a discussion of how the budget is reconciled to the collected fees; and (D) the projected total executed equivalent share volume of all transactions in Eligible Securities for the year (or remainder of the year, as applicable), and a description of the calculation of the projection.

(i) Each Execution Venue that: (A) executes transactions; or (B) in the case of a national securities association, has trades reported by its members to its trade reporting facility or facilities for reporting transactions effected otherwise than on an exchange, in NMS Stocks or OTC Equity Securities will pay a fixed fee depending on the market share of that Execution Venue in NMS Stocks and OTC Equity Securities, with the Operating Committee establishing at least two and no more than five tiers of fixed fees, based on an Execution Venue's NMS Stocks and OTC Equity Securities market share. For these purposes, market share for Execution Venues that execute transactions will be calculated by share volume, and market share for a national securities association that has trades reported by its members to its trade reporting facility or facilities for reporting transactions effected otherwise than on an exchange in NMS Stocks or OTC Equity Securities will be calculated based on share volume of trades reported, provided, however, that the share volume reported to such national securities association by an Execution Venue shall not be included in the calculation of such national security association's market share.]

(ii) Each Execution Venue that executes transactions in Listed Options will pay a fixed fee depending on the Listed Options market share of that Execution Venue, with the Operating Committee establishing at least two and no more than five tiers of fixed fees, based on an Execution Venue's Listed Options market share. For these purposes, market share will be calculated by contract volume.]

(b) Past CAT Costs. The Operating Committee will establish [fixed] fees ("Historical CAT Assessment") to be payable by Industry Members with regard to CAT costs previously paid by the Participants ("Past CAT Costs") as follows: [, based on the message traffic generated by such Industry Member, with the Operating Committee establishing at least five and no more than nine tiers of fixed fees, based on message traffic. For the avoidance of doubt, the fixed fees payable by Industry Members pursuant to this paragraph shall, in addition to any other applicable message traffic, include message traffic generated by: (i) an ATS that does not execute orders that is sponsored by such Industry Member; and (ii) routing orders to and from any ATS sponsored by such Industry Member.]

(i) Calculation of Historical Fee Rate.

(A) General. The Operating Committee will calculate the Historical Fee Rate for the Historical CAT Assessment by dividing the Historical CAT Costs by the projected total executed equivalent share

volume of all transactions in Eligible Securities for the Historical Recovery Period. Once the Operating Committee has approved such Historical Fee Rate, the Participants shall be required to file with the SEC pursuant to Section 19(b) of the Exchange Act the Historical CAT Assessment to be charged Industry Members calculated using such Historical Fee Rate. Industry Members will be required to pay the Historical CAT Assessment calculated using this Historical Fee Rate once such Historical CAT Assessment is in effect in accordance with Section 19(b) of the Exchange Act.

(B) Executed Equivalent Shares. For purposes of calculating the Historical CAT Assessment, executed equivalent shares in a transaction in Eligible Securities will be counted in the same manner as set forth in paragraph (a)(i)(B) of this Section 11.3.

(C) Historical CAT Costs. The Operating Committee will determine the Historical CAT Costs sought to be recovered by the Historical CAT Assessment, where the Historical CAT Costs will be Past CAT Costs minus Past CAT Costs excluded from Historical CAT Costs by the Operating Committee.

(D) Historical Recovery Period.

(I) The length of the Historical Recovery Period used in calculating the Historical Fee Rate will be established by the Operating Committee based upon the amount of the Historical CAT Costs to be recovered by the Historical CAT Assessment; provided, however, no Historical Recovery Period used in calculating the Historical Fee Rate shall be less than 24 months or more than five years.

(II) Notwithstanding the length of the Historical Recovery Period used in calculating the Historical Fee Rate, the Historical CAT Assessment calculated using the Historical Fee Rate will remain in effect until all Historical CAT Costs are collected.

(E) Projected Total Executed Equivalent Share Volume of Transactions in Eligible Securities for Historical Recovery Period. The Operating Committee shall determine the projected total executed equivalent share volume of all transactions in Eligible Securities for the Historical Recovery Period based on the executed equivalent share volume of all transactions in Eligible Securities for the prior twelve months.

(ii) Past CAT Costs and Participants. Because Participants previously have paid Past CAT Costs via loans to the Company, Participants would not be required to pay the Historical CAT Assessment. The Historical CAT Assessment to be paid by Industry Members and collected by the Company will be used by the Company to repay a portion of the loans from the Participants to the Company on a pro rata basis. The Historical CAT Assessment is designed to recover two-thirds of the Historical CAT Costs.

(iii) Historical CAT Assessment for Industry Members.

(A) Each month in which the Historical CAT Assessment is in effect, each EBB and each EBS shall pay a fee for each transaction in Eligible Securities executed by the EBB or EBS from the prior month as set forth in CAT Data, where the Historical CAT Assessment for each transaction will be calculated by multiplying the number of executed equivalent shares in the transaction by one-third and by the Historical Fee Rate determined pursuant to paragraph (b)(i) of this Section 11.3.

(B) Historical CAT Fee Filing. When the Participants file with the SEC pursuant to Section 19(b) of the Exchange Act the Historical CAT Assessment calculated using the Historical Fee Rate that the Operating Committee approved in accordance with this Section 11.3, such filing shall set forth (A) the Historical Fee Rate; (B) a brief description of amount and type of the Historical CAT Costs; (C) the Historical Recovery Period and the reasons for its length; and (D) the projected total executed equivalent share volume of all transactions in Eligible Securities for the Historical Recovery Period, and a description of the calculation of the projection.

(c) The Operating Committee may establish any other fees ancillary to the operation of the CAT that it reasonably determines appropriate, including fees: (i) for the late or inaccurate reporting of information to the CAT; (ii) for correcting submitted information; and (iii) based on access and use of the CAT for regulatory and oversight purposes (and not including any reporting obligations).

(d) The Company shall make publicly available a schedule of effective fees and charges adopted pursuant to this Agreement as in effect from time to time. The Operating Committee shall review such fee schedule on at least an annual basis and shall make any changes to such fee schedule that it deems appropriate. The Operating Committee is authorized to review such fee schedule on a more regular basis, but shall not make any changes on more than a semiannual basis unless, pursuant to a Supermajority Vote, the Operating Committee concludes that such change is necessary for the adequate funding of the Company.

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APPENDIX B

Fee Schedule

Consolidated Audit Trail Funding Fees for Participants

(a) CAT Fee. Each Participant shall pay the CAT Fee set forth in Section 11.3(a) of the CAT NMS Plan to Consolidated Audit Trail, LLC in the manner prescribed by Consolidated Audit Trail, LLC on a monthly basis based on the Participant's transactions in Eligible Securities in the prior month.

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EXHIBIT B:

Proposed Additional Revisions to Proposed Changes in Proposed Amendment

Additions underlined; deletions [bracketed]

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ARTICLE XI

FUNDING OF THE COMPANY

Section 11.1. Funding Authority.

(a) On an annual basis the Operating Committee shall approve an operating budget for the Company. The budget shall include the projected costs of the Company, including the costs of developing and operating the CAT for the upcoming year, and the sources of all revenues to cover such costs, as well as the funding of any reserve that the Operating Committee reasonably deems appropriate for prudent operation of the Company.

(i) Without limiting the foregoing, the budgeted CAT costs shall include technology, legal, consulting, insurance, professional and administration, and public relations costs, a reserve and such other cost categories as determined by the Operating Committee to be included in the budget.

(ii) For the reserve referenced in paragraph (a)(i) of this Section, the budget will include an amount necessary to allow the Company to maintain a reserve of not more than 25% of the annual budget. To the extent collected CAT fees exceed CAT costs, including the reserve of 25% of the annual budget, such surplus shall be used to offset future fees.

(b) Subject to Section 11.2, 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 Participants. The 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, and such fees shall be labeled as "Consolidated Audit Trail Funding Fees."

(c) To fund the development and implementation of the CAT, the Company shall time the imposition and collection of all fees on Participants and Industry Members in a manner reasonably related to the timing when the Company expects to incur such development and implementation costs. In determining fees on Participants and Industry Members the Operating Committee shall take into account fees, costs and expenses (including legal and consulting fees and expenses) incurred by the Participants on behalf of the Company prior to the Effective Date in connection with the creation and implementation of the CAT, and such fees, costs and expenses shall be fairly and reasonably shared among the Participants and Industry

Members. Any surplus of the Company's revenues over its expenses shall be treated as an operational reserve to offset future fees.

(d) Consistent with this Article XI, the Operating Committee shall adopt policies, procedures, and practices regarding the budget and budgeting process, resolution of disputes, billing and collection of fees, and other related matters.

Section 11.2. Funding Principles. In establishing the funding of the Company, the Operating Committee shall seek:

(a) to create transparent, predictable revenue streams for the Company that are aligned with the anticipated costs to build, operate and administer the CAT and the other costs of the Company;

(b) to establish an allocation of the Company's related costs among Participants and Industry Members that is consistent with the Exchange Act, taking into account the timeline for implementation of the CAT;

(c) to establish a fee structure in which the fees charged to Participants and Industry Members are based upon the executed equivalent share volume of transactions in Eligible Securities, **and the costs of the CAT.**

(d) to provide for ease of billing and other administrative functions;

(e) to avoid any disincentives such as placing an inappropriate burden on competition and a reduction in market quality; and

(f) to build financial stability to support the Company as a going concern.

Section 11.3. Recovery.

(a) **Prospective CAT Costs.** The Operating Committee will establish fees ("**CAT Fees**") to be payable by Participants **and Industry Members with regard to CAT costs not previously paid by the Participants ("Prospective CAT Costs")** as follows:

(i) **Fee Rate. The Operating Committee will calculate the Fee Rate for the CAT Fee twice per year, once at the beginning of the year and once during the year as follows:**

(A) General.

(I) At the beginning of each year, the Operating Committee will calculate the Fee Rate by dividing the budgeted CAT costs for the year by the projected total executed equivalent share volume of all transactions in Eligible Securities for the year. Once the Operating Committee has approved such Fee Rate, the Participants shall be required to file with the SEC pursuant to Section 19(b) of the Exchange

Act CAT Fees to be charged to Industry Members calculated using such Fee Rate. Participants and Industry Members will be required to pay CAT Fees calculated using this Fee Rate once such CAT Fees are in effect with regard to Industry Members in accordance with Section 19(b) of the Exchange Act.

(II) During each year, the Operating Committee will calculate a new Fee Rate by dividing the budgeted CAT costs for the remainder of the year by the projected total executed equivalent share volume of all transactions in Eligible Securities for the remainder of the year. Once the Operating Committee has approved the new Fee Rate, the Participants shall be required to file with the SEC pursuant to Section 19(b) of the Exchange Act CAT Fees to be charged to Industry Members calculated using the new Fee Rate. Participants and Industry Members will be required to pay CAT Fees calculated using this new Fee Rate once such CAT Fees are in effect with regard to Industry Members in accordance with Section 19(b) of the Exchange Act.

(III) For the avoidance of doubt, CAT Fees with a Fee Rate calculated as set forth in this paragraph (a)(i) shall remain in effect until the Operating Committee approves a new Fee Rate as described in paragraph (a)(i) and CAT Fees with the new Fee Rate are in effect with regard to Industry Members in accordance with Section 19(b) of the Exchange Act.

(B) Executed Equivalent Shares. For purposes of calculating CAT Fees, executed equivalent shares in a transaction in Eligible Securities will be counted as follows:

(I) each executed share for a transaction in NMS Stocks will be counted as one executed equivalent share;

(II) each executed contract for a transaction in Listed Options will be counted based on the multiplier applicable to the specific Listed Option (i.e., 100 executed equivalent shares or such other applicable multiplier); and

(III) each executed share for a transaction in OTC Equity Securities shall be counted as 0.01 executed equivalent share.

(C) Budgeted CAT Costs. The budgeted CAT costs for the year shall be comprised of all fees, costs and expenses budgeted to be incurred by or for the Company in connection with the development, implementation and operation of the CAT as set forth in the annual operating budget approved by the Operating Committee pursuant to Section 11.1(a) of the CAT NMS Plan, or as adjusted during the year by the Operating Committee.

(D) Projected Total Executed Equivalent Share Volume of Transactions in Eligible Securities. The Operating Committee shall determine the projected total executed equivalent share volume of all transactions in Eligible Securities for each relevant period based on the executed equivalent share volume of all transactions in Eligible Securities for the prior twelve months.

(ii) Participant CAT Fees.

(A) CAT Fee Obligation. Each Participant that is a national securities exchange will be required to pay [a fee] **the CAT Fee** for each transaction in Eligible Securities executed on the exchange in the prior month based on CAT Data. Each Participant that is a national securities association will be required to pay [a fee] **the CAT Fee** for each transaction in Eligible Securities executed otherwise than on an exchange in the prior month based on CAT Data. [(ii)] The [fee] **CAT Fee** for each transaction in Eligible Securities will be calculated by multiplying the number of executed equivalent shares in the transaction by one-third and by the [applicable fee rate for the relevant period (“ Fee Rate (“) **determined pursuant to paragraph (a)(i) of this Section 11.3.**

(B) Effectiveness. Each Participant will be required to pay the CAT Fee calculated using the Fee Rate determined pursuant to paragraph (a)(i) of this Section 11.3 and approved by the Operating Committee only if such CAT Fees are in effect with regard to Industry Members in accordance with Section 19(b) of the Exchange Act.

[(iii) Participants will be required to pay a CAT fee with regard to CAT costs not previously paid by the Participants (“Prospective CAT Costs”). The Fee Rate for the CAT fee related to Prospective CAT Costs will be calculated by dividing the budgeted CAT costs for the relevant period (as determined by the Operating Committee) by the projected total executed equivalent share volume of all transactions in Eligible Securities for the relevant period based on CAT Data.]

[(iv) Notwithstanding anything to the contrary, Participants will not be required to pay a CAT fee related to CAT costs previously paid by the Participants in a manner determined by the Operating Committee (“Past CAT Costs”).]

(iii) Industry Member CAT Fees.

(A) CAT Fee Obligation. Each Industry Member that is the executing broker for the buyer in a transaction in Eligible Securities (“Executing Broker for the Buyer” or “EBB”) and each Industry Member that is the executing broker for the seller in a transaction in Eligible Securities (“Executing Broker for the Seller” or “EBS”) will be required to pay a CAT Fee for each such transaction in Eligible Securities in the prior month based on CAT Data. The EBB’s CAT Fee or EBS’s CAT Fee (as applicable) for each transaction in Eligible Securities will be calculated by multiplying the number of executed equivalent shares in the transaction by one-third and by the Fee Rate determined pursuant to paragraph (a)(i) of this Section 11.3.

(B) Content of Fee Filings. When the Participants file with the SEC pursuant to Section 19(b) of the Exchange Act CAT Fees to be charged to Industry Members calculated using the Fee Rate that the Operating Committee approved in accordance with paragraph (a) of this Section 11.3, such filings shall set forth (A) the Fee Rate; (B) the budget for the upcoming year (or remainder of the year, as applicable), including a brief description of each line item in the budget, including technology, legal, consulting, insurance, professional and administration, and public relations costs, a reserve and/or such other categories as determined by the Operating Committee to be included in the budget, and the reason for changes in each such line item from the prior CAT Fee filing; (C) a discussion of how the budget is reconciled to the collected fees; and (D) the projected total executed equivalent share volume of all transactions in Eligible Securities for the year (or remainder of the year, as applicable), and a description of the calculation of the projection.

(b) Past CAT Costs. The Operating Committee will establish fees (“Historical CAT Assessment”) to be payable by Industry Members **with regard to CAT costs previously paid by the Participants (“Past CAT Costs”)** as follows:

(i) Calculation of Historical Fee Rate.

(A) General. The Operating Committee will calculate the Historical Fee Rate for the Historical CAT Assessment by dividing the Historical CAT Costs by the projected total executed equivalent share volume of all transactions in Eligible Securities for the Historical Recovery Period. Once the Operating Committee has approved such Fee Rate, the Participants shall be required to file with the SEC pursuant to Section 19(b) of the Exchange Act the Historical CAT Assessment to be charged to Industry Members calculated using such Historical Fee Rate. Industry Members will be required to pay

Historical CAT Assessment calculated using this Historical Fee Rate once such Historical CAT Assessment is in effect in accordance with Section 19(b) of the Exchange Act.

(B) Executed Equivalent Shares. For purposes of calculating the Historical CAT Assessment, executed equivalent shares in a transaction in Eligible Securities will be counted in the same manner as set forth in paragraph (a)(i)(B) of this Section 11.3.

(C) Historical CAT Costs. The Operating Committee will determine the Historical CAT Costs sought to be recovered by the Historical CAT Assessment, where the Historical CAT Costs will be Past CAT Costs minus Past CAT Costs excluded from Historical CAT Costs by the Operating Committee.

(D) Historical Recovery Period.

(I) The length of the Historical Recovery Period used in calculating the Historical Fee Rate will be established by the Operating Committee based upon the amount of the Historical CAT Costs to be recovered by the Historical CAT Assessment; provided, however, no Historical Recovery Period used in calculating the Historical Fee Rate shall be less than 24 months or more than five years.

(II) Notwithstanding the length of the Historical Recovery Period used in calculating the Historical Fee Rate, the Historical CAT Assessment calculated using the Historical Fee Rate will remain in effect until all Historical CAT Costs are collected.

(E) Projected Total Executed Equivalent Share Volume of Transactions in Eligible Securities for Historical Recovery Period. The Operating Committee shall determine the projected total executed equivalent share volume of all transactions in Eligible Securities for the Historical Recovery Period based on the executed equivalent share volume of all transactions in Eligible Securities for the prior twelve months.

(ii) Past CAT Costs and Participants. Because Participants previously have paid Past CAT Costs via loans to the Company, Participants would not be required to pay the Historical CAT Assessment. The Historical CAT Assessment to be paid by Industry Members and collected by the Company will be used by the Company to repay a portion of the loans from the Participants to the Company on a pro rata basis. The Historical CAT Assessment is designed to recover two-thirds of the Historical CAT Costs.

(iii) Historical CAT Assessment for Industry Members.

(A) Each month in which the Historical CAT Assessment is in effect, each EBB and each EBs shall pay a fee for each transaction in Eligible Securities executed by the EBB or EBS from the prior month as set forth in CAT Data, where the Historical CAT Assessment for each transaction will be calculated by multiplying the number of executed equivalent shares in the transaction by one-third and by the Historical Fee Rate determined pursuant to paragraph (b)(i) of this Section 11.3.

(B) Historical CAT Fee Filing. When the Participants file with the SEC pursuant to Section 19(b) of the Exchange Act the Historical CAT Assessment calculated using the Historical Fee Rate that the Operating Committee approved in accordance with paragraph (b) of this Section 11.3, such filing shall set forth (A) the Historical Fee Rate; (B) a brief description of the amount and type of the Historical CAT Costs; (C) the Historical Recovery Period and the reasons for its length; and (D) the projected total executed equivalent share volume of all transactions in Eligible Securities for the Historical Recovery Period, and a description of the calculation of the projection.

[(i) Each Industry Member that is the clearing firm for the buyer in a transaction in Eligible Securities (“Clearing Broker for the Buyer” or “CBB”) will be required to pay a fee for each such transaction in Eligible Securities based on CAT Data. The CBB’s fee for each transaction in Eligible Securities will be calculated by multiplying the number of executed equivalent shares in the transaction by one-third and by the Fee Rate.]

[(ii) Each Industry Member that is the clearing firm for the seller in a transaction in Eligible Securities (“Clearing Broker for the Seller” or “CBS”) will be required to pay a fee for each transaction in Eligible Securities based on CAT Data. The CBS’s fee for each transaction in Eligible Securities will be calculated by multiplying the number of executed equivalent shares in the transaction by one-third and by the Fee Rate.]

[(iii) CBBs and CBSs will be required to pay CAT fees related to Past CAT Costs. The Fee Rate for the CAT fees related to Past CAT Costs will be calculated by dividing the Past CAT Costs for the relevant period (as determined by the Operating Committee) by the projected total executed equivalent share volume of all transactions in Eligible Securities for the relevant period based on CAT Data.]

[(iv) CBBs and CBSs will be required to pay CAT fees related to Prospective CAT Costs. The Fee Rate for the CAT fees related to Prospective CAT Costs will be the same as set forth in paragraph (a)(iv) above.]

(c) The Operating Committee may establish any other fees ancillary to the operation of the CAT that it reasonably determines appropriate, including fees: (i) for the late or inaccurate reporting of information to the CAT; (ii) for correcting submitted information; and (iii) based on access and use of the CAT for regulatory and oversight purposes (and not including any reporting obligations).

(d) The Company shall make publicly available a schedule of effective fees and charges adopted pursuant to this Agreement as in effect from time to time. The Operating Committee shall review such fee schedule on at least an annual basis and shall make any changes to such fee schedule that it deems appropriate. The Operating Committee is authorized to review such fee schedule on a more regular basis, but shall not make any changes on more than a semiannual basis unless, pursuant to a Supermajority Vote, the Operating Committee concludes that such change is necessary for the adequate funding of the Company.

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APPENDIX B

Fee Schedule

Consolidated Audit Trail Funding Fees for Participants

(a) **CAT Fee.**

[(1) Each Participant that is a national securities exchange shall pay a fee for each transaction in Eligible Securities executed on the exchange based on CAT Data, where the fee for each transaction will be calculated by multiplying the number of executed equivalent shares in the transaction by one-third and by the Fee Rate.

(2) Each Participant that is a national securities association shall pay a fee for each transaction in Eligible Securities executed otherwise than on exchange based on CAT Data, where the fee for each transaction will be calculated by multiplying the number of executed equivalent shares in the transaction by one-third and by the Fee Rate.

(b) **Fee Rate**

(1) The Operating Committee will calculate the Fee Rate at the beginning of each year by dividing the budgeted CAT costs for the year by the projected total executed equivalent share volume of all transactions in Eligible Securities for the year. After setting the Fee Rate at the beginning of each year, the Fee Rate may be adjusted once during the year, if necessary, due to changes in the budgeted or actual costs or projected or actual total executed equivalent share volume during the year.

(2) For purposes of calculating the fees, executed equivalent shares in a transaction in Eligible Securities will be counted as follows:

(i) each executed share for a transaction in NMS Stocks will be counted as one executed equivalent share;

(ii) each executed contract for a transaction in Listed Options will be counted based on the multiplier applicable to the specific Listed Option (i.e., 100 executed equivalent shares or such other applicable multiplier); and

(iii) each executed share for a transaction in OTC Equity Securities shall be counted as 0.01 executed equivalent share.

(3) **Budgeted CAT Costs.** The budgeted CAT costs for the year shall be comprised of all fees, costs and expenses budgeted to be incurred by or for the Company in connection with the development, implementation and operation of the CAT as set forth in the annual operating budget approved by the Operating Committee pursuant to Section 11.1(a) of the CAT NMS Plan, or as adjusted during the year by the Operating Committee.

(4) **Projected Total Executed Equivalent Share Volume of Transactions in Eligible Securities.** The Operating Committee shall determine the projected total executed equivalent share volume of all transactions in Eligible Securities for each relevant period based on the executed equivalent share volume of all transactions in Eligible Securities for the prior six months.]

[(c) **Fee Payments/Collection.**] Each Participant shall pay the CAT **Fee** [fee] set forth **in Section 11.3(a) of the CAT NMS Plan [paragraph (a)]** to Consolidated Audit Trail, LLC in the manner prescribed by Consolidated Audit Trail, LLC on a monthly basis based on the Participant's transactions **in Eligible Securities** in the prior month.

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